UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

STUDENT BODY REPORTS

VOLUME 1

CASES ADJUDGED

IN

THE SUPREME COURT

FROM

OCTOBER, 1969 THROUGH FEBRUARY, 2022

REPORTED THIS, THE SEVENTH OF JULY — MMXXII

ANGUS EWINGTON, ASSOCIATE JUSTICE

EDITOR

CASES

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1970

HADLEY EMERSON WHITTEMORE, PLAINTIFF *v.* DAVID RUFFIN, CHAIRMAN OF THE ELECTIONS BOARD

ORIGINAL

No. 70–001. Orig. Decided November 15, 1970

The Elections Board's Executive committee refused to certify Plaintiff Whittemore to the ballot as a candidate for President of the Sophomore Class because Plaintiff did not have a 2.0 grade point average (GPA). Since Plaintiff did not have the requisite, GPA, she was not a "student in good standing." Whittemore filed a complaint requesting a temporary restraining order (T.R.O.) and alleging that the GPA requirement was discriminatory.

Held: The Court cannot reach the substantive claim, and denies the request for relief since the Plaintiff failed to demonstrate arbitrary and capricious action.

To show that injunctive relief is proper, a Plaintiff must demonstrate that the Plaintiff has a clear right to the relief or where denial of the relief which adversely harm them. The Plaintiff has no such clear right since the Constitution does not contain any equal protections clause, nor are there laws restraining the Legislature from promulgating discriminatory laws. The Court finally notes, that the GPA requirement is wholly consistent with University Policy.

Relief denied.

CRUMP, C.J. delivered the opinion for a unanimous Court

JUSTICE CRUMP delivered the opinion of the Court.

The Executive Committee of the Elections Board refused to place the name of the Plaintiff on the ballot in an election for President of the Sophomore Class. The stated reason for this action was that the Plaintiff did not have a 2.0 grade point average and was therefore not a "student in good standing."

I

The Plaintiff's motion for a preliminary injunction will be denied. In order to obtain a temporary restraining order *ex parte*, it is necessary to show that the Plaintiff has a clear right to the relief requested, or that his rights and remedies will be adversely

affected in such a way as to render them a nullity if the order will not issue. The Plaintiff has no such clear right. Furthermore, it will be possible to hold a hearing on this matter before the election if no answer is required of the Defendant.

II

The grounds complained of in paragraphs I–VIII of the complaint, while showing that the Plaintiff had in fact been discriminated against, fail to show a conflict between the complained of provisions of the Elections laws and the Constitution. Nowhere in the Constitution is there a provision that the Legislature may not promulgate a discriminatory law. The Constitution contains no equal protection clause. The closest to such provision as exists is 1.1.1.4(1): "The Student Legislature shall have powers: To make all laws necessary and proper to promote the general welfare of the Student Body," From this it logically follows, to my way of thinking, that the right to be represented as implicitly granted in Article I of the Constitution, which composes and establishes the Legislature, is clearly and distinctly distinguishable from the "right" to represent, which is not at all guaranteed save to those who meet the criteria set forth by the Legislature in the Elections Law. The denial of injunctive relief however, is based on the provisions of *Kiel* v. *Tyndall* which prevails: "Claims of unconstitutionality must be founded on provisions of the Student Constitution and what may be reasonably deduced from its language." This standard of *Kiel* v. *Tyndall* also applies to the amended complaint. Herein Plaintiff argued that class officers fall outside the jurisdiction of the Legislature as they are not mentioned in Article I, Section 1.1.1.2 and Sections 1.1.1.5–1.1.1.9 nor in Articles II or III of the Constitution. The Court pointed out to Plaintiff, however, that there were several other groups within the University over which the Legislature has power, but which are not funded or otherwise supported by Student Government monies, and which are not specifically created by the Constitution. We further pointed out that the Legislature has, in the General Elections Law, provided for the election of class officers, and that no Constitutional provision conflicts with such assertion of jurisdiction, but rather may be subsumed under § 1.1.1.4(f): "To make laws governing Student Government Elections." To my way of thinking, the fact that class officers are not explicitly provided for in the Constitution does not interfere with legislative power over their election, for in fact, class officers are a creature of the Legislature, and the Legislature can therefore provide for their election, provide for qualifications for those who run for those offices, or blot out class officers altogether. It would seem to me that even if there were no requirement that class officer qualifications set by the general elections laws be met by the

candidates, the election of such officers would still fall within the Legislative power by analogy to the case of *Dorrol* v. *Oliver*.

Only if the Legislature has been wholly arbitrary and capricious in setting minimum qualifications for officeholders should this Court strike those qualifications down. The 2.0 average standard may be capricious and arbitrary, but it is not wholly the creation of the Legislature. The University Administration requires that the student have a 2.0 average in order to graduate. The Legislature has chosen that those whom the University would not graduate should spend their time working on their studies, rather than at the business of Student Government.

* * *

Plaintiff is denied relief.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1971

ROBERT MARK LEVY, PLAINTIFF *v.* DAVID RUFFIN, CHAIRMAN OF THE ELECTIONS BOARD

BANTA, PLAINTIFF *v.* DAVID RUFFIN, CHAIRMAN OF THE ELECTIONS BOARD

ORIGINAL

Nos. 71–002, 71–001 Orig. Decided April 9, 1971

Robert "Bob" Levy was a candidate for Student Legislature running in MD IX (Ehringhaus). On the copies of the ballots produced by the Elections Board on the day of the election, the boxed between Levy and his competitor, Frank McNair's names was sufficiently close to cause confusion among voters about which candidates corresponded with each check box on the ballot. Despite the confusion board, the Elections Board strictly maintained that only the third box corresponded to a vote for a vote for Levy. Levy placed fourth—thereby disqualifying him from the race. He filed suit. The Elections Board contended that Levy did not meet the high evidentiary bar to void an election, and that—because the error in the ballots was primarily technological and unintentional—no culpability could reasonably lie with the Elections Board.

Held: a ballot may be so poorly materially constructed so as to deprive a candidate of their rights, privileges, and immunities, to an extent which justifies voiding an election result.

The Court extends the grounds for which an election may be voided from our common law. An election may be voided if the error was of degree and quantity to compromise the results of an election or ballot box, *see Kelly* v. *Mickel*, No. 69–001 S.S.C. (1969), and indeed so compromised that the voiding of the box would substantially affect the results. *See Beskow* v. *Fletcher*, No. 69–006 S.S.C. (1970). A plaintiff may also file under *Dorrol* which held that an election may be voided if it was so unfairly and incompetently administered that a fair election was made impossible. *See Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969). The Court also notes that some additional standards are required to render these burdens just, and fashions the "Banta standard." When a candidate becomes aware of a violation or error, they must act as swiftly as possible in an attempt to remedy the violation. If a plaintiff cannot demonstrate this proactivity, their claim must fail. Levy satisfies all of these standards. The ballot was so poorly constructed that the just administration of the election was rendered impossible.

The Court rejects the Elections Board's claims that it cannot be held liable for the faults of a printer. To this end, the Court notes that the Elections Board, and student government administration more generally, is bound by the doctrine of *respondeat superior*, *i.e.*, a party is responsible for the actions of their subordinates. That the printer lacks agency is immaterial.

Election of March 16, 1971 voided. 5

CRUMP, C.J. delivered the opinion of a unanimous Court.

JUSTICE CRUMP delivered the opinion of the Court.

The Court considered simultaneously today two controversies, that of *Banta* v. *Ruffin*, and *Levy* v. *Ruffin*. For the purposes of opinion and final disposition, they are considered separately.

The Court waived arguments on standing to bring suit, necessary defendants, and the jurisdictional issue. This was done to expedite the hearing because the standing to sue and the necessary defendants were not contested, were immediately clear from the pleadings, and are thoroughly and clearly spelled out in statute. The jurisdictional issues were waived because we accepted jurisdiction, as the controversies both involved the same substantial issue: can there be a ballot so constructed as to deprive a candidate of his rights, privileges, and immunities, that is, of his right to a fair and impartial election; and if a ballot has been so constructed, does this constitute sufficient grounds for nullifying an election and granting the extraordinary remedy of ordering a new election? The Court have concluded that, under certain conditions, there can be such error and defectiveness in a ballot, and that such error does entitle the candidate so affected to a new, and hopefully fairer election.

II

In the instant suit, the following facts were established: That Robert Mark Levy, whose name appeared on the ballot as "Bob Levy," was on March 16, 1971 a candidate for Student Legislature in MD IX (Ehringhaus). That Mr. Levy's name was third of six names on the ballot. That Mr. Frank McNair's name was the fourth of six names on the bellow. That the boxes on the ballot were sufficiently misaligned that there could be some confusion as to which box one should check if he wished to vote for Mr. Levy. That three seats in the Student Legislature were contested in MD IX and that Mr. Johnson Finelli, Mr. Frank McNair (whose name immediately followed that of Mr. Levy), and Mr. Phillip Williams were declared the winners of those seats.

That the Elections Board was at the time of counting of the ballots aware of the confusion appertaining to the MD IX Legislative ballot, and that a member of the Elections Board, Miss Margot Fletcher, ruled at the time of the counting of the ballots

that only those ballots which had been marked in the third box should be counted as votes for Mr. Levy.

III

For the Opinion in this suit, the Court relies on the standards set forth in the consideration of the *Banta* case today. The first point of the decision in that case is that a ballot can be so constructed and so defective as to cause a candidate irreparable harm, the loss of his right to a fair and impartial election, and from there the loss of the election. The Court also decided that the showing that a ballot used in an election was in some way defective does not by itself constitute grounds for voiding an election. In deciding to void an election, an extreme and extraordinary act, the Court must look at every available aspect of the election process. In the past, the Court has refrained from voiding an election because there was some error in the administration of the election, and has further required that in addition to the showing of error, petitioner must also show that the error was of sufficient degree and quality as to compromise the results of the election, of sufficient degree and quality as to compromise the results of a box, and that, even if the box were voided, in a campus-wide election, that the given box would substantially affect the results of the election, *Carver* v. *Zettel*, *Kelly* v. *Mickel*, *Beskow and Griffith* v. *Fletcher*, or that the election was so unfairly and so incompetently administered, with such flagrant disregard of the rights of a candidate or of all the candidates as to make a fair election impossible to obtain, *Dorrol* v. *Oliver*. In short, error or defectiveness alone is not sufficient to warrant voiding an election unless the error is substantially harmful. Thus, the second requirement is that the candidate must show, in addition to the defectiveness of the ballot and the irreparable harm, that the two are joined; that there is a clear possibility that the error was responsible for his defeat.

The Court accepts without question that it is the responsibility of the Elections Board to provide all candidates with a fair and impartial election. The idea is fundamental to the concept of participatory democracy. From this it follows that the printer who accepts from the Elections Board the order of preparing the ballots is an agent of the Elections Board, and that the Elections Board is responsible for the errors of its agent, the printer. This Court cannot claim the original authorship of this idea, although the idea can certainly appeal to its reasonableness, particularly in the setting of this University. The doctrine is called, in the common law, *respondeate superior*, which means, let the master answer, or that the master of a house is responsible for the damages inflicted by the negligence of his servants. The doctrine is, I

think, especially applicable within the setting of the University community and in the Courts of the student body, in which only student organizations can be held responsible for injuries to other student organizations, to Student Government, and to the rights of students within the jurisdiction of Student Government. One of the minimal responsibilities of the Elections Board, in the view of this Court, is to provide a clear and unambiguous ballot. To define further than has already been done the meaning of a "clear and unambiguous ballot" is to go beyond the scope of these two cases. We can only say that the ballot used in the race for the Student Legislature in MD IX does not fall within that standard. Finally, we accept that cases of this sort do fall within the original jurisdiction of the Court, and that beyond these two cases the Court has the responsibility to define the meaning of a clear and unambiguous ballot. These two cases, when considered together, we hope, do provide some guiding light for this determination, in that we do establish that a defect of any sort is not sufficient to warrant the voiding of an election, that the ballot must be so defective as to do possible harm to the rights of the petitioning candidate.

Finally, the Court, in the *Banta* case, has placed upon the petitioning candidate a third burden of proof: It must be shown that the candidate, upon acquiring knowledge or reason to know of the irregularity on the ballot must act with all due diligence and speed so as to ensure the correction of the error. Again, the primary appeal which the Court can make for establishing this doctrine is its reasonableness and its attempt to assure fairness to all candidates equally, to the Elections Board, and to the electorate. It is the responsibility of the candidate and his supporters to attempt to assure his election. If this is true in terms of building one's following of popular support, then assuredly, it must also be true in terms of a candidate's meeting his legal obligations. The candidate must comply with those portions of the Elections Laws which apply to him to the satisfaction of the Chairman of the Board of Elections; and as soon as a candidate is aware that the construction of a ballot is prejudicial to his campaign, it is just as surely his responsibility to attempt to rectify this fault as it is his responsibility to attempt to raise his standing in the polls by any other lawful means available to him. The Elections Board or one of its agents must bear sole responsibility for the harm done the candidate if his cause is to stand. Again, the Court could also appeal to the common law for justifications of this doctrine, but due to limitations of time and because the applicability and reasonableness of this doctrine has been demonstrated to the best of our abilities, as it applies to the instant situations, we will decline from so doing.

In summary, then, it is the desire of the Court to establish four burdens of proof for those who would seek to have the results of an election invalidates by the Court on the ground that the ballot was not clear and unambiguous:

(1) The Court Requires that the candidate show that the ballot was defective and/or that it was not clear and unambiguous.
(2) The Court requires that the candidate show that he suffered irreparable harm, that is, that he lost the election.
(3) The Court requires that the candidate show that there was a clear possibility that the error on the ballot was responsible for his defeat.
(4) The Court requires that the candidate show that upon his acquiring knowledge or reason to know of the irregularity on the ballot that he did act with all due diligence and speed so as to ensure the correction of the error.

The Court are satisfied that Mr. Levy has satisfied these burdens of proof.

IV

The court accepts without question that Mr. Levy was damaged. Mr. Levy placed fourth in a field of six candidates. Mr. Frank McNair, who won a seat in the Student Legislature, placed third. Since all the records from the election were destroyed after the recent fire in the Student Union Building, and since Mr. Ruffin did not contest Mr. Levy's estimates, the Court accepts Mr. Levy's allegations that about 350 votes were cast in the election, and that the difference between the totals of Mr. McNair and Mr. Levy was about 10 votes. *See also* Polk affidavit in Appendix B.). Mr. Levy lost the election by about 2.8 per cent of the total vote case. After having examined the ballot (*See* Appendix A) the Court was satisfied that on the face of it, the ballot used in the MD IX Legislative election was damaging to Mr. Levy, and possibly also to Mr. Whittemore, on the face of it. The third and fourth boxes on the ballot, corresponding to the names "Bob Levy" and "Frank McNair" are both raised to such a degree that the fourth box appears to be closer to the name "Bob Levy" than it is to that of "Frank McNair." Mr. Levy claims that the fourth box is .02 inches closer to his name than it is to that of Mr. McNair. The Court should not like to set .02 inches as any sort of standard. Rather, we should like to point out that the boxes are sufficiently misaligned that there could be some confusion as to whom one was voting for.

In terms of the ballot defected on the ballots, I should like to distinguish between the *Levy* ballot and the *Banta* ballot in the following ways. The *Levy* ballot, as I have said, may be accepted as damaging on the face of it. Even to a reasonable and prudent elector at the University of North Carolina at Chapel Hill, there could be some confusion as to which box should be marked if one were to vote for Mr. Levy. The ballot used in *Banta*'s election cannot be so accepted. On the face of it the *Banta* ballot is clear. It is damaging only by extrinsic fact. The presence (or, perhaps, the absence) of a party label, even where the presence of a party label might be construed to be the kiss of death, or where the party label applied is that of a minor or unpopular party is, in and of itself, not to be construed as damaging without further argument. The argument that the temper of the times is opposed to the party label, without reference to the damage caused by the presence of the party label with respect to specific voters, is not sufficient If Mr. Banta had been able to secure evidence that as many or more voters as would have made a difference in the results of the election did not vote for him due to the presence of the Student Party label by his name, the Court might have been satisfied as respect the third burden of proof. *Supra* at 5.

V

The Court are further satisfied that Plaintiff Levy has demonstrates that there is a clear possibility that the error on the ballot was responsible for his non-election. At the hearing Mr. Ruffin admitted that there was some confusion in the ballot, and that he had been aware of the confusion in the ballot prior to the time of the counting of the ballots.

At the time of the counting, Miss Margot Fletcher made her ruling on which votes were to be counted for Mr. Levy after two ballot counters had erred in the counting by giving to Mr. Levy votes which, after her ruling, we counted for Mr. McNair. Mr. Levy was an eyewitness to the counting and was partially responsible for pointing out the error to the counters. Finally, Mr. Levy reports that, after having checked among his potential constituency, he found some electors who remembered voting for him, but were unsure as to whether they had checked the appropriate box. Other voters reported having checked the third box since Mr. Levy's name was third on the ballot, but were uncertain as to whether or not these votes would be counted as voted for Mr. Levy. The Court accepts that an error could have been made by approximately 2.8 per cent of the electorate due to the confusion on the ballot and that there is a clear possibility that the defectiveness of the ballot was responsible for Mr. Levy's defeat.

Two things further remain to be said regarding this point. In the first place, the Court should not like to establish a defeat by 2.8 per cent of the vote case as a minimal standard for the clear possibility that the error on the ballot caused the candidate's defeat. Any further definition of a reasonable standard or clear possibility must be established by future cases. Second, we accept Mr. Levy's contentions regarding the election statistics, the ballot counters, and the confusion within his constituency due to the fact that the official election records were destroyed after the fire in the basement of the Student Union. I would recommend that in the future witnesses and affidavits be required beyond what it was possible to reasonably obtain in this case.

VI

Finally, respecting the third standard set by the *Banta* Decision: that the damaged candidate must show that upon his acquiring knowledge or reason to know that the ballot was defective, he did act with all due speed and diligence so as to ensure the correction of the error, the Court are satisfied that Mr. Levy has adequately complied. Mr. Levy, of course, did not know or have reason to know or even suspect that the ballot was defective until he himself went down to vote. At that time there was nothing which Mr. Levy could do to correct or cause to be corrected the error on the ballot. In this Instance, Mr. Levy did all that was within his power to do to attempt to offset the unfairness caused by the error in the ballot when he went to the counting of the ballots and watched that process. On or about 18 March 1971 Mr. Levy called MR. JUSTICE CRUMP of the Court to enquire as to what judicial remedy might be open to him and how he might go about having his cause heard. He filed the initial protest against the MD IX Legislative election on 19 March 1971. This particular burden is, of course, directed more towards the situation in the *Banta* case than that of the *Levy* case. We are satisfied that Mr. Levy was in no way responsible for his own harm, and that all the damage done Mr. Levy is attributable to the printer and thus to the Elections Board. We are satisfied that this error was sufficient that as little as 2.8 per cent of the vote case could have gone to Mr. McNair, contrary to the intentions of the voters.

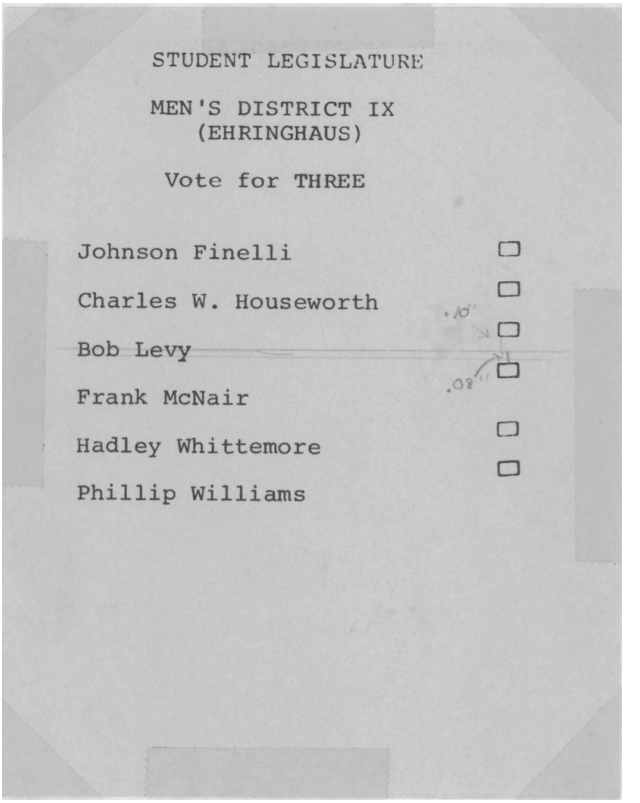
* * *

Thus, the elections of 16 March 1971 for Student Legislators from Men's District IX are declared null, void, and without any consequence whatsoever, and it is further ordered that the Elections Board order a new election for the Legislative seats within

that district consistent with the General Elections Laws and this Opinion.

It is so ordered.

APPENDIX A



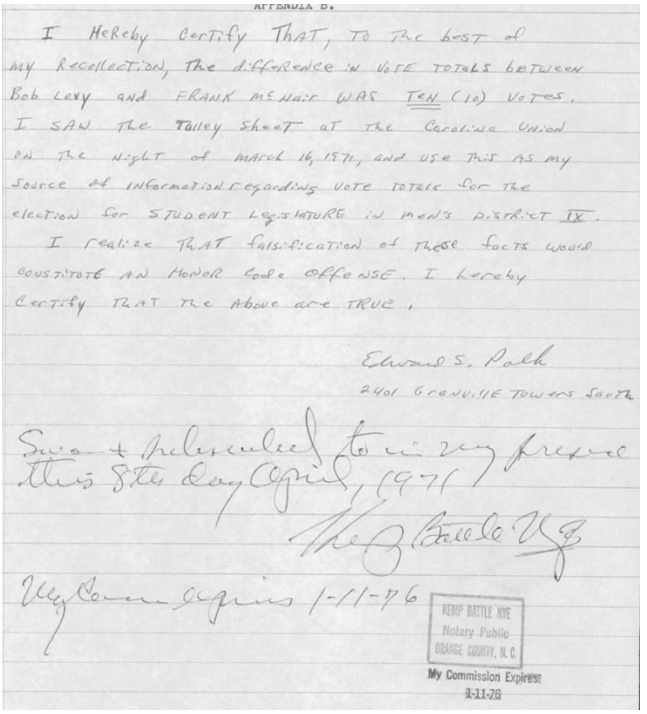
STUDENT LEGISLATURE

MEN'S DISTRICT IX
(EHRINGHAUS)

Vote for THREE

Johnson Finelli ☐
Charles W. Houseworth ☐
Bob Levy ☐
Frank McNair ☐
Hadley Whittemore ☐
Phillip Williams ☐

APPENDIX B



APPENDIX B.

I Hereby Certify THAT, TO The best of MY Recollection, The difference in VOTE TOTALS between Bob Levy and FRANK McNair WAS TEN (10) VOTES. I SAW The Tally Sheet at The Carolina Union ON The night of March 16, 1971, and use THIS AS my source of information regarding VOTE TOTALS for The election for STUDENT Legislature in MEN'S DISTRICT IX.

I realize THAT falsification of THESE facts would constitute AN HONOR Code OFFENSE. I Hereby Certify THAT The Above are TRUE.

Edward S. Polk
2401 GRANVILLE TOWERS South

Sworn + subscribed to in my presence this 8th day April, 1971

Notary Public

My Comm. Expires 1-11-76

KEMP BATTLE NYE
Notary Public
ORANGE COUNTY, N. C.
My Commission Expires
1-11-76

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1972

ROBERT B. WALTERS, PETITIONER *v.* U.N.C. STUDENT BODY

ON WRIT OF CERTIORARI TO THE MEN'S HONOR COURT

No. 72–001.

PER CURIAM.

The facts on this appeal are as follows, On March 31, 1972, defendant Walters was charged with a violation of the Honor Code: It is alleged that Mr. Walters violated the Honor Code in that he made use of "crib" notes while taking an hour examination in Zoology 41 on March 30, 1972. Mr. Walters was submitted to trial by the Honor Court on April 25, 1972. Mr. Walters pled and was adjudged guilty. Mr. Walters appealed to the Faculty Review Board on the grounds of severity of sentence. Faculty Review Board reduced the sentence from two-semesters of suspension to definite probation ending December 31, 1972. Further appeals were taken to the Chancellor and subsequently to the Board of Trustees on the same grounds, and the decision of the Review Board was affirmed.

Mr. Walters did take "crib" notes into the classroom and did use said notes. A teaching assistant (Mr. Greene) requested that defendant surrender his papers, and talk to Dr. Mueller, the instructor in the course.

Dr. Mueller reported the offense to the Office of the Dean of Men. The hour examination was an optional quiz, one option available within the rules under which the quiz was administered was, having begun the exam, request permission from the instructor to withdraw the paper without grade, if good cause was shown. Absent such permission, withdrawal of the paper would result in a grade of zero.

Because Mr. Walters' paper and notes were confiscated, he was not given an opportunity to withdraw the paper.

I

(1) Does the Supreme Court have jurisdiction of this appeal, the 20-day limitation on appellate review having expired? (2) Do the facts alleged in the court below constitute a violation of the Honor Code?

II

The Supreme Court accepts jurisdiction of this appeal. A contributing factor of our decision is the failure of the office of the Attorney General and of the Honor Court, to fully inform defendant of his rights of appeal, including the right to appeal to the Supreme Court, as guaranteed by S.G.C. §§ 1.1.2.2 and 1.1.2.14. We expressly reserve decision on the nature of appellate action.

It is the opinion of the Supreme Court that commission of an Honor Code offense under the circumstances of this case, took place when the "crib" notes were used during the examination. The commission of the offense here took place independent on the effect on grading. The defendant, having begun the exam and committed an Honor Code offense, has no right to escape Honor Code liability by withdrawing his paper. Whether the paper is turned in for credit affects only the severity of the offense, and is to be taken into consideration in sentencing, which has already been done.

The student, having committed a breach of honor, will not be permitted to say that the breach is ineffective by his failure to turn in the completed exam.

If we were to announce any other rule, then any students who committed a breach of honor, would be permitted to tear up his paper when his breach was detected, accept a grade of zero or other grade in the discretion of the instructor, and escape Honor Code liability.

This enforcement would place both instructor and student in an untenable situation.

Affirmed.

Syllabus

GRETCHEN YOST DUNN *v.* CHIP KING, CHAIRMAN OF THE ELECTIONS COMMITTEE OF THE STUDENT BAR ASSOCIATION, ET AL.

ORIGINAL

No. 72–001(0) Orig. Decided March 25, 1972

The Plaintiff, Dunn, filed an application with the Chairman of the Elections Committee of the Defendant Student Bar Association in the form prescribed by that Committee indicating her desire to run for office of President of Defendant Association. The Defendant King accepted that application, but then told Dunn that her name would not appear on the ballot because she did not have a 2.0 grade point average and that she was required to have such average to be eligible to run for said office. Student Bar Assoc. Const. art. V, § 3. The Plaintiff has filed this action requesting that her 1.9534 average be rounded off to 2.0 for this purpose; or for an order declaring that since the 2.0 average requirement originated as a requirement that the student running for President have an average sufficient to graduate, that the required average is, in the intent of the Student Bar Association Constitution to be read as 1.75; or for a rule that the Defendant King is estopped from refusing to place the name of Plaintiff on the ballot due to certain events; or for a rule that the 2.0 requirement of the Student Bar Association is inconsistent with the action of the Legislature in removing the same requirement from the General Elections Law, and therefore unconstitutional. Against these prayers the defendants have interposed a plea to the jurisdiction of the by designation; and Cohen, E.J., sitting by designation.

Held: this Court lacks jurisdiction.

Dismissed.

Crump, C.J. delivered the opinion of a unanimous Court.

JUSTICE CRUMP delivered the opinion of the Court.

The principle which determined this case is to be derived from the case in this Court of *Dorrol* v. *Oliver* decided in 1968. That case is unreported but there could be no better panel to decide a case governed by the principle of it, for CRUMP served as counsel for the Plaintiff there, COHEN as counsel for the Defendant, and BISHOP as a Justice who decided the case. In that case, Phillip Dorrol had been a candidate for President of Alexander dormitory. The election was the first election in that dormitory conducted by paper ballot. During the hours that the polling place had been open, candidates for office had tended the poll, the poll had gone for long periods unattended, there was evidence introduced from which a clear inference of ballot box stuffing could be drawn, and other irregularities occurred. Dorrol lost the election by a narrow margin. He complained to Oliver, the Chairman of the Elections Committee who advised Dorrol that his complaints were without merit. An action was brought in this Court alleging the facts set out above and demanding that the results of the election be declared void and a new election ordered. The Plaintiff's theory of jurisdiction in that case was that the Alexander

Dormitory Elections Committee had no elections rules, and that the only body available to hear his charges was the elections committee, the party defendant. Likewise, the Residence Hall Association had no rules for residence college or dormitory elections, nor any forum for disposing of challenges to such elections. Therefore, the Plaintiff argued, the case must be taken as one arising under the General Elections Laws. This Court held, in a judgement announced by FREEMAN, J. that the Supreme Court had jurisdiction of the cause, not as a matter arising under the General Elections Law and the Supreme Court Act of 1968, but because there was no other forum in which the Plaintiff might obtain relief.

He further announced that, in the absence of other controlling rules, the General Elections Laws should serve as a guide to the Court in determining the policy of the common law of elections. The acts proved by plaintiffs here having taken place were viewed as so likely to have deprived the fraud that the election was set aside and a new election ordered. The jurisdiction thus asserted may be seen to be a constitutional jurisdiction for the constitution in the first section of the judiciary article invests the judicial powers of the Student Body in the Supreme Court and in the inferior courts. There being no inferior courts with jurisdiction of the matter and the Plaintiff having alleged a fraud, there was jurisdiction in the Supreme Court as a court of last resort. That proposition answers the motion of the defendants herein to dismiss for lack of jurisdiction. The motion must be and hereby is denied.

But that there is jurisdiction in the Supreme Court to hear this case does not fully dispose of the matter. The Defendants allege that under the Student Bar Association Constitution the Law School Honor Court has jurisdiction of this case. The SBA Constitution in Article VI, Section 1 provides as follows:

> The honor Council shall adjudicate all cases arising under the UNC Honor Code and Campus Code involving students enrolled in the law school, and shall decide questions of constitutional interpretation.

While the Plaintiff has urged that the Law School Honor Court is not a properly constituted court under the Student Constitution to hear cases arising under the Honor Code, that is immaterial to the question of the jurisdiction of the Law School Honor Court to hear questions arising under the SBA Constitution. Questions of jurisdiction of a court and composition of a court to hear cases arising under the Honor Code are governed by the Student Constitution, but the Student Bar Association is an independent student government of students in the Law School, and

it is free to designate such body, or bodies as it shall see fit to arbitrate and adjudicate questions arising under its own law. The question posed by the Complaint are essentially questions of the law of the Student Bar Association; the only question under the general student law which is posed is whether the Student Bar Association may do that which the Student Legislature has chosen not to do. We therefore hold that while the Supreme Court has jurisdiction of this cause, the most appropriate forum of *Dorrol* v. *Oliver*, we therefore announce the rule to be as follows: Where the Plaintiff alleges fraud in an election, or presents some other basis for the exercise of constitutional jurisdiction, and there is no other forum to hear the complaint, the Supreme Court will exercise its jurisdiction, and the applicable law is the common law of elections as announced by this Court guided by the policy of the General Elections Law. But where there is an alternative forum which has jurisdiction to hear the complaint, and where the claim arises under the law of that Court rather than the Constitution of the Student Body, though the Supreme Court has the jurisdiction to hear such complaint, we shall defer our jurisdiction to that court for its judgement. Whether an appeal lies from such local court in the absence of a specific statute granting the right of appeal to this Court from such a judgement needs not now to be decided.

It is so ordered.

Syllabus

JAMES CHRISTOPHER CALLAHAN, ET AL., PLAINTIFFS *v.* LEO MAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD

ORIGINAL

No. 72–002. Orig.

On October 17, 1972, an election was held to determine the fate of a Constitutional Amendment Initiative. Plaintiffs brought suit to challenge the certification of the election. Plaintiffs alleged that the ballots used in the election did not comport with BR–51–58, art. II, § 4. Plaintiffs further alleged fraudulent conduct in the administration of the election. At question in determining whether or not to certify the election or void the results were questions of whether BR–51–58 a valid act of the Legislature, and if so, were the actions in this case compliant with Article II, § 4.

Held: while BR–51–58 is certainly a constitutional act of the Legislature, the Elections Board failed to uphold Article II, § 4. The Elections Board must hold a new election in accordance with Article II, § 4.

As a matter of fact, the Court establishes that BR–51–58 is a constitutional act. Despite the burdens placed on the Elections Board by a statute—extra printing in this case—there is no justification for flatly ignoring the dictates of elections administration statutes. The Elections Board's reliance on a continued, historical pattern of legal violations is no defense for their violations here. The Elections Board has a clear and affirmative duty to know and apply the statutes.

Judgement entered for, and relief granted to Plaintiffs.

CRUMP, C.J. delivered the opinion for a unanimous Court.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

On October 17, 1972 a by-election was held on the Constitutional Amendment Initiative proposing substantial revisions of the Student Constitution. This action was brought to challenge the certification of the results of that election. Among the grounds of challenge is that the ballots used in the October 17 Initiative did not conform with the provisions of Article II, Section 4 of an alleged enactment of the Student Legislature, BR–51–58. That alleged enactment provides as follows:

> A ballot on a petition for Constitutional Amendment Initiative shall contain at the top the full provisions of the proposed Constitutional Amendments including the Resolving clause but excluding any whereas clauses. The ballot shall have printed on it the exact words of the Constitutional Amendment Initiative petition, with no additions or deletions whatsoever. The ballot shall then have printed out the following question:
>
> "shall the above proposed Amendment to the Constitution of the Student Body of the University of North Carolina at Chapel Hill be approved?"
>
> YES ( ) NO ( )

Although evidence was adduced at the trial concerning other issues related to alleged frauds in the conduct of the election, this evidence will not be recited here as our disposition of this case does not so require.

There are essentially two issues to be decided on this challenge. First, is BR–51–58 a valid enactment of the Student Legislature? If so, was Section 4 of Article II of that act complied with in this case?

We hold that BR–51–58 was a valid enactment of the Legislature. There were two copies of this bill submitted into evidence at the trial. The first of these came from the records of the Clerk of the Legislature for the Fifty-First Session, the other from the records of the Vice-President. Although the records of the Clerk and of the Vice-President are both incomplete and spotty at the best, both records contain a copy of BR–51–58, and at the top of each the word "Consent" is written in longhand, indicating that such bill did indeed pass. The Clerk positively identified the handwriting on her copy of this bill as that of the former Vice-President. Although it was adduced that the Vice-President kept copies of both passed and unpassed bills, the overwhelming weight of the evidence was that the bill did indeed pass.

It was argued at the trial that the absence of the signatures of the Vice-President and of the President on any available copy of this bill served as evidence that this bill was not a valid enactment. First, Section 1.1.3.2(e) of the Constitution provides simply that the President shall have the power to veto acts passed by the Legislature within ten days after the bill is placed in his Executive Offices. We find nothing in the Constitution requiring the Presidential approval of any bill before it becomes law. Because of the lack of evidence as to the signature of the President, we conclude that the bill became effective, at the very latest on November 2, 1971. The Constitution requires that the Vice-President shall forward all Legislative acts to the President within three days of their passage Section 1.1.3.3. In the absence of evidence that this was not done, we can only presume that the Vice-President executed his Constitutional duty. While BW–16–27 (5 S.G.C. § 2.6.1.1) requires the Speaker of the Legislature to affix his signature to all non-financial enactments of the Legislature, and convey these copies to the President of the Student Body, this is a mere ministerial act. We presume that the failure of the Vice-President to sign a copy of the bill which has been produced was a mere oversight. We are constrained to this holding due to the other and overwhelming evidence of Legislative passage, including the production of a copy of this bill from Vice-Presidential records required by law to be kept.

Therefore, the only remaining issue necessary to the decision in this case is whether the presence at each polling place of a copy

of the proposed Constitutional Amendment Initiative satisfied the requirements of Article II, Section 4 of BR–51–58. We are satisfied that it did not. The language of the statute requires in clear and unequivocal terms that the language of the proposed amendment appear on the face of the ballot case with the question of ratification. While it has been argued in this case that it would be administratively impossible to comply with the statute in regards to an amendment three pages in length we find this argument to be without reason or logic. The Legislature is clearly required to appropriate sufficient funds for printing of ballots in all elections. If the Legislature has made this burden more onerous on the resources of Student Government by the passage of BR–51–58, it may not now complain that the act was never passed. It is not the duty of this Court to sit in judgement on the wisdom or lack thereof of Acts of the Legislature, and we reach no decision as to its constitutionality, as this was not made an issue in this case.

While it has been pressed at the Bar of this Court that the former Chairman of the Elections Board did not comply with the provisions of BR–51–58 in an election on a similar Initiative last spring, and that this action constitutes a precedent for the violation of BR–51–58 in this election, this argument is clearly absurd. Violation of the law, no matter how regular, is no precedent for its continued violation. These plaintiffs, who had no cause to complain of the violation last spring, clearly have standing to complain of the violation now.

It has further been argued that the Defendant Gordan had no knowledge of the terms of BR–51–58 and that therefore he was under to duty to comply therewith. This argument too, stands without foundation. All acts of the Legislature concerning Elections are to be executed by the Elections Board and the passage of the law concerning elections is of itself notice to the Elections Board. The Elections Board is under a clear duty to discover and apply the laws enacted by the Legislature concerning elections. *See* 5 S.G.C. § 1.1.4.5.

We cannot condone the shoddiness with which the Legislature keeps the records of its actions. We cannot condone the proof of the passage of laws which comes from a variety of semi-official sources. We cannot condone the lackadaisical conduct of the legislature in transmitting its enactments to those bound to execute them. Nevertheless, we cannot exempt those who have a clearly defined duty to know the law from its provisions.

* * *

We hereby order the Defendant Gordon to hold a new election on the Constitutional Initiative complained of in this case in accordance with § 94 of the General Elections Law, RR–51–58, and

this Opinion. Because of the way in which we dispose of this case, we need reach none of the other issues made by the parties concerning the existence of a fraud.

It is so ordered.

Syllabus

LEWIS CRAWLEY, ET AL., PLAINTIFFS *v.* LEO MAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD, ET AL.

ORIGINAL

No. 72–003 Orig. Decided November 5, 1972

Lewis Crawley and other Plaintiffs were candidates for the Student Legislature in the Men's District VI. They filed suit against the Elections Board for allegations of illegal activity in the October 17, 1972 election. Plaintiffs contended that discrepancies in times the polls remained open, their locations, and the composition of the ballots, constituted procedural violations. They further alleged that ballots made their way into the hands of third-parties and that the location violation would be prejudicial to Crawley as a resident of Mangum Residence Hall.

Held: the errors were of insufficient magnitude to warrant relief.

Defendants have proven that they acted in a speedy and expeditious manner to remedy the location and time violations, and took significant steps to remedy those violations. Additionally, Defendants demonstrated that all violations alleged by the Plaintiffs were unlikely to have suffered the harms required to warrant relief.

Relief denied.

CRUMP, C.J. delivered the opinion of the Court.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

I

The plaintiff in this action, a candidate for a seat in the Student Legislature from Men's District VI makes his case on the following points: (1) the polls in Men's District VI were open from 1:00 p.m. to 8:30 p.m. rather than from 10:00 a.m. to 5:30 p.m. as required by law; (2) the polls were opened in the middle of the upper quad, rather than in the TV room of Mangum Dormitory, as required by law, and the polling box was moved from the middle of the upper quad to the TV room of Mangum about 7:00 p.m.; (3) four types of ballots were used in the election, thus opening some chance of forgeries; (4) a group of ballots which were to be used in the election were outstanding in the hands of third persons; (5) having the polling place in the middle of the quad was prejudicial to Crawley in that he was a resident of Mangum dormitory.

The plaintiff Hussey tried the case to the court on an agreed state of facts; a commission appointed by the Court to find the fact in these challenges found the facts to be as follows: 71 persons registered to vote in the legislative election but 87 ballots were case, representing an overage of 16 votes. The votes were split as follows: Hussey, 11; Schumacher, 27; Van Tyle, 44; void, 5.

As to Crawley, the issue is whether his contentions form sufficient grounds for voiding an election. As to the first contention, that the polls were open during improper hours, we hold this to be non-prejudicial to the plaintiff. Sections 10 and 110 of the General Elections Law provide for powers in the Chairman of the

Board of Elections to correct any violations of the laws which may have taken place. In this case the Chairman opened the polls as quickly as possible after finding that they had not in fact been open, placed the polling place in the most public area of the upper quad, and maintained the polls open for seven and a half hours. While having polls open during hours other than those prescribed by law may work to the prejudice of some right of some persons to vote, we hold that the actions taken here were sufficient to relieve the violations of the Elections law from any prejudice. We are bothered somewhat by the fact that some ballots in this race were in the hands of third persons during the hours the polls were open. This does indeed create a possibility for fraud. A mere possibility is not sufficient to render the results of an election void without other supporting affirmative evidence of actual compromise of a ballot box. The plaintiff may not complain that at 7:00 p.m. the ballot box was moved to the Mangum TV room, because this was precisely the place the box was to be placed, according to law.

As to the plaintiff's contention that the fact that four different types of ballots were used in the election, thus creating the possibility of fraud, we find this to have been a harmless error, if error it was. We cannot imagine the plaintiff would argue that a polling place must close if it runs out of ballots. The clear remedial action to be taken in such a case was the action taken here—to run off more ballots. We are undisturbed by the fact that the spacing on the ballots differed as the stencil for the ballots was probably cut in such a way that all four forms the ballot took were on the same stencil. This is indeed suggested by the fact that all four ballots laid together neatly form a standard letter size sheet. We therefore hold that any error respecting the legislative race in MD VI was non-prejudicial.

As to the case made by plaintiff Hussey, we find that a surplus of ballots over registrants is sufficient to raise an inference of fraud. This inference standing alone, however, is not enough to support a finding of fraud without some evidence of actual fraud. There is a possibility that there was some fraud. It is equally likely, however, without evidence of actual fraud that the surplus of ballots over names resulted from simple human error in forgetting to sign a polling book or of a poll tender's failing to remind the voter to sign the polling sheet. As indicated by our opinion in the *Robertson* case, heard and decided this same day, the fact that the surplus of ballot was sufficient to alter the outcome of an election may supply sufficient supporting evidence to cause the inference to ripen into a presumption. That presumption may, however, be rebutted by showing the absence of actual fraud, or of offering some other explanation of the surplus. Such other

explanation of the surplus must, however, be based on actual observation of activities at the polling place.

* * *

The judgement of the Court will therefore be that no re-election is required as to the results of the elections of October 17, 1972 in Men's Districts V, and VI. To that extent, the order to the Vice-President restraining him from swearing in the persons elected from those districts is vacated.

It is so ordered.

Syllabus

RICHARD LEE ROBERTSON *v.* LEO MAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD, ET AL.

ORIGINAL

No. 72–004 Orig. Decided November 5, 1972

An election was held for the MD III race for the Student Legislature on October 17, 1972. The results revealed a notable surplus in votes relative to registered voters. Plaintiff Robertson filed suit alleging fraudulent activities and other elections laws violations.

Held: the deficiencies in these circumstances are apt evidence of fraud and had requisite impact to warrant a new election, though surplusage is not in itself sufficient to void an election.

Plaintiff granted relief.

CRUMP, C.J. delivered the opinion of a unanimous Court.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

This case was tried on an agreed set of facts as follows: In the race for MD III seats in the Student Legislature (October 17, 1972), there were six groups of ballots held together with rubber bands. These groups were determined as having come from the following places:

Y–Court	60
Y–Court	67
	This totals to 127 from the Y–Court
Law School	23
Armory	61
St. Union	43
P. Health	4
	There was a total of 258 valid ballots in MD–III

Based on these results, the commission would state the following persons as winners in the MD–III race:

Robert G. Griffin	76
Ralph A. Pitts	70
Chris Callahan	64
Nick Jones	63
Dave Kohl	57

POLLING PLACE	VOTED	REGISTERED
Y–Court	127	111
Law School	23	28
Naval Armory	61	55
Student Union	43	42
Public Health	4	8

Oral evidence adduced at the hearing showed that at the counting of the ballots in this race a sheaf of ballots was discovered labelled "Y–Court" on one side and "Naval Armory" on the other. The witness, Jim Becker, and the other ballot counter, John Molen, credited these ballots to the Y–Court polling place. As will be noted, there was a total surplus of twenty-three (23) at all polling places, while there was a deficiency of nine (9) ballots at all polling places. We take these deficiencies to mean that nine people chose not to vote in the legislative race in MD–III. The total surpluses we hold to be strong evidence of fraud. While the surplus standing alone is not sufficient evidence of fraud, the surplus combined with the fact that either the gross or the net surplus in this case would be sufficient to alter the outcome of the election is enough to attribute the surplus to sources other than simple human error. We do not hold that only in cases where surplus is sufficient to be outcome-determinative will a new election be granted. We do hold, however, that where surpluses sufficient to drastically alter the result of an election are found, this factor with out more shall be sufficient to mandate the calling of a re-election. There is obviously inherent in this situation a probability of prejudice to the rights of all candidates, compromise of a ballot box, and fraud.

* * *

We therefore order the defendant Gordon to hold a new election in this case in accordance with section 94 of the General Elections Law. The temporary restraining order to the defendant Davenport shall be made permanent.

It is so ordered.

Syllabus

ANNE ELIZABETH WELFARE, PETITIONER *v.* U.N.C. STUDENT BODY

CERTIORARI TO THE HONOR COURT OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

No. 72–005. Decided December 14, 1972

On September 26, 1972 Anne Elizabeth Welfare, Petitioner, was convicted by the Honor Court of violating the Honor Code in that she cheated in Business Administration 162 by submitting a paper which she did not write, but ordered from a term paper service. She entered a plea of guilty, was found guilty, and was sentenced by the Honor Court to definite suspension to terminate December 23, 1972. Petitioner then brought an appeal to this Court, alleging a number of violations of her rights in the hearing below. The facts with respect to these allegations as found in this Court are as follows:[1]

On September 26, 1972, the night of the trial of this case in the Honor Court, a folder prepared by the Attorney General's Office, containing all of the statements of the material witnesses, including that of the petitioner, was submitted to the Chairman of the Honor Court, Miss Freda Cobb, prior to the formal opening of the hearing. Members of the Honor Court quite possibly read those statements prior to the introduction into evidence of the live testimony of the material witnesses there present. Some of the members of the court possibly read these material statements while the character witnesses were speaking on behalf of the petitioner.

At the close of the hearing, the Honor Court met in their conference to deliberate upon the issues raised by the case. Doug Reynolds, Chairman of the Men's Court, sat as a member of the court which sentences the petitioner. He states before this Court at the trial of this action that when in the conference of the Honor Court in this case he attempted to raise the issue of probation as a proper sentence to be imposed for this offense, he was asked to be quiet. There is no evidence that when he attempted to bring up this topic he was speaking out of order, that he was interrupting another court member, or that he was attempting to raise an issue not properly to be considered by the court. Judge Reynolds testified that another member of the court tried to raise the topic of the sentence of probation while the court was debating the suspension issue and

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[1] The Supreme Court Act, §80 enjoins the parties in an appellate action here from making any offer of proof which goes to the guilt or innocence of the party who was the defendant in the Court below. This limitation on proof was observed here. The only proof taken went to the procedures followed by the Court below in the taking of evidence and the conduct of deliberations. Further proof was taken concerning the conduct of certain members of the Honor Court with respect to the release of information concerning Petitioner's trial.

This limitation on the taking of evidence demonstrates something of the jurisdictional differences between this Court and the Faculty Review Board. The creation of this Court in 1968 bifurcated the remedies and forums available to the defendant in an Honor Court proceeding. Technically speaking, a petitioner here engages in a proceeding like the common law suit for a writ of error. One who removes his case to the Faculty Review Board on the grounds of "reasonable doubt of guilty," engages in a proceeding like the civil law "appeal" for in those circumstances the case is tried *de novo*. One who removes his case to the Faculty Review Board on grounds of unduly severe sentence engages in a proceeding like an appeal to the kind or to another chief executive for clemency. The only proceeding which could be brought here for writ of error as to sentencing matters would relate either to a denial of due process in sentencing, as here, or the assessment of a sentence against the defendant in excess of a maximum prescribed by the Legislature. The terminological differences here described are largely a matter of history, all now being called "appeals."

that he, too, was asked to be quiet. Likewise, there is no testimony to suggest to us that this other judge spoke out of turn, attempted to interrupt another person, or to raise an issue not properly considered by the court. The credibility of Judge Reynolds was supported by petit Chairman, Freda Cobb and by Barbara Spencer, another judge of the Honor Court, both of whom appeared here as witnesses for the Student Body.

The precise circumstances under which Judge Reynolds and the other judge below were asked to refrain from discussion appear as follows: the normal procedure for deliberations by the Honor Court as described by both Judge Reynolds and Judge Cobb was substantially followed. The Chairman called the conference to order, and the guilt issue, being uncontested, was summarily disposed of, the court having determined, we suppose, that the facts being alleged in the Summons were sufficient to constitute a violation of the Honor Code. Then deliberation proceeded to the issue of sentencing. The Honor Court in determining a sentence considers "the person without the case," "the case without the person," and then, by some metaphysical process not quite clear to us, "the two intermeshed," in arriving at a general sense of the sentence. They then proceeded down the list of penalties statutorily available to them, starting with expulsion[2], then suspension, then probation[3], etc., stopping where down the list they achieve agreement. The penalty of expulsion proposed in this case by the Chairman was not deliberated by the Court. When Chairman Cobb sensed that no one wished to discuss the penalty, she then proceeded to raise the topic of suspension. *See* n. 3, *supra*. During the discussion of the suspension penalty, its merits relative to those of the probation sentence were discussed. During the course of these deliberations on the suspension issue two "straw votes" were taken in an unspecified manner. The result of the second of these two "straw votes" was two in favor of suspension, three opposed to suspension, and two abstaining. As was pointed out here, if the two abstentions were converted to votes in favor of suspension, then the motion for suspension of the petitioner would have failed, a two-thirds majority of the court (5) being required to suspend.[4] It seems that it was at this point that Judge Reynolds attempted to for the second time to raise the probation issue, he believing the motion on suspension to have failed. He had first tried to raise the same issue at the conclusion of the first "straw vote." He further testified that it was at this point that Chairman Cobb asked him to refrain from speaking to that issue. Judge Reynolds did

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[2] It is to be noted that expulsion is no longer a penalty available to the Honor Court, nor, for that matter, has it been available since the passage of the constitutional referendum of 1968, which struck all reference to the penalty from the constitution. The penalty not having been imposed by the court below, their consideration of the unavailable penalty was a constitutionally harmless error, as will be seen from the description of that doctrine herein.

[3] It is unclear from the evidence here presented whether the Honor Court in their deliberations on sentencing consider "suspension" and "probation" *per se*, or whether they consider them as "indefinite suspension," "definite suspension," "indefinite probation," and "definite probation." The terms of the December fourteenth judgement require that these penalties be considered first in their generic form, *i.e.*, as "suspension," and "probation" and that the duration of the penalty then be considered after it is decided which shall be imposed.

[4] Commissioner's Note (3) to the current edition of the Student Constitution § 1.1.2.14 reads as follows: "Student Legislature has by statute extended the protection of subsection n to all offenses of record." Given the language of subsection n, this note should undoubtedly be read, "to all penalties of record." My brother COHEN recalls that such a bill was passed and delivered to the Chairmen of the Honor Court and the Attorney General. Whether this practice is followed, we do not know, nor do we need remark thereon further, as this is not an issue in this case. The current draft of the *Instrument of Student Judicial Governance for the University of North Carolina at Chapel Hill* (May 1971) imposes the same requirement in V I.S.J.G. § B(4)(d).

not testify, in the words of the complaint, that he was "literally told. . .to 'shut up.'" It does seem that he was twice asked to be quiet when he tried to raise the probation issue.

Chairman Cobb, testifying here for the Respondent, stated that she did not remember the events to have taken place quite as Judge Reynolds had related them. Her memory was not altogether clear as to precisely what events took place in this particular deliberation. She did say that she felt that the deliberation, while long and difficult, was not out of the ordinary. Chairman Cobb, despite her insecurity as to the accuracy of her account of the particulars of the deliberation, was fairly certain that she did ask several members of the court to be quiet for the time being, or to save an argument for later in the deliberation. She qualified this by saying that she thought that she had done so, more likely than not, when someone spoke out of turn or when the conference began to get out of hand. Judge Spencer corroborated this version of the circumstances in the same general terms which Judge Cobb had related them in.

Deliberations began about 9:00 p.m. and terminated about 1:45 a.m. on the 27th. Judge Reynolds stated that having been asked to be quiet twice, he despaired of attempting to raise the probation issue a third time, and did not participate so actively in the conference as he had done before the transaction described above. He and the other judge who had been asked to refrain from discussion voted against suspending the petitioner when a final vote was taken.

On Tuesday, October 24, 1972, the following paragraph appeared in a feature story entitled "Want to buy a 'manuscript'?" in the *Daily Tar Heel*: "Buying a term paper is, of course, a violation of the Honor Code, and one UNC coed who was caught this summer was suspended for a semester. The coed, who bought the $60 paper from an organization then advertising in the DTH, appealed the Honor Court decision to the Faculty Review Board, which upheld the sentence. She is not appealing to the Chancellor and the Student Supreme Court." 81 Daily Tar Heel, No. 45, p. 1, c. 3. The information contained in this paragraph was released to the *Daily Tar Heel* by Chairman Cobb.

Two judges of the court below released some information about the case to third persons. One of these judges Vice-Chairman of the Men's Court, Chris Campbell, discussed the case, without identifying petitioner by name in a conversation with other persons. Bill Calder had been elected to the Honor Court at the time of petitioner's trial, but was not at that time actively engaged in the adjudication of cases. The Honor Court, as a traditional rule, holds that one who is elected to the court must actively engage as a voting member of the court. Bill Calder sat as an observer of the proceedings in petitioner's case, and is alleged to have released information about the case to third persons. These two instances are currently under investigation by the Attorney General's Office. Statements prepared in these cases were introduced into evidence in this Court for the purpose of showing the exact nature of the transactions in which these two persons are alleged to have engaged. The statements, we are informed, are the working papers in the cases which may be brought against these two persons in the Honor Court. This being the case, we shall advert to the contents of these papers no further. It shall be noted that during the trial of this action, Judge Campbell testified to the substantial truth of the story of the events contained in these working papers. In addition to advising Judge Campbell of his obligation to tell the truth as a witness before this Court, we also advised him that since we were compelling him to testify to facts which might be against his interest in terms of Honor Code liability, that no statement made by him as a witness before the Supreme Court could be used or held against him in any student court. This grant of an immunity for the purposes of his testimony here shall be observed to be a collateral holding of this case. Judge Calder did not appear as a witness. It shall also be observed that during that during the testimony of Judge Campbell as to his communications about the hearing in the petitioner's case, the chambers of this Court were cleared of all but the petitioner, her counsel, and counsel for the Student Body. None of these persons shall be compellable as witnesses before any student court as to any statement which Judge Campbell may have made.

Held: Petitioner's conviction was secured in violation of Article XIII of the Student Judicial Procedures requiring this Court's instruction on remand. Petitioner Welfare shall be given a new trial, limited to the sole issue of sentencing. This Court retains jurisdiction over the case

(1) We enter findings of fact as follows:

(a) We find that the working papers and statements of witnesses in petitioner's case were delivered to members of the Honor Court prior to the opening of the hearing, and before the live testimony of the witnesses who prepared those statements were introduced. We find that there is an extremely high probability that those statements were read by members of the Honor Court during the testimony of petitioner's character witnesses.

(b) We find that the facts relating to the conduct of the conference in the Honor Court were substantially as related here by Judge Reynolds. No member of this Court was privy to the deliberations of the Honor Court in petitioner's case, nor, for that matter, has any member of this Court ever sat as a member of the Honor Court. These findings depend entirely on the weight of the evidence introduced here. We realize that Judge Reynolds testimony was not wholly uncontroverted. In so finding this version of these facts to be true, we point to the following factors: (1) Judge Reynolds is a man of unimpeached character; in fact, his character was supported without being attacked here by two hostile witnesses; (2) His memory of the events which transpired in the deliberations below was clear and his testimony as to those facts unequivocal, in contrast to the accounts of Respondent's witnesses; (3) Judge Reynolds has already testified to the same acts, facts, and transactions he bore witness to here in a proceeding before the Faculty Review Board; (4) The same adverse witnesses who supported the Character of Judge Reynolds for truth and veracity further indicated that they did not believe that he would have appeared as a witness to these events if they were not supported by the facts, as well as his own beliefs; and (5) Judge Reynolds' testimony need be discounted only by the fact that he cast his vote with the minority of the court. We think that the testimony of Judge Cobb must also be discounted to a certain extent, because the essence of the complaint is to charge an abuse of her discretion as Chairman of the Honor Court which heard the petitioner's case. We therefore find that Judge Reynolds and the other judge who voted with him in the minority were suppressed from raising the issue of whether probation might not have been the appropriate penalty to be assessed against the petitioner here. We further find as fact that the conduct of Chairman Cobb in the Honor Court's conference chilled the rights of Judge Reynolds and his fellow dissenter to participate in the conference and deliberations.

(c) We will assume, without deciding, that Judge Campbell and Judge Calder did release at their own discretion information concerning petitioner's trial, and will discuss the legal consequences of that release only as it relates to whether petitioner deserves a new trial of her own. It is for the Attorney General, the Honor Court, and the Legislature to determine whether such conduct violated the Honor Code, and it is not within the jurisdiction of this Court to conduct trials of these students, even though factual evidence of their conduct was introduced here. For us to find as a fact that Judges Campbell and Calder actually did release such information, despite the fact that was the purport of the testimony of Judge Campbell here, would be for us to decide their guilt before they have an opportunity to contest it.

(2) This Court provides the following instructions on remand.

(a) Pursuant to Article XIII of the Student Judicial procedures it should be necessary: (i) the procedures necessary to protect Petitioner's rights shall be known; (ii) that the Honor Court be able to insulate itself from the possibility of re-reversal based on the grounds Petitioner has claimed in Paragraphs 2 and 3 of her complaint; (iii) that these procedures shall be known and regularized in Honor Court proceedings.

(b) The panel which hears the retrial of this case shall find: (i) that the facts and acts alleged in the summons do constitute an Honor Code violation; (ii) that the petitioner herein is guilty as charged The Court shall then proceed to deliberate upon the sentencing issue. The Chairman of the Honor Court shall lead the deliberations. XIII S.J.P. § 2. The Chairman shall establish a regular order in which the members of the Honor Court are to speak in the deliberation. The Chairman of the Honor Court shall then say to the court: "Shall a penalty of no less than a Court Reprimand be assessed against the defendant?" Each member of the court shall speak to this question in the order established by the

Chairman. After the last member of the court has spoken, the Chairman shall ask each member, again in the order of speaking established, if he has anything further to say to the issue of whether the court should assess a penalty of no less than a Court reprimand. Voting shall proceed on penalties of increasing severity in the manner herein established. No "straw vote" or other pre-determinative preference assessing device shall be employed.

(3) The persons having already once heard the case, are permanently enjoined from further participation in the case, including sitting on the panel which shall conduct the rehearing.

(4) The Supreme Court retains jurisdiction over this case as may be necessary for the enforcement of this judgement and its orders and instructions.

Reversed.

CRUMP, C.J. delivered the opinion of a unanimous Court.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

I

The Petitioner has sought to vest jurisdiction of this appeal in this Court by filing with Dean Schroeder a writing indicating a desire on her part to appeal the judgement of the Faculty Review Board to Chancellor Taylor, and requesting a stay of such appeal she had "another hearing through the Student Judicial System." The only other hearing in any student court to which the petitioner might have been entitled was a hearing in this Court. This writing was dated by the appellant and received by Dean Schroeder on 6 October 1972, which was within seventy-two hours of her appellate hearing in the Faculty Review Board.

Appeals to this Court are taken from the judgements of the Honor Courts, not from judgements of the Faculty Review Board. *See* Supreme Court Act § 26; Article XVII, Sections 1 and 2 of the Student Judicial Procedures provide that an appeal may be taken to the Faculty Review Board on three grounds: (a) reasonable doubt of guilt; (b) evidence of prejudicial error; (c) excessively severe sentence. The Student Constitution in § 1.1.2.2(a) declares that the judicial power of the student body shall be vested in one Supreme Court and in the inferior courts. In § 1.1.2.3(c), the Constitution states, "The Supreme Court of the Student Body shall have appellate jurisdiction in controversies from all inferior courts in cases where error of law, under this Constitution or laws enacted under its authority is alleged to have occurred." The Supreme Court Act in § 26 provides that this Court shall have the jurisdiction provided by § 1.1.2.3(c) and further specifies that this Court shall have no jurisdiction over appeals based on the existence of a reasonable doubt of guilty or on the imposition of an excessively severe sentence. Thus, the Constitution and the Supreme Court Act have rendered ground (b) of Article XVII, Section 1, a nullity. This Court has jurisdiction over appeals from judgements of the Honor Court where the

claim is one of error of law in the proceedings below, such as a denial of the constitutional rights of the accused student, lack of Honor Court jurisdiction, or that the alleged offense did not come within the prohibitions of the Honor or Campus Codes. *See* Supreme Court Act of 1968 § 96.

Article XVII of the Student Judicial Procedures is aimed at the end of securing review by the Faculty Review Board of judgements faulty for one of the grounds of §§ (a) or (c) quoted above, and has no effect on the taking of appeals to this Court. The seventy-two-hour rule for the taking of appeals to the Faculty Review Board does not apply to this Court. The taking of appeals to this Court is governed by §§ 56–58 of the Supreme Court Act, which provide as follows:

> **Section 56. Limitation on Appellate Actions.**
>
> (a)No appellate action shall be commenced in the Supreme Court later than one hundred and fifty-eight (158) hours after the determination of the inferior court from which the appeal is taken.
>
> (b) The period of limitation shall not run during any time in which the University is in recess for a scheduled University holiday.
>
> **Section 57. Commencement of Action.**
>
> An action in the Supreme Court shall be commenced by filing with the Chief Justice of the Supreme Court or, if the Chief Justice is not readily available, by filing with the Chief Clerk of the Supreme Court, a sufficient number of copies of the complaint.
>
> **Section 58. Number of Copies of Complaint to be Filed.**
>
> In commencing an action in the Supreme Court shall be filed six (6) copies of the complaint plus a sufficient number of additional copies for one (1) to be served on each of the defendants named in the complaint.

Thus, it will readily be seen that the methods for bringing the actions being entirely different from each other, and the questions over which each has jurisdiction being different, a student convicted by the Honor Court may file concurrent appeals, one to this Court on one ground, and one to the Faculty Review Board on other grounds. In order to effectively bring such appeals, the

governing statutes for the taking of appeals to either court should be followed. Thus, it becomes apparent that the petitioner did not file notice of appeal to this Court in the statutorily prescribed form.

In *Walters* v. *U.N.C. Student Body*, No. 72–001 S.S.C. (1972) decided this term, the following enigmatic language appears with respect to the finding by this Court that it had jurisdiction of an appeal wherein the applicable limitation on the bringing of an action has expired:

> The Supreme Court accepted jurisdiction over this appeal. A contributing factor to our decision is the failure of the office of the Attorney General and of the Honor Court, to fully inform defendant of his right of appeal, including the right to appeal to the Supreme Court, as guaranteed by S.G.C. §§ 1.1.2.1, 1.1.2.14. We expressly reserve decision on the nature of appellate action.

If it is within the proper power of this Court to waive the statute of limitations and thus accept jurisdiction over an appeal, as the quoted language from Walters suggests, then this case presents a case for the exercise of such discretion which is even more compelling than *Walters*. Here, not only was petitioner not informed of her rights of appeal to this Court, but her counsel made a good faith effort to follow what he erroneously believed to be the appropriate procedure for the perfecting of an appeal here.

This Court, however, has no power to waive the statute of limitations on our own motion. The statute is on its face absolute, requiring any appeal which is to be brought here to be brought by filing six copies of the complaint with the Chief Justice or with the Chief Clerk within one hundred and fifty-eight hours of the entry of judgement of the Honor Court.[5]

We think that the finding of jurisdiction in the *Walters* case, and the finding of jurisdiction in this case are to be explained on another principle altogether. Section 6(a) of the Supreme Court Act provides that the Supreme Court Act, and, we think, all other acts of the Legislature, shall be construed and applied to promote their underlying policies and purposes. The question of the operation and application of the statute of limitations is to be decided on this principle. The fundamental policy of the statute of limitations on the bringing of appeals is essentially one of

[5] The one hundred fifty-eight-hour limitation computes out to six days and fourteen hours. The original draft of the Supreme Court Act (1967 draft) provided a ninety-six-hour statute of limitations. We suspect that the Legislature meant to amend the statute of limitations to provide a one hundred sixty-eight-hour statute of limitations, that being one week in hours from the determination of the lower court, but what the Legislature did not write, we are not free to read into the statute.

administrative convenience. The limitation gives notice to the Attorney General and to University Officials who are charged with the responsibility of executing sentences of the fay and hour at which execution may begin, all possibility of appeal being cut off. We think that this protection of officials executing sentences should not be permitted to be cut off by the mere negligence of the Attorney General or of the Chairman of the Honor Court in failing to inform the defendant of his rights to appeal here and in explaining to him the subtle and technical distinctions which exist between the ground of taking appeal to this Court and the ground of appeal to the Faculty Review Board. Furthermore, this Court having been established for the purpose of protecting the rights of defendants who have been convicted without due process of law, we see no reason that the statute of limitations should preclude us from deciding an otherwise properly brought case.

The Attorney General does not wear two hates. It is not his responsibility to serve as a prosecutor who has engrafted onto the prosecutorial duty the duty to assist the accused student in preparing his defense. The role of the Attorney General is quite internally consistent. His role is that of a public official who has the duties of investigating and prosecuting claims of violations of student law, *see* S.G.C. § 1.1.2.1; of informing the accused students of their rights under the constitution, *see* S.G.C. § 1.1.2.14(a); of providing the accused with defense counsel from among his staff, *see* IV S.J.P. § 1(c); of providing counsel from among his staff to aid the accused student in perfecting an appeal for review; and of providing trained advocates before the Supreme Court, *see* Supreme Court Act of 1968 § 4 (amending BJ–43–30, art. VII). In *Callahan* v. *Gordon*, No. 72–002 S.S.C. (1972), this term we held that the Chairman of the Elections Board had a duty to know the law as to elections that the absence of notice to him of the terms of a lawfully enacted elections law did not void his public responsibility and duty to know the law and comply therewith. So with defense counsel.

The student courts are not courts in the technical legal sense of that term, and the offenses tried before them are not crimes, *in the technical legal sense of that term*. *Greer* v. *Student Body* (1959); Report of the Special Committee of the Board of Trustees on the Suspension of Anne Royal Carter (28 May 1962) (hereinafter cited as *Carter*). In the same line of thinking, it cannot seriously be contended that members of the Attorney General's staff are "lawyers." Rather, the members of the Attorney General's staff are trained specialists, expert in the business of representing accused students before the sundry courts within the University community. But so long as we refine our inquiry, leaving it within the four walls of the University, we must note that the student courts, established by the cooperative effort of the

University's Administration, the faculty, the student body, and the Board of Trustees (*see Carter*, *supra.*) and supported further by the law of this state, *see In Re Carter*, 262 N.C. 360, 137 S.E. 2d 150 (1964); N.C. Gen. Stat. §116–10, have served both long and well for the purposes of resolving disputes internally within the University and in securing to students the blessings of a long tradition of self-government.[6]

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[6] *In Re Carter*, 262 N.C. 360, 137 S.E.2d 150 (1964) is cited to show the subsequent history of the case reported by the *Report of the Special Committee of the Board of Trustees on the Suspension of Anne Royal Carter* (28 May 1962).

§ 91 of the Supreme Court act says: "The statutes of the United States or any state, the decisions of the courts of the United States or any state, and treatises on the law of the United States or any state shall not be used *as authority for decision of any action* in the Supreme Court of the Student Body" (emphasis added). The popular interpretation of this section by many, if not all, members of Student Government in the past had been that it is a flat prohibition on the use of anything which might be found in the library of the Law School in an opinion of this Court. Thus, it was intimated that Groot, E.J., author of the opinion in *Baily and Williams* v. *Waddell and Perez* (1969) and I in my opinion in *Levy* v. *Ruffin* (1971) had somehow rendered "illegal" decisions for having relied on the "law of municipal corporations" and "the common law" in those opinions. This interpretation ignores the plain language of the statute and the experience of this Court. First, the statute prohibits the use of such materials only "as authority for decision of any action" and not for a vast variety of other purposes, such as showing the history of a case which originated as an Honor Court decision in this University, or use as an illustration, etc. The section has been honored more in its breach than in its enforcement, and I comment on it here merely because I find it difficult to imagine litigation in this Court concerning it. Many of the doctrines of the opinions of this Court are duplicated by the common law authority of the United States, the several states, and of England. That this Court has invented or discovered these principles is something of a gross fiction.

Second, law students have always been among the personnel of this Court Among them, Mr. Justice FREEMAN, Mr. Justice BENTON, Mr. Justice (later Chief Justice) BISHOP, Mr. Justice COHEN, and Mr. Justice (later Chief Justice) CRUMP. Emergency Justices GROOT (*Baily & Williams* v. *Waddell & Perez*, *supra.*), and BOYNTON (*Rast* v. *Blue, et. al.* (1970)) were also law students. Counsel from among the student body of the law school too numerous to list here have also appeared in this Court, almost from the day of its inception. This great number of law students, whether they have brought to this Court any ability at legal reasoning or knowledge of law greater than that possessed by the majority of undergraduate students and graduate students from other disciplines, have decidedly brought to this Court some familiarity with some eight or ten cases which were not decided by the Supreme Court of the Student Body and the cases which were not decided by the Supreme Court of the Student Body and the frame of mind which considers a proposition of law to require the citation of some sort of authority. Furthermore, the vast majority of cases which have been brought in this Court have consisted of someone's having a great moral outrage about some act of Student Government; his feeling that such action was or ought to be illegal, and his search through a disorganized mass of Student Government statutes for some statement of principle similar to the common law or statutory law principle on which his feeling that the action was illegal was based. *See e.g.*, *Whittemore* v. *Ruffin* (1970) (Cmpl.); *Dunn* v. *King* (1972) (Cmpl.); *Bailey & Williams* v. *Waddell & Perez*, *supra.*; and *Yates & Ayers* v. *Waddell et. al.* (1970).

At the same time, §91 is not totally devoid of purpose and reason, as its location in the scheme of the Supreme Court Act tends to show. While limiting the use of common

Members of the Attorney General's staff are appointed to assist him in the execution of his duties as described above. Thus, the Attorney General's staff member undertakes a public duty not dissimilar to that of the Attorney General to inform every defendant in the student courts of their right to appeal here. Those who undertake to defend in the student courts undertake to do so to the best of their ability. That duty includes the taking of all permissible appeals where grounds exist for taking such appeals.

On the basis of this analysis of the underlying policy of the limitation on bringing appellate actions to this Court, and the duties of those who it was designed to protect, we hold today that the statute of limitations is an affirmative defense. It must be pleaded by the Attorney General in order to operate to divest this Court of the jurisdiction required to decide the merits of an appeal. The statute of limitations does not rise to jurisdictional

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law, statutory, and treatise authority in §91, the Act in §90 requires the Court to issue a written opinion in every action; in §92 provides that the decisions of predecessors of this Court, wherever records of thos predecessors may exist, shall be given the same credit and validity as decisions of this Court; and in §93 provide that the previous decisions of this Court are binding on this Court. The purpose of the whole business is to encourage this Court to develop its unique common law. A further purpose of the scheme is really a corollary of the purposes for the establishment of this Court—namely to establish a forum for the resolution of internal disputes within Student government or between Student Government and a student (whether the student be one who has a gripe about the way in which an election was conducted; about the way the Legislature is spending his money; or about the way in which he was treated or mistreated, in another student court, for example). Thus, it was, I think, in the contemplation of the Legislature when the Supreme Court Act was passed that this forum should be available to all students, and that they should not be required to know a law student or hire a lawyer to be able to obtain relief here. At the same time, the Supreme Court Act is a complicated, highly sophisticated statute, and some knowledge of the law "of the United States or any state" is helpful to understanding it. While common law authority may not be directly cited by us as an authority for our decision, nothing prohibits counsel from attempting to persuade us with the reasoning of cases reported from other courts, and nothing prohibits the occasional citation of a case from the courts of the United States or of any state.

As indicated in the text, this Court is a court only within the limited perspective of the four walls of the University community, and only the students under our jurisdiction are bound by our decrees. The law of the United States, and the cited statute would define us differently, and our decrees probably have a different legal effect when entered in actions brought under the original and appellate branches of our jurisdiction. The *Carter* case indicates that when we decide an appellate action, we act as an agency of the Board of Trustees and the State of North Carolina, and out authority to so act depends, in part, on them, as well as on the Student Constitution. Under the original branch of our jurisdiction, we act as an arbiter of disputes within Student Government, a private association, and our sole authority to act and our sole authority for our judgements and their enforcement depends on the Student Constitution. Cf. *Healy* v. *James*, 408 U.S. 169 (1972) (indicates some support among the Justices of the Supreme Court of the United States for the use of courts such as this for the resolution of intra-university disputes such as this and such as come under our original jurisdiction).

magnitude untouched by human hands. For the statute to operate, the Attorney General, who is by law counsel for the student body in all appellate actions, must move to dismiss the case on the grounds of the statute or the defense and protection of the statute is lost. Any further question regarding the nature of appellate action need not be spelled out. The Supreme Court Act defines the nature of appellate action, and that is enough. The final sentence of the jurisdictional holding in *Walters* was included as the result of certain theories of jurisdiction in *Walters* which are disapproved by today's holding.

Thus, jurisdiction in the *Walters* case and this case can be explained on a very simple ground. The Attorney General did not assert the running of the statute of limitations in either case. The statute of limitations being the defense of a party rather than a limitation of the jurisdiction of the Court, the Court will not inquire whether the statute has run.

II

The rights guaranteed the Honor Court defendant are set out in the Student Constitution in § 1.1.2.14. The defendant here has alleged and we have found that the material statements in this case were solicited by Chairman Cobb prior to the formal opening of petitioner's hearing. The petitioner has alleged that because these statements were taken into evidence and read, in whole or in part, by some or all of the Honor Court members that she was denied the right to be present during the taking of material evidence and that this procedure violated Article XII, Section 6 of the Judicial Procedures. She further alleges that because some of these statements were read by Honor Court members before the introduction into evidence of the present material witnesses that the Honor Court members "acquired initial prejudices about this case" and therefore should have excused themselves by reason of such prejudices by reason of Article IX, Section 3 of the Judicial Procedures.

The Attorney General, in reply, has alleged that the solicitation of statements by the Chairman of the court prior to the commencement of the hearing has been customary in the Honor Court until recently. He admits, however, that this practice "indirectly" violates the rights of those in the petitioner's shoes, but alleges that this is a harmless error because it is necessary for the Chairman to have some knowledge of the case so that he will know who counsel, the defendant, the witnesses and other persons are.

Despite the fact that this Court was established in the Constitutional scheme for the purpose of protecting the due process rights of Honor Court defendants, this case is the first which has come here alleging constitutional error. All of the other appeals

which we have decided have dealt with other questions. *Moore* v. *Student Body* (1969) decided that some violations of Men's Residence Hall Regulations also constituted violations of the Campus Code, and that where the conduct constituted a violation of both, the court having jurisdiction over Campus Code violations was the proper forum for deciding the claim. *Walters* v. *Student Body* (1972) decided only that a breach of the Honor Code took place when cheating took place, and not when the paper was turned in for grading. The only case which we have been able to find which rests on a due process contention is the *Carter* case cited above. The Carter case is of only limited application here, for in that case, the Board of Trustees undertook to determine whether the procedures employed in the student courts at that time met the basic requirements of due process. While *Carter* establishes certain fundamental principles which are useful in the resolution of the difficult questions posed by this case, its usefulness is limited by the fact that the Board of Trustees did not inquire whether a given procedure met the requirements of the Student Constitution, but analysed the procedures used in the trial of Miss Carter to determine if they were sufficient to protect her due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution. We are called to determine a fundamentally different question. We are not engaged in the business of trying the procedures used in the inferior courts as a whole, but only a few sections of them. Furthermore, we do not analyze these procedures in light of the Fourteenth Amendment, but in the light of § 1.1.2.14 of the Student Constitution.[7] Our decision,

[7] Among the legitimate objective of § 91 of the Supreme Court Act is probably the prevention of this Court from importing into student judicial proceedings the criminal procedure requirements of the modern Supreme Court decisions. These decisions are, indeed, relevant to proceedings in the student courts and other courts of the University only so far as the Supreme Court is willing to import the requirements of criminal due process into the due process required of administrative agencies in their quasi-judicial functions. The opinion of McMillan, J., in *Givens* v. *Poe*, Vic. Action No. 2615 (W. D. N. C. *decided* June 19, 1972) indicates something of the overlap of the fourteenth amendment and § 1.1.2.14 of the Student Constitution, as well as the greater breadth and specificity of § 1.1.2.14. Quoting from the slip opinion at 16–17:

> "Not all school discipline due process cases have reached identical results. The Supreme Court has written no blueprint. However, where exclusion (expulsion) or suspension for any considerable period of time is a possible consequence of proceedings, modern courts have held that due process requires a number of procedural safeguards such as : (1) notice to parents and student in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought; (2) a full hearing after adequate notice and (3) conducted by an impartial tribunal; (4) the right to examine exhibits and other evidence against the student; (50 the right to be represented by counsel (though not at public expense); (6) the right to confront and examine adverse witnesses; (7) the right to present evidence on behalf of the student; (8) the right to make a record of the proceedings; and (9) the requirement that the decision of the authorities be based upon substantial evidence. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir.,

in the absence of any common law authority in this Court must depend on a careful analysis of the procedures used, the terms of the constitution, and the underlying purposes and policies of both.

As we apprehend it, there are two distinguishable types of proceedings which take place in the Honor Court, although they appear on the surface to be the same thing. The first of these proceedings, which we shall call a trial, is a proceeding wherein the defendant contests his guilt. In such a case, the primary purpose of the trial is to attempt to establish the accused's guilt beyond a reasonable doubt. The second of these proceedings is a proceeding in which the accused does not contest his guilt; this we shall define as a sentencing hearing. In a trial, the Honor Court must determine three things, and thus, the evidence introduced must be relevant to supplying an answer to one of: (1) do the facts alleged in the summons constitute a violation of the Code; (2) from the evidence introduced (the material evidence, and not the character evidence), is the court satisfied beyond a reasonable doubt that the defendant is guilty of the acts charged; (3) what is the appropriate sentence to be assessed. In the sentencing hearing, the first and the third questions must be decided, but not the second, that not being an issue in the case. The petitioner here took part in a sentencing hearing, not a trial.

Evidence is required to be submitted in every case, regardless of whether guilt is in issue. This is certainly a wise rule, for we feel safe in saying that it is true that the vast majority of accused students plead guilty. But evidence is called on to serve two basic functions, both of which are recognized by the judicial procedures. In a trial, the material evidence and witnesses are put on

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1961), *cert. denied*, 368 U.S. 930 (1961); *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo., 1967), *affirmed*, 415 F.2d 1077, Blackmun, J. (8th Cir., 1969); *Black Students* v. *Williams*, No. 70–4 (M.D. Fla., Ft. Myers Dic., 1972); *Breen* v. *Kahl*, 296 F. Supp. 702 (W.D. Wisc., 1969), *affirmed*, 419 F.2d 1034 (7th Cir., 1969), *cert. denied*, 398 U.S. 937 (1970); *Vought* v. *Van Burden Public Schools*, 306 F. Supp. 1388 (E.D. Mich., 1969). For additional citations of authority see R. Butler, "The Public School Student's Constitutional Right to a Hearing," 5 Clearinghouse Review 431 (1971) and W. Buss, "Procedural Due Process for School Discipline: Probing the Constitutional Outline," 119 Penn. L. R. 547 (1971). Not all courts have expressly required all the items listed above, but all items do appear essential if both the substance and the appearance of fairness are to be preserved." *Id.*

The requirements listed here are essentially those guaranteed by § 1.1.2.14 of the Student Constitution. Notice to parents was required by McMillan, J., in *Givens* because, I think, he was dealing with high school students rather than college students over the age of majority. This list is presented for the purposes of comparison, and not as authority for the decision herein, *see* n. 6, *supra.*, n. 10, *infra.*, n. 14, *infra.* These, as I take it, are the rights which the Trustees in *Carter*, *supra.* meant for the president to secure. The student body has secured to itself more extensive rights than these, for example, *compare* § 1.1.2.14(1) *with* (9) of the McMillan list.

for the purpose of attempting to show the guilt of the accused student beyond a reasonable doubt. This is the effect of § 1.1.2.14(1) which guarantees to the accused student the presumption of innocence and the right to be acquitted unless proven guilty beyond a reasonable doubt. In the conference of the Honor Court, in trials where two-thirds of the Honor Court believes the accused to be guilty beyond a reasonable doubt, and in all sentencing hearings, the evidence submitted is called upon to serve a quite different group of functions; namely, to set a factual setting and background in which the Honor Code offense took place and to establish certain facts about the individual defendants which the court needs to do justice and fairness in sentencing. Thus, in a trial, the court is to consider the material evidence to determine the guilt issue and the character evidence and the material evidence on the sentencing issue. This is what we take these considerations of "the case without the person," "the person without the case," and "then the two intermeshed" which we are told by the Honor Court members are made to mean. The function of evidence in the sentencing hearing then means that all evidence is relevant all at once, for both character and material evidence is relevant to sentencing considerations. Thus, analyzed in terms of the purposes for which evidence is introduced, it would seem that the practice followed here would not violate petitioner's rights in a sentencing hearing, but might violate petitioner's rights in a trial. This is not correct, however.

Article IX of the Judicial Procedures and §§ 1.1.2.14 (d), (m), (n), (o), and (r) are all directed towards giving the Honor Court defendant as unbiased a trier of fact as might reasonably be obtained. The rights of petitioner in her sentencing hearing are the same as the rights of a defendant at a trial. The only imaginable exceptions to this identity of rights is the right guaranteed by § 1.1.2.14(1), the petitioner having by her own act removed the guilt issue from the case. The purpose of permitting the petitioner to be present during the introduction of material evidence is clearly stated in § 1.1.2.14(j)—"to question said witnesses and evidence." It is altogether possible here that those persons who read the material statements prior to the introd·uction of the material evidence formed initial prejudices about the case which later examination and cross-examination did not remove. There is no such thing as a procedure which 'indirectly' violates a defendant's rights, as the Attorney General has suggested in his answer; a procedure violates her rights or it does not. This placing into evid·ence of all of the case before petitioner had the opportunity to question such evidence and the witnesses who had prepared the statements violated petitioner's right as guar·anteed by § 1.1.2.14(j) and also her right to face her accuser and the witnesses against her as guaranteed by § 1.1.2.14(i).

Furthermore, if members of the court read these state-ments during the presentation of the character evidence in the case, then such members of the court were grossly derelict in their duties as members of the Honor Court. Their being engaged in the reading of the material case prior to the introduction of the live testimony of the persons who prepared the statements violated the right of the petitioner to make a full and effective presentation of her character as guaranteed by § 1.1.2.14(c).

Whether the members of the Honor Court who read the statements prior to the intro-duction of live testimony should have excused themselves from hearing the case as sug-gested by petitioner, we need not now decide. Judicial Procedures, Article IX, Section 1 gives the accused student the right to apply for a change in the composition of the council if a fair and impartial hearing cannot be had by reason of interest or prejudice of a member of the council. Petitioner did not introduce any evidence here that she had requested any member of the court to remove himself because he had read these state-ments. Petitioner had the same responsibility to protect her right to an impartial tribunal which the court had.

III

he Attorney General has defended the practice of giving the folder to the Chairman of the Honor Court prior to the opening of the hearing on two grounds: (1) this is the customary procedure (which has been changed, now) and (2) this was harmless error.

As to the first defense, the fact that the practice used here has been changed is of no moment to us here, for the subsequent change of an erroneous practice, and we have held this to be an erroneous practice, does not ameliorate the violation of this petitioner's rights. This Court is not the Legislature, we may not examine the question of whether the procedures generally used result in the kind of trials we think that people deserve; we examine only the question of whether the individual petitioner received a fair trial, and whether the procedures employed in the individual case brought about a fair result impartially arrived at.

If the practice employed here has been customary or traditional, it is a tradition of recent vintage. My brother MEDFORD served as Attorney General but a year ago, and I served as Assistant Attorney General about two years ago. As we remember it, the traditional practice has been for the investigator to introduce his statement into evidence and to read his statement to the court. The purpose of this investigator's statement was, in the words of the answer, "to allow the . . . Court to become familiar with the names of the persons involved in the case in order to differentiate the roles of defendant, counsil [sic], investigator,

and witnesses." Then the character testimony was introduced. Finally, the material witnesses were introduced and the statement of each material witness was introduced into evidence as he spoke. Further-more, the investigator said of each person who entered the court's chambers, "This is John Doe, who is here tonight as a character witness (or material witness)." If the procedure used in petitioner's sentencing hearing is non-harmless error, the procedure described here must be used in proceedings before the Honor Court.

The Attorney General, in his answer, has defended against all of petitioner's charges of error by saying that they were harmless error. He has not offered us an explanation of how harmless error must be in order to be harmless error. Counsel for the petitioner, on the other hand, has assumed that any violation of her rights is a harmful error, and from this premise has reasoned that if this Court finds as a fact that any of petitioner's rights were violated, then we should automatically reverse. Both of these positions misapprehend, in some degree, the nature of the harmless error defense.

The harmless error defense is a defense only to the violation of a petitioner's procedural rights guaranteed by 1.1.2.14 of the constitution or of some other section of the constitution.[8] The defense comes into play only when the Attorney General is prepared to admit, or the Court has found a violation of some such right. Finally, in order to sustain the defense, it must be proved that the error was harmless.

In order that the Attorney General might be able to prove that an error was harmless, it is first necessary for this Court to state what the standard of "harmless error" shall be. The Supreme Court Act in § 95 and § 96 speaks in terms of error which is "harmless" and "prejudicial" "as a matter of law." It is the responsibility of this Court to say what shall be harmless "as a matter of law," the Legislature having prescribed no standard for making that determination. The determination of what harmless error is must rest with an analysis of the interests protected by the constitution on either side. The Attorney General has misapprehended the question of what harmless error is in two respects: (1) He has assumed that all of the errors alleged by petitioner were harmless, largely, as we gather it from his answer, because the petitioner was engaged in an ordinary, garden variety proceeding before the Honor Court; and (2) He has assumed his conclusion, that the garden variety Honor Court proceedings protect

[8] The harmless error doctrine is available as a defense to violations of procedural rights only. Because of the relatively strict definition of the Honor Code adopted by this Court in *Walters*, No. 72–001 S.S.C. (1972) it should be readily apparent that harmless error in the definition of proscribed conduct is an impossibility.

all of petitioner's rights. The question is not as he understands it. The question of what harmless error is most properly put in the form: "Can there ever be a violation of a defendant's constitutional rights which is harmless error?" But counsel for the petitioner has mis-apprehended the question of harmless error also, for he has assumed that there is no such thing. The Supreme Court Act in § 95 states that there is a possibility that this Court might find an error harmless, and further, by fair implication, states that this Court shall say what is harmless '"as a matter of law."

The constitution in § 1.1.2.14 declares the due process rights of a defendant before the Honor Court. As pointed out in note 7 to this opinion, the due process guaranteed by § 1.1.2.14 and that guaranteed by the fourteenth amendment to the United States Const-itution are very similar, though § 1.1.2.14 is both broader and more specific. As pointed out at 12-13 *supra*. and 16 *supra*. it is the duty of this Court to construe the Student Constitution's due process and not the Constitution's due process, though each is aimed at the same end. The principal immediate function of due process in Honor Court trials is to ensure that sanctions will not be imposed against the defendant without a full, fair, and impartial trial on the merits of the case. As we have already said, the due process interests of the petitioner are the same in a sentencing hearing and a trial. The protection from the imposition of a sanction without § 1.1.2.14 due process is declared by the constitution to be an important, significant, salient feature of proceedings before the Honor Court. The Board of Trustees in *Carter*, *supra*. at 2 have declared that it shall be the duty of the President to protect the due process interests of Honor Court defendants, and the Supreme Court Act has vested this Court with the same responsibility The Chancellor, faculty, and constitution have placed the responsibility for student discipline where it should be-with the students and with student courts. To place the responsibility anywhere else would be to rest such responsibility on some theory of the power of a University to discipline its students which is no longer recognized in the law of the United States or of any state. It was students who first undertook the responsibility for student discipline at this University, and that responsibility has remained with students to this very day. In the words of *Carter*, *supra*. at 1:

> Student participation in the discipline of other students in some form or other goes back to 1799, four years after the University was founded. With the establishment of the Honor system on examinations in 1875, it was apparent that there could be no effective honor system without student responsib-ility for enforcement. In 1904 there was formed

> the "College Council," which was the beginning of the present council form of student government. Today highly organized and responsible student government has become one of the rich heritages of university life at Chapel Hill.

The imposition of sanctions, however, with or without due process, is a serious bus-iness, and has serious consequences for the student against whom such sanctions are imposed. while the petitioner is under a sentence of suspension, she is deprived of her right to be a full-fledged member of the University community. Furthermore, notice of such a sentence is carried on her permanent record so long as the sentence is active-·giving any prospective employer notice of disciplinary sanction if he desires to inquire. The imposition of this particular sanction is a grievous deprivation, and it is to be imposed only after a due process hearing and only in appropriate circumstances.[9]

The Student Constitution and the laws enacted pursuant to its authority represent the only guide we have to the collective conscience of the student body as to matters of discipline and judicial affairs. In § 1.1.2.1 the student body has placed upon itself the responsibility to abide by the Honor and Campus Codes, and has placed upon the Attorney General the responsibility of investigating instances in which violations of the Codes are alleged. In § 1.1.2.2 the student body has created student courts to discipline those who cannot live by the Codes. The student body has described the type of discretion to be vested in those courts in sentencing in § 1.1.2.12, and in §§ 1.1.2.13 and 1.1.2.14 (which overlap to a great extent) has described the due process rights and procedures guaranteed to defendants. The student body has a legitimate interest in imposing sanctions against those whose conduct does not meet the standards of respon-sibility set forth in § 1.1.2.1, but the student body has declared that sanctions will not be imposed without due process of law, as described in §§ 1.1.2.13 and 1.1.2.14. This mandate of due process is nothing new, nor is it unique to our own concept of law. The following story from the Holy Bible of the Christian religion, Book of the Acts of the Apostles, Chapter 25, verses 13–16 (RSV) shows something of the ancience of the concept and its sophistication, even in the first century A.D.:

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[9] The appropriate circumstances for the imposition of the penalty of suspension are to be determined in every case by the Honor Court. For this Court to attempt to define the variety of imponderables which should enter into such a decision would be for us to overstep our constitutional authority, the constitution having defined appeals based on excessiveness of sentence out of our jurisdiction as not "errors of law" *See* n. 1, *supra*.; text at 25–26. The theory of sentencing in Honor Court proceedings has been, for the most part, that sentences are imposed to rehabilitate rather than punish the offender, albeit the imposition of a sanction undoubtedly does both, in fact.

> (13) Now when some days had passed, Agrippa the king and Bernice arrived at Caesarea to welcome Festus. (14) And as they stayed there many days, Festus laid Paul's case before the king, saying, "There is a man left prisoner by Felix; (15) and when I was at Jerusalem, the chief priests and the elders of the Jews gave information about him, asking for sentence against him. (16) I answered them that it was not the custom of the Romans to give up anyone before the accused met the accusers face to face, and had opportunity to make his defense concerning the charge laid against him.

An account of a trial in the early days of the student courts shows that due process has always been considered something of an important interest before those tribunals:

> It was during this cold month (January of 1822) that one student was brought before the dreaded "Committee" which reviewed the conduct of members of the Philanthropic Literary Society. It was said that "his irregularity in the performance of his collegiate studies, playing at cards with low and unworthy characters, and the general immorality of his conduct were unworthy of a member of the Philanthropic Society." This beleaguered moral pauper appealed to the Society that if given one or two months longer, "a manifest reformation should take place in him." He was granted this extra period for reform, but his Saturday hunting privileges were revoked. 3 *Gadfly*, No. 1, p. 2, c. 6 (Nov. 27, 1972).

The interests of the student body and of petitioner in due process of law are not therefore antagonistic, but are concurrent. Given this analysis of the due process inter-est, and given the solicitude shown by § 1.1.2.14 for a defendant's rights, we think that the harmless error standard can be condensed to two rules: (1) Among alternative pro-cedures which are reasonably equal in feasibility, the procedure offering the accused the greatest measure of protection *must* be followed; and (2) In the absence of a showing by Student Government of some compelling justification for the procedure followed, a procedure which intrudes in the least on a right of an Honor Court defendant will result in a reversal of the result below unless the infringement is affirmatively shown to have been harmless beyond a reasonable doubt. We today so hold. Any lesser standard of harmless error could not adequately protect the due process interest.

Measured by this standard, the presentation of evidence to any member of the court prior to the introduction of the live

testimony of the witnesses who prepared the statements and open to cross-examination by petitioner or her counsel is clearly prejudicial error. An equally feasible alternative procedure, that traditionally followed by the Honor Court was available, and there was no showing that the use of this procedure was harmless beyond a reasonable doubt. To submit a "store-bought" term paper for credit in a course can only be viewed as a serious breach of the Honor Code, *Walters* v. *U.N.C. Student Body*, No. 72–001 S.S.C. (1972). The truth of the charge was fully disclosed by the statements in the folder, but the attending circumstances were not disclosed in full therein. We cannot say as a matter of law that the minds of those Honor Court members who read these statements prior to petitioner's having an opportunity to bring out those attending circumstances might not have been prejudiced against petitioner so as to result in their being inclined to severity with her. In any event, if they read those material statements while petitioner's character witnesses were speaking, there can be no doubt that the Petitioner was denied the right to effectively present the character witnesses she had a right to bring to the hearing, and whose testimony is always so highly relevant in considerations of sentencing.

IV

Petitioner has alleged, and we have found, that two members of the Honor Court were prevented from speaking their minds in the Honor Court's conference because they were asked by the Chairman of the court to refrain from speaking. A second and related issue tried here by consent of the parties was whether the procedure used in the conference of opening consideration of sentence with the more severe sentences and then proceeding to the less severe sentences was prejudicial to the petitioner.

The Honor Court is required by Article XIII, Section 3 to undertake full deliberations in every case, regardless of the plea; and by Article XIII, Section 6 to deliberate upon the sentence. Counsel for Petitioner thus argues that the prevention of the dissenters below from raising the issue of probation as an appropriate penalty was "a flagrant violation of [§ 3]." He further argues that deliberation on the sentencing issue was unfair because, "Ms [sic] Cobb stated that the question as to whether Ms [sic] Welfare was considered a menace to the University community, or whether she should be allowed to remain within the university [sic] on probation was not deliberated. Here we feel that this is one of the key questions in deciding whether or not a student should or should not be suspended "from the University." Finally, counsel argued here that the consideration of the more severe before the less severe sentences tended to prejudice the court toward severity in sentencing the Petitioner.

The contention of the Attorney General in reply is merely that "Ms. Welfare did receive a full and complete deliberation in that every member of the court was allowed opportunity to voice his/her [sic] opinion and that the opportunity for alternate possible penalties to be discussed was given."

The facts as we have found them belie the Attorney General's contention. The pro-cedures which were actually described here as having been followed in the deliberation represent an appalling violation of the concept of full and fair deliberations. Not only were two judges prevented from raising the issue of probation as a proper penalty, but, in violation of Article XIII, Section 8, two so-called "straw votes" were taken, and the Chairman relied only on some vague, subjective, and unidentifiable sixth sense to deter-mine when everyone had spoken his mind on whatever issue might have been before the con-ference. Whether measured by the "equal convenience" rule or the "harmless beyond a reasonable doubt" rule of the harmless error doctrine, it is clear that the procedures followed here were grossly prejudicial, and far from being directed towards conducting a full and fair deliberation, conducted to bring about a just result.

One interpretation of which the facts presented here will admit is that Chairman Cobb belabored the suspension issue in an attempt to secure the imposition of that penalty against the Petitioner While this practice is not unheard of, we do not believe that to have been the case here. We think that Chairman Cobb made a reasonable effort to conduct a conference in accord with what she erroneously believed to be a correct pro-cedure. The unfortunate aspect of the procedure followed here is that it is so loose, so informal, so unstructured, that it does admit easily of the possibility that a Chair- man, under the guise of ding the conference, can hold an issue on the floor of the conference until two-thirds of the court, whether because of fatigue or exasperation, decide the game is no longer worth the candle and vote to suspend a student.

The conference procedure described here also admits of other abuses. My brothers COHEN, MEDFORD, and I think that had we been parties to the deliberations here described, we might have had great difficulty in knowing to what issue we were speaking. These difficulties exist due to the taking of "straw votes," the legal effect (to the Honor Court) of which is unclear, and due to the failure on the part of the Honor Court Conference to distinguish the penalty of suspension clearly from that of probation. While we have little doubt that the members of the Honor Court take their responsibilities very seriously, we likewise cannot condone a conference procedure which is so loosely designed for purposes of reaching a just result, which admits of numerous abuses, which admits of a confusion among the Judges as to what is being

deliberated, and which permits the use of a sixth sense or a "straw vote" to determine when debate must be cut off.

Article XIII of the Judicial Procedures does not define a method of conducting the Honor Court's deliberations. Article XIII defines the issues to be considered in the conference in gross terms, §§ 3,6; the votes required for support of a verdict or sent-ence, §§ 4,7; permissible verdicts, § 5; the method of voting, § 8. The only conference procedure included which relates to the manner of debate is § 2, which requires the Chair-man of the petit court to lead the deliberations. These judicial procedures have been in use in the student courts for some time, about twenty years, if the legislative history contained in the last edition of the Student Government Code is accurate. They have been subjected to quasi-judicial scrutiny once by the Board of Trustees, in Carter, and now to the judicial scrutiny of this Court.

No branch of Student Government has been subjected to greater scrutiny by the University administration, Student Government officials, or the student body than the student courts. The opinion of the Board of Trustees in *Carter* in 1962 was the first such major enquiry. Since then, to the best of my knowledge, there have appeared: *Proposals for Judicial Reform*, a report of the President's (Student Body President Paul Dickson) *Ad-Hoc* Com-mission on the Judiciary (1 November 1965); *Report of the Special Advisory Committee on the Honor System*, (the Long-Wales Committee) (22 June 1965); a study which was conducted by the former head of the Legislative Services Commission, which resulted in the so-called Tuttle Bill for judicial reform (1967–1968); the Parker Bill for judicial reform (based substantially on the Joint Statement of Student Rights and Freedoms of the American Association of University Professors and the Model Code for Student Rights, Respon-sibilities and Conduct of the Law Student Division of the American Bar Association) (1969); *Proposed Changes for the Attorney General's Office and the Honor System*, a study by the Student Government Attorney General's Office (April, 1969); and numerous draft reports of the current Judicial Reform Committee (established in 1969). Unfortunately, none of these reports contain anywhere in their mountains of pages anything relevant to the quest-ion of what the Honor Court should do once the defendant and counsel walk out the door. Yet, if some semblance of due process is not observed in the procedures by which the Honor Court resolves the questions in its collective mind, then what has gone before in preparation for trial has been rendered a useless form of playing at judgment.

We think it incontestable that the student body has a legitimate interest in sanction-ing those who do not live up to the standards set forth in the Honor and Campus Codes. At the same

time, the Student Constitution has smiled broadly on the Honor Court defendant, and has in §§ 1.1.2.13 and 1.1.2.14 guaranteed him rights to due process more extensive than a liberal reading of the Fourteenth Amendment grants, and has set up this Supreme Court for the purpose of protecting those rights. The Constitution has spoken, and has chosen that the defendant will not be sanctioned without having substantial protection. Due process does not mean that the procedural requirements to be imposed on the conduct of Honor Court proceedings must be so burdensome as to make it impossible for a conviction to be had. Due process means little more than the rights guaranteed a defend-ant by the Student Constitution, any right protected by the fourteenth amendment to the United States Constitution which is not covered by the Student Constitution,[10] and the "equal convenience" rule of the harmless error doctrine announced here p. 20 *supra*. A conviction obtained or a sentence imposed where these requirements are met will never be set aside by this Court.[11]

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[10] 10. It is the duty of the President to secure to the accused student any due process right guaranteed by the Fourteenth Amendment and not by § 1.1.2.14. *See* n. 7, *supra*. Thus, in theory, a student convicted in the Honor Court could take three simultaneous appeals from the Honor Court decision, at least in theory: (1) One to the Faculty Review Board, based on the presence of a reasonable doubt of guilt and/or the imposition of an unjust sentence; (2) One to this Court for the denial of a right under Student Government statutes, the constitution, misdefinition of the Honor or Campus Code, or some other error of law; and (3) One to the President based on the denial to him of some right guaranteed him by the due process clause of the Fourteenth Amendment and not covered anywhere in the law available to him in grounds for appeal to this Court. *See* n. 1, *supra*.; n. 7, *supra*.; *Carter*, *supra*.

[11] 11. The harmless error doctrine announced herein needs, I think, to be related to the distinction between "trials" and "sentencing hearings" which we have made. The issues in trials and sentencing hearings are identical, except that the trial involves the issue of the guilt of the accused. Likewise, the rights of an accused are identical, except that those which relate to the proof of guilt are inapplicable in a sentencing hearing, for the accused, by his plea of guilty, forecloses the issue. Thus, that which is prejudicial error in a sentencing hearing will always be prejudicial error in a trial The converse of that prop-osition need not always be true, however. What is prejudicial error in a trial might not be error in a sentencing proceeding, since the guilt issue and the requirement that the prosecution prove its case beyond a reasonable doubt are procedural features of the trial, and a trial error could relate solely to that issue or the presumption of innocence.

There is only one situation in which the guilt issue could pose any sort of problem in a sentencing hearing Let us suppose that a defendant plead guilt to a charge which, even if proved, would not constitute a violation of the Honor or Campus Code In such a case, the guilty plea would not be conclusive evidence of the defendant's guilt, but it would be the duty of the Honor Court to reject the guilty plea, the appropriate code having been mis-defined, and find the defendant not guilty of anything This seems to be the logical consequence of § 96(a) of the Supreme Court Act. So long as the defendant actually committed the acts charged in the summons, that he "lied" to the Honor Court by having plead guilty to a violation of the Code would be of no consequence. In fact, even if he did not commit the acts charged, plead guilty, and the Honor Court then found the acts, even if proved, would not be a violation, then that he "lied"

The full deliberations required to be undertaken by Article XIII, Sections 3 and 6 are but a means to the end of protecting the rights of Petitioner guaranteed by §§ 1.1.2.14 (l), (m), (n), and (r); and by §§ 1.1.2.13 (b–c). The deliberation in the proceedings below in this case were, it is true, long. There is no support in the findings of fact for the contention that it was full. When a member of the court is prevented from raising an issue properly to be considered, and he is not later permitted to raise it; when a member's right to participate is chilled by frequent rebuff; when the opening and closing of debate is left to the unbridled discretion of the Chairman, so that she might close debate at any moment she believes the required number of judges might vote her way, the constitutionally required deliberation never takes place.

As to the question of whether proceeding from the more to the less severe penalties is prejudicial to the Petitioner's right to an unbiased decision, we think it is. In the sort of verbal free-for-all which is described to have taken place in the conference in this case, there can be no doubt that starting with the more severe penalties tended to keep the discussion there, and admits of the possibility of the sort of abuses by the Chairman before described.

As to whether the court should have considered whether Petitioner Welfare posed a menace to the University community and so should have suspended her, this we need not decide. The sentencing hearing is directed toward deciding what sanction is most appropriately imposed for the conduct complained of. The theory of sentencing in the Honor Court has been substantially that sentencing is primarily rehabilitative, and only secondarily punitive. The Constitution in § 1.1.2.12 requires the Honor Court to "take full cognizance of the traditional offenses and punishments heretofore enforced at this University," and recognizes that sentencing, in the absence of a mandatory sentence from the Legislature, is an appropriate occasion for the exercise of discretion. *See also* n. 14 *infra*. The purpose of introducing evidence in a sentencing hearing is to provide a background of relevant information for the court in arriving at an appropriate penalty. It is for the evidence and the Honor Court to determine what factors are relevant to the sentence ultimately imposed. It is not for this Court to say that the penalty of suspension may be imposed only where the defendant constitutes a menace to the University community, albeit that is one factor which the Honor Court may appropriately consider in its decisions on sentence. For us to require that suspension only be imposed when the defendant is a menace to the University community would be for us to decide a question of

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by pleading guilty should be of no consequence. Of course, only a very foolish or very poorly counselled defendant would permit himself to be caught in such a situation.

"excessive penalty," which is beyond our jurisdiction. § 26(b). Supreme Court Act of 1968.

It has been contended by the Attorney General, Chairman Cobb, and one or two other members of the Honor Court who appeared here that that which took place here was the usual sort of deliberation. By assuming that the usual sort of deliberation results in a properly considered decision, we are advised by them that we must affirm this result. If that which took place here was an ordinary sort of deliberation, then it presents all the more reason for us to reverse, for defendants are being denied their rights every time this sort of melee takes place. If this has been traditional, then the tradition is shockingly brutal. We have no trouble holding that a practice is unconstitutional when it violates the rights of a defendant, even when it is usual, and even though it may have been followed since the time the Di and the Phi began to discipline their members. When the sheltering and protective hand of the constitution has intervened on the side of the defendant, the very trunk of the tree of tradition is uprooted, and it becomes the duty of the Court to plant anew, in hope that as the twig be bent, so shall the tree incline in the direction of growth which the constitution intended.

We believe that the constitution and the Judicial Procedures require deliberations to be conducted in every case in the manner described in the judgment of this Court entered in this case on the fourteenth day of December, 1972 and appended to this opinion. We so hold.[12]

The only guidance which this Court has had in formulating these procedures is Article XIII of the Judicial Procedures, the constitutional rights of the Petitioner, and some comments from interested parties upon the judgment of the fourth day of December which was vacated by the December 14th judgment.[13] We

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[12] 12. Precise procedures for the conduct of deliberations in the Honor Court have not been set forth before, nor, to the best of our knowledge and research, has the question ever been considered beyond the requirements of Article XIII of the Judicial Procedures. V I.S.J.G. § B(4)(a–h), *supra*. is a veritable photocopy of the current Article XIII, so there seems to us no good reason that the procedures mandated by the December 14th judgment should not apply to proceedings conducted under their authority, if and when the *Instrument* ever becomes the law.

[13] A number of people approached me between the issuance of the judgment in this case on 4 December 1972 and the issuance of the reformed judgment of December 14, 1972, inquiring as to the possibility of having such judgment reformed in some particular or another. Considering that much of this discussion took place in such a close proximity to examinations, in both the undergraduate colleges and the Law School, I did issue the reformation ten days after the entry of judgment This, however, is not the appropriate procedure to be followed, and had it not been for the time of the trial of this case and the time of the entry of the judgment, I doubt seriously that I should have issued this reformation. Speedy action was also necessary in order to preserve the rights of the Petitioner herein, the retrial of her cause not having taken place until

regret that counsel, even when advised at the trial of this appeal that such interstitial lawmaking might be necessary to the judgment herein, provided us with little help in formulating a procedural scheme which would protect the rights of the Petitioner and result in "full deliberations." The duty of this Court to protect the rights and remedies of the Petitioner is a sufficient predicate for the type of lawmaking in which we have here engaged. The only further explanation which must be made of the holding in this case is to elaborate on the function of the Chairman, who, by Article XIII, Section 2 of the Judicial Procedures, is charged with the duty of leading the deliberations. Leading of the deliberations does not preclude the Chairman from speaking or voting in the conference. S.J.P. art. XIII, § 4. The prerogatives of the Chairman are otherwise limited by the procedures prescribed herein. Thus, the Chairman may set the order of speaking, including his own place in the order of speaking; he may cut off a member who speaks out of turn, or interrupts another member.

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14 December For the guidance of those with an interest in having some future judgment reformed, I shall try to set out here the appropriate procedures to follow.

Judgments are issued by the Court, and not by the Chief Justice, § 85(b) of the Supreme Court Act. Furthermore, judgments are issued for the purpose of cases and controversies, and therefore, a reformed judgment could only be issued in this case, or for that matter, in any appellate action, prior to the retrial of the case. Thus, even though the December 4th judgment herein might not have been procedure so good as that prescribed by the December 14th judgment, if Petitioner's retrial had taken place on December 10, 1972, and had been conducted in accordance with the December 4th judgment, the issuance of a reformation thereof would have been both useless and unnecessary. While it is true that this Court says what the law is and what it will be, it speaks first and foremost to the case before it.

The appropriate procedure is to petition the CHIEF JUSTICE or the PRESIDING JUSTICE for a reconsideration, serve notice to the adverse party of the request, and await the setting of a date for the reconsideration. At the time of the re-consideration, each party may have time to argue for changes which might be necessary in the judgment. Any person or organization not a party to the issuance of the judgment should file a request with the Court to participate in either the original proceeding or the proceeding for reformation of judgment as an *amicus curiae*. Since this Court should, in my view at least, attempt to try to make the law it writes palatable to all persons with responsibility for student discipline, and since a part of the authority of this Court in the appellate branch of its jurisdiction, derives from the Board of Trustees and the State of North Carolina. *See* n. 6 *supra*.; n. 10, *supra*., the arguments and remarks as amici of such persons as the Faculty Committee on Student Discipline and the Office of the Dean of Student Affairs should always be welcome In recognition of the fact that it has been the usual philosophy of the administration of this University to permit Student Government to make its own mis-takes and attempt to learn thereby, these organizations might wish to advise the Attorney General of their opinions and assist him in the preparation of a brief, rather than entering amicus briefs here under their own names. Advice to the Attorney General has been, perhaps, the notable exception to the general attitude of non-interference with the affairs of Student Government This interference with the Attorney General is surely as it should be, for student discipline has always been the collective responsibility of the university administration, the faculty, and the students.

while a member of the court is speaking, he may say anything he likes, although, hopefully, he will limit himself, insofar as is reasonably possible, to the merits of the particular penalty or issue under consideration. The court, in its deliberations shall, in the words of the Constitution in § 1.1.2.12, "take full cognizance of the traditional offenses and punish-ments heretofore enforced . . ."[14]

One further matter needs to be remarked upon. We have not held in this case, nor do we wish to imply, that if a defendant can get one member of the Honor Court which heard his case to say that he did not have a full opportunity to speak, or that the full letter of the procedures here prescribed[15] were violated that he is therefore entitled to a new trial. If the Honor Court follows some other procedure which meets the requirements of the "equal convenience" rule of the harmless error doctrine, and which take full cognizance of the defendant's right to be sentenced only after full deliberation; if the requirement of full deliberation as described in Art. XIII, § 3 and § 6 is met, and the rest of the defendant's rights are honored in fact, then there can have been no error of which a defendant can successfully complain. We prescribe this procedure because we can envision no other procedure which can meet those requirements. Furthermore, as we pointed out in the findings of fact, the acceptance of Judge Reynolds' version of the story of the deliberation below depends on a number of factors. It is the balancing of all of these factors which mandates our finding. The evidence required to

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[14] As I read it, the constitutional directive to the student courts in § 1.1.2.12 is the fundamental basis of distinction between this Court and the other student courts. This Court is a court at common law, *i.e.*, it is bound by its own decisions. The other student courts have never had much of their own precedent recited to them as authority for their entry of their decisions. This is altogether proper, for the constitution, in the same breath in which it admonishes the courts to take full cognizance of the traditional offenses and punishments heretofore enforced recognizes that sentencing is an occasion for discretion unless the Legislature has required them to impose a given sanction for a given offense. Discretion is the essence of imposing sentence, particularly when the philosophy or sentencing is that the sentence should serve primarily to rehabilitate the offender. While the punishments traditionally imposed are to be given some weight in the consideration of sentence, the only way in which the "discretion" clause of § 1.1.2.12 and the "full cognizance" clause may be read consistently is to recognize that that which is traditionally done may be entirely inappropriate in the circumstances of the given case.

[15] In order to erase any lingering doubt, it is to be noted that by the terms of this opinion, the requirements of the December 14th judgment are made to hinge upon the constitution, what may be reasonably implied from its language, and laws enacted under its authority. The *stare decisis* effect of this judgment is therefore that the deliberation procedures required herein are required in all deliberations conducted in all proceedings in all courts inferior to this subsequent to the fourteenth day of December, 1972. While the Honor Court is not a court bound by its own decisions, it is in all events bound to the common law of this Court.

support a finding in this Court need not persuade us "beyond a reasonable doubt," as we make no findings as to the guilt or innocence of anyone. Evidence to support a finding in this Court need only be sufficient to persuade us that the weight of the evidence, weighed by balancing many factors such as those used to weigh that of the witnesses here, falls to one side or another. We have reason, therefore, to believe, not that Judge Reynolds felt that he was suppressed, for that would depend entirely on his subjective impressions; but that the objective facts were as Judge Reynolds related them here, and that those objective facts are capable of being interpreted by both Judge Reynolds and ourselves to mean that he was suppressed.

V

Petitioner's final assignments of error relate to the release of information concerning her hearing to the *Daily Tar Heel* and by members of the court to third persons. As to the paragraph quoted at 32, *supra*., Petitioner assigns as error that the information about the hearing appeared in a feature news story; that the article contained more than the nature of the offense, because it mentioned some particulars of the facts; and, that the article gave the sex of the defendant. Petitioner's counsel has argued vociferously that these errors, or violations of the Petitioner's rights, are grounds for a new trial, and are breaches which may be redressed only in this Court. We disagree.

It is true that information concerning Petitioner's trial appeared on the front page of the *Daily Tar Heel*, and it is also true that the stories of Honor Court trials almost always appear as a few brief paragraphs buried in its inner pages. If this were error, which it is not, it would present us with a non-justiciable issue. The controls which Student Government exercises over the *Daily Tar Heel* are few. Access by the *Tar Heel* to information concerning any trial is contingent upon the permission of the defendant to the paper to send two reporters, Art. VI Judicial Procedures, § 1; or release of the information which the Chairman may make pursuant to Art. XII Judicial Procedures, § 1; releases must be accurate and relate to proceedings which took place while the accused had the right to be present, Art. VI Judicial Procedures, § 2; and witnesses' names may not be released without their written authorization, Art. VI Judicial Procedures, § 2.[16] The only general controls over the *Daily Tar Heel* are

[16] For my own part, while I have no doubts that the Legislature may condition the access of the *Daily Tar Heel* or of other members of the campus press on the con-sent of the accused, I have more than a passing constitutional doubt, whether under § 1.1.4.3 of the Student Constitution or under the first amendment of the Constitution of the United States, that any of the scheme of Art. VI Judicial Procedures, including

described in Article IV of the Constitution: (1) the editor is elected and subject to recall, §§ 1.1.4.3 and 1.1.5.3; (2) the Legislature determines how much money shall be appropriated to the paper, § 1.1.4.2; § 1.1.1.4(b); (3) so long as the Legislature appropriates money to the *Tar Heel*, the Publications Board has authority to supervise its financial administration, § 1.1.4.2; and (4) so long as the Legislature appropriates money, the Student Audit Board has the authority to inspect the books of the *Tar Heel*, § 1.1.4.4.

An Honor Court defendant has the right to a closed hearing, § 1.1.2.14(e), and to a public hearing, § 1.1.2 14(f),[17] but in any event, the access of the public and the newspaper to information concerning the trial is subject to the defendant's discretion, ex-cept for the releases required by Article XII Judicial Procedures, § 1. Neither Student Government nor the defendant could compel the attendance of reporters at a "public trial." Given the highly limited control which Student Government may exercise over the *Tar Heel* at all, there can be no doubt that Student Government cannot require the paper to publish information concerning Honor Court proceedings only in its inner pages where only a few will see them. The information concerning petitioner's trial and its results was an accurate representation, and the only information contained therein which might possibly exceed the authorized release under Article XII, § 1 is the information relating to the cost of the paper and the sex of the Petitioner. The *Tar Heel* had the right to publish any, all, or none of the information the Chairman made available to it, and if it found the information sufficiently newsworthy to deserve treatment as part of a front-page story, the petitioner may not complain of that.

The release of information concerning the trial is not a violation of the petitioner's rights for which new trial might be given. If this were the case, then this Court would create the risk of every defendant's being entitled to a new trial if the Chairman released more than the most schematic sort of information. Furthermore, the grant of a new trial because information was released concerning the trial hen a closed hearing had taken place

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the requirement that the report be accurate, could pass constitutional muster if attacked in a proper proceeding in this Court.

[17] The Commissioner's notes in the current edition of the Constitution to §§ 1.1.2.14(e) and (f) indicate that reporters may attend all trials unless the defendant requests a closed hearing, and that subsection (r) of § 1.1.2.14 would permit a defendant to request a public trial at which any member of the student body might attend. The Commissioner is in error. Until Article VI of the Judicial Procedures is amended to permit someone other than two reporters from the campus newspaper to attend, then the effect of §§ 1.1.2.14(e) and (f) is to permit two reporters to attend, or no one. The Legislature has yet to undo that which the constitutional change attempted to undo. This is all based upon familiar principles of construction.

could not remedy the wrong the Petitioner has suffered. The errors of which this Petitioner could complain in this Court could not have taken place after the announcement of a verdict and sentence; this Court corrects errors which have taken place at the trial. This right to privacy which the defendant has respecting proceedings before the Honor Court may be vindicated in one or both of two ways: (1) Petitioner may ask the Attorney General to institute proceedings under the Honor Code against the members of the Honor Court who pierced the shroud of privacy which surrounds those proceedings; or (2) She may complain against them and ask that proceedings be brought under the Campus Code. Article XI J.P., § 1 requires the Chairman to read the following statement to each witness who appears before them:

> I would remind you that you are on your honor to tell the truth at all times. You are also on your honor not to reveal the proceedings of this hearing to anyone at any time. A violation of either of these shall constitute an Honor Code offense.

Article XII Judicial Procedures, § 1 extends this injunction on revealing the content of an Honor Court proceeding to the members of the court, providing the limited exception for news releases by the Chairman. It cannot be too often repeated that these Judicial Procedures have been in force for some time, and have seldom been subjected to judicial scrutiny, in this Court or anywhere else. The above quoted statement, which defines revealing information concerning an Honor Court case as an Honor Code offense might be an appropriate exercise of Legislative authority under §§ 1.1.1.4(g), (1), and/or (o); or it might have been rendered unconstitutional by the constitutional referendum of 1968 which changed the Honor Code from:

> It shall be the responsibility of every student at the University of North Carolina to obey the Honor Code, prohibiting lying, cheating, or stealing of which he has knowledge.

to:

> It shall be the responsibility of every student at the University of North Carolina to obey the Honor Code, prohibiting lying, cheating, or stealing, when these actions involve academic processes, or university, student, or academic personnel acting in an official capacity and to report any such cases of which he has knowledge. Former and current versions of Student Constitution § 1.1.2.1.

But we need not now decide the effect of this constitutional change, if any, on Art. XII, § 1, as this is not a proper proceeding for that question. In any event, the Campus Code, § 1.1.2.1, in either its former or its present versions[18–19] is clearly adequate to cover the release by an Honor Court member of such information.

The constitutional right to a closed trial has often been criticized as a denial to the student body of information about other students to which they should be entitled, proceedings against the individual having been brought in their name, and of a valuable educational opportunity concerning the operation of the courts. The right is not recognized by the *Instrument of Student Judicial Governance*, *supra*. *See* V I.S.J.G. §§ A(2)(b)(6); B(1)(b). In any event, it is a right guaranteed by the constitution to the accused student, and until the student body writes the right out of the constitution, it must be honored by the Honor Court and this Court.[20] It may serve two purposes: (1) it grants to the accused some protection of reputation, since his name is never released in connection with the Honor Court proceedings; and (2) it may serve as some encourage-ment to witnesses to be

[18] Prior to 1968, § 1.1.2.1 of the Constitution read further as follows:

> And it shall further be the responsibility of every student to abide by the Campus Code, namely to conduct herself or himself as a lady and gentleman at all times.

[19] In 1968 the ladies and gentlemen went the way of china plates and chine cups and saucers in the Pine Room. § 1.1.2.1 was amended to read:

> And it shall be the further responsibility of every student to abide by the Campus Code, namely to conduct oneself so as not to impair significantly the welfare or the educational opportunities of others in the University Community while on the campus and environs, provided that this area shall not be construed to exceed the limits of Orange County during the term for which he is enrolled or while officially representing the University.

[20] Proceedings in this Court have always been open to the public. Since in this Court we take no evidence of the character or guilt of a defendant, and since the only evidence concerning the trial which comes to our interest or attention relates to the procedure used, we did not see fit to close the consideration and argument of this case from public view. During our consideration of the case of *Walters* v. *U.N.C. Student Body*, No. 72–001 S.S.C. (1972) no reporter from the *Tar Heel* appeared, so it was unnecessary for us to decide whether it is necessary under the constitution to close our proceedings in this Court when the contention is that the acts committed by the defendant constituted a violation under the Codes.

open, frank, and candid with the court in revealing all they know about the acts and facts to which they testify.[21]

There is only one violation under the Honor Code—a violation of the Honor Code—and the statutory dispensation of Article XII, Judicial Procedures, § 1 extends only to "the nature of the offense, the verdict, and the sentence." We think, then, that the Chairman is privileged by the statute to release more than that a student was convicted of an Honor Code offense. In our judgment, the information contained in the quoted paragraph is wholly within the statutory dispensation. It states nothing more than the nature of the offense, the verdict, the sentence, and the efforts of the Petitioner to obtain a modification of the judgment.

The unfortunate aspect of this release was that it was sufficiently specific to narrow down to some four or five persons within the University community the universe of possible U.N.C. co-eds who might have been the defendant, there being few women in the advanced courses in the school of Business Administration. This Court does not desire to get into a semantic and metaphysical jungle by attempting to describe as a test the degree of generality or specificity which a release by the Chairman of the Honor Court may obtain without being objectionable. The test is a common sense one, and stated in the statute to be facts relating to "the nature of the offense, the verdict, and the sentence." The petitioner's name was not released to the public at large, the facts released were relatively few, and related fairly closely to the statutory dispensations. That a few persons in the School of Business Administration or in a given fraternity, sorority, or residence college were able to guess that the co-ed referred to was the Petitioner is unfortunate, but it is not a violation of her rights for which she should be entitled to a new trial.

The releases of information concerning the trial by Judges Calder and Campbell stands on a different footing. We have no doubt that the Chairman was privileged to release the information which she gave to the *Daily Tar Heel*, and it is equally indisputable that the judges of the Honor Court are privileged to discuss the case among themselves, at least for the purpose of reaching a decision, and this would be true even if it had been necessary for the Honor Court to deliver its verdict and sentence

[21] Both of these purposes are substantially make-weight arguments. If the purpose is to protect the reputation of the defendant, then, if he is guilty of no misconduct, then his reputation is fully vindicated by the announcement to the public of his innocence in the verdict. If he is guilty of some misconduct, then the right to a closed hearing is justified only as another demonstration of the solicitude shown by the constitution for Honor Court defendants. If the purpose of the protection is to encourage witnesses to be candid with the court, then this is little tribute to the powers of cross-examination of counsel, and it is poor judicial administration to permit this protection of the fact-finding capabilities of the court to rest in the hands of the defendant.

on a day other than the day of the trial. Likewise, members of the Attorney General's staff are privileged to discuss a pending case among themselves for the purpose of furthering the investigation thereof. The discussion of the case with third persons after the entry of judgment and the imposition of sentence is the evil at which Art. XII, § 1 is aimed, and the Petitioner has a good reason to complain of it. But the complaint is not properly brought in this Court as grounds for a new trial, but, as suggested, is properly taken to the Attorney General for redress through proper proceedings brought against the individual judges who have violated the right. No number of new trials given here would ever serve to rectify this wrong.[22]

If the Petitioner has suffered any damage from the violation of her right to a closed trial, then the complaint does not so indicate. The complaint says: "Many students have expressed their sympathy to Ms [sic] Welfare about her being convicted by the Honor Court." Counsel has chosen strange language indeed to express the Petitioner's sense of outrage at the release of information concerning her case. Damage in fact is not required for liability under the Honor or Campus Codes. That Petitioner suffered slight, if any, damage in fact from this violation of her constitutional rights may be considered by the court, if any, which hears cases against the judges who released this information, as bearing on the sentence to be imposed. Also, to be considered on this issue is the contempt for the rights of the Petitioner and for the Judicial Procedures.[23] The statement quoted from Article IX Judicial Procedures § 1 is read numerous times at every trial, and

[22] Probably the most effective vindication of Petitioner's right to a closed hearing, which was violated if Judges Calder and Campbell did release the information they are alleged to have released, would be to give the Petitioner a cause of action for restitution. The creation of causes of action for money damages is beyond the enumerated powers of the Legislature, and I doubt that the Legislature could create such a cause of action without a grant of authority to do so from the student body, in the form of a constitutional amendment, and, probably, a grant of authority from the Board of Governors or the Board of Trustees.

[23] Again, the considerations which may be given effect are not listed here in full, nor do we attempt to make such a list, nor could we attempt to make such a list. It will be up to the Honor Court to determine whether in fact such releases were made in fact, and, having so determined, to determine what punishment should be imposed. We merely mention that these considerations relate to sentencing because we do not believe them to relate to the existence of a claim under either of the Codes. Whether the conduct which is alleged to have taken place violates the Honor Code is a determination which the Honor Court must make, and which we could make only if Judges Campbell and Calder were found guilty under the Honor Code and appealed that determination to this Court. These determinations must await a properly brought proceeding. For the time being, the presumption of constitutionality of Legislative acts would seem to mandate that proceedings could properly be brought under the Honor Code, that being the purport of Article XI Judicial Procedures, § l.

should be familiar to everyone who has observed only one proceeding before the Honor Court.[24]

It has been contended that Judges Calder and Campbell released no more information concerning Petitioner's trial than the Chairman of the Honor Court might have released to the Daily Tar Heel. Article XII Judicial Procedures, § 1 creates a privilege for the Chairman of the court, and not for any and all members of the court. The degree of detail in which Judges Calder and Campbell may have related the story of Petitioner's trial is another consideration which may be taken into consideration by the court which hears their cases in sentencing. That only a little information was released and that someone else had a right to release as much does not privilege these members or the court to

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[24] Having announced that the release of information about an Honor Court case should result in Honor Code and/or Campus Code liability to he who releases without the defendant's permission or the statute's dispensation, without regard to any damage caused by such a release, we should, I think, recognize one very limited common law exception to that principle of liability without fault. Where a member of the Honor Court, such as Judge Reynolds in this case, releases information about the case, which information is unavailable to the defendant, and which the court member believes in good faith to relate to the denial of a right to the defendant during the conduct of the proceedings, and such release is made to only such persons as the judge reasonably believes can or might be able to do something to redress the violation of the defendant's right, then the person who released such information should be held non-liable. This exception is necessary, I think, for two reasons: (1) in theory at least, no complainant is required for the imposition of liability under the Honor Code, and thus the rule of non-liability could not be converted into a rule of standing to complain; (2) Judge Reynolds, though a Chairman of the Honor Court in his own right, did not chair the case about which he released this information, and therefore has no access to the privilege of a Chairman to release information concerning the case, that privilege being personal to the Chairman of the court. When Judge Reynolds sat as a member of the court which heard this case, he became as any other judge of the Honor Court, and lost the rights, privileges, prerogatives, and immunities of a Chairman of the Honor Court.

The exception so advised is probably not logically entirely consistent with the theory of Honor Code and/or Campus Code liability which is developed in this opinion, but the exception is a desirable one, based on experience. The Honor Court judges have always been secretive about the conduct of their deliberations, even if they have not always been secretive about their actions, as a court. This privacy which attaches to deliberations would be expected to continue, even if all trials were open to the public. Without the exception, however, there would be no way in which a defendant in the place of the Petitioner would ever come to know of the violation of her rights which took place once she and her counsel left the presence of the court.

Under the theory of liability under the Honor Code and/or Campus Code developed in Part V of this opinion, the conduct of Judge Reynolds in revealing the story of the conduct of the court in deliberation to, among others, the Chairman of the Faculty Committee on Student Discipline and to the Faculty Review Board, which Judge Reynolds knew and had been advised, had no jurisdiction over errors of law in Honor Court proceedings, constitutes a technical violation of Art. XI Judicial Procedures, § 1 and Article XII Judicial Procedures, § 1. For the above stated reasons, I would permit this possibly *ad hominem* exception.

release the information, even though the general public may know as much a few days hence, when and if the Chairman makes the release he is privileged to make. If we were to hold that any judge of the Honor Court is privileged to make the same release of information about their cases which the Chairman is privileged to make, then this Court would have taken the first step toward writing § 1.1.2.14(e) out of the Constitution entirely. The next logical step is to hold that any member of the Honor Court is privileged to release any information about any trial which anyone could release, and since the defendant may by Article XII Judicial Procedures, § 1 release any information about the case, the right to a closed trial would thus be rendered a nullity. The only effect which the right would have would be to exclude the public from the hearing. So long as § 1.1.2.14 remains in the Constitution, and so long as we are willing to permit the Chairman a broad discretion within his privilege to release information, then that privilege of releasing information must remain personal to the Chairman.

* * *

A new trial is ordered for the reasons stated in Parts I–IV of this opinion. As to the assignments of error dealt with in Part V of this opinion, vindication of that right must depend on action by the Attorney General. The judgement of December fourteenth 1972 is hereby incorporated as a part of this opinion and as the judgement of this Court.

It is so ordered.

JUSTICE PONDER concurring in part and dissenting in part.

As to Parts IV and V of the majority opinion, I concur. As to all other parts of the majority opinion, I respectfully dissent.

I

It is my opinion that the procedural error in violation of Article XII, § 6 of the Student Judicial Procedures is a harmless error: during the deliberation of the Supreme Court: (as 3 persons formerly of the Attorney General Staff were sitting as Justices (CRUMP, MEDFORD, and PONDER); and as each of us reluctantly admitted to having on some occasions handed all of the available court material to the court before its formal introduction by the investigator without any fear of intending to influence the court). It has heretofore been a matter of convenience. I support the intention of the Attorney General's staff and the conduct of Chairman Cobb as presented in the voluntary answer of the Student Body in this case. As the letter of this procedural instruction has

now been tested, I'm sure that the Attorney General's staff and the Honor Court will be more painstaking. But, I see no possibility of harmful prejudice in this case. In addition, the majority opinion for reversal of the Honor Court decision on this ground would place the Supreme Court in the untenable position in that petitions for reversal logically might be made for many cases of the last several years—if the appeal deadline could be waived for another reason (as it was in this case).

II

III

It is very disturbing to me that it was necessary to probe so deeply into the deliberation of the Honor Court. It is my opinion that Chairman Cobb usurped no one's rights and I am satisfied that the deliberations were "full deliberations" on both plea and sentence. XII S.J.P. § 3. I feel secure that Ms. Cobb is consistently conscientious in her job as Chairman. I found the testimony of the other members of the Honor Court to be supportive to Chairman Cobb's position and conduct. It seems to me that there may be a conflict in the definition of the desirable way in which to conduct the deliberation held by Doug Reynolds (Chairman of the Men's Honor Court) and Freda Cobb (Chairman of the Women's Honor Court). As there is no policy for the deliberation or definition of the role of the chairman, this discrepancy is understandable, but should never have been admitted in this case (the integrity and conscience of Mr. Reynolds should have saved us the hearing of this case, had he carried out his duty at the time of the trial). It should, in my opinion, be beyond the power of the Supreme Court to demand that any inferior court's deliberations be conducted in a certain way (unless the majority is willing to demand the impeachment of duly-elected and duly-trained persons of authority of the lower court).

* * *

In conclusion: I am of the opinion that the members of the Supreme Court should be engaged in supporting rather than undermining the credibility of the judicial system.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1973

A. JOHNNY KALEEL, JR., PLAINTIFF *v.* LEO LAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD

ORIGINAL

No. 73–001 Orig.

On February 6, 1973, an election was held to select the member of the Campus Governing Council from Undergraduate District VI, an on-campus seat. In the process of counting the ballots cast in that election, agents for the Elections Board discovered that three of those ballots contained write-in votes for ineligible candidates. Specifically, "Godzilla", "Rodan", "George Leroy Tirebiter" each received one write-in vote. Additionally, it was determined that the Plaintiff, A. Johnny Kaleel, Jr., whose name had appeared on the ballot as a candidate, had received a plurality of all votes cast in the district election. If, however, the three ballots indicated above are considered valid "votes cast" under the terms of § 13(C)(1) of the General Elections Law (BR–54–28), Plaintiff Kaleel did not receive a majority of votes case in the election—thus a run-off election between Mr. Kaleel and the candidate receiving the next highest number of votes would be necessitated. If, on the other hand, these ballots are considered not to be valid "votes case," Plaintiff Kaleel did receive such a majority and was, therefore elected as District VI's representative on the Campus Governing Council. Plaintiff brings suit before this Court alleging that the three write-in ballots are not legitimate and valid votes case and petitioning the court to order the defendants to conduct a recount of the votes cast in the election for the Undergraduate District VI Campus Governing Council seat with the instruction that the three questioned ballots be disregarded in determining the number of votes cast and to order the Elections Board to certify the results of the election in accordance with that recount.

Held: "Godzilla", "Rodan", and "George Leroy Tirebiter" are not natural persons and therefore incapable of ever meeting the qualifications of the General Elections Law.

MEDFORD, J. delivered the opinion of the court in which CRUMP, C.J., CARPENTER, and HANCOCK, JJ. Joined. PONDER, J. took no part in the argument or consideration of this case.

JUSTICE MEDFORD delivered the opinion of the Court.

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District VI, an on-campus seat. In the process of counting the ballots cast in that election, agents for the Elections Board discovered that three of those ballots contained write-in votes for ineligible candidates. Specifically, Godzilla, Rodan, George Leroy Tirebiter each received one write-in vote. Additionally, it was determined that the Plaintiff, A. Johnny Kaleel, Jr., whose name had appeared on the ballot as a candidate, had received a plurality of all votes cast in the district election. If, however, the three ballots indicated above are considered valid "votes cast" under the terms of Section 13(C)(1) of the General Elections Law (BR–54–28), Plaintiff Kaleel did not receive a majority of votes case in the election—thus a run-off election between Mr. Kaleel and the candidate receiving the next highest number of votes would be necessitated. If, on the other hand, these ballots are considered not to be valid "votes cast," Plaintiff Kaleel did receive such a majority and was, therefore elected as District VI's representative on the Campus Governing Council. Plaintiff brings suit before this Court alleging that the three write-in ballots are not legitimate and valid votes case and petitioning the court to order the defendants to conduct a recount of the votes cast in the election for the Undergraduate District VI Campus Governing Council seat with the instruction that the three questioned ballots be disregarded in determining the number of votes cast and to order the Elections Board to certify the results of the election in accordance with that recount.

I

The General Elections Law does not indicate what shall be considered a valid "vote cast." Thus, it would seem to be left to the judgement of the court to define what "votes cast" means within the context of Section 13(C)(1). It would seem obvious that ballots cast in a manner which does not conform to regulations established by the Executive Committee of the Elections Board under the authority of Section 24(A) of the General Elections Law or to the dictates of Sections 24(B) and 24(C) of that same law (where that non-conformity can be demonstrated) are not valid votes.

It is less obvious, however, that ballots case for candidates who are ineligible under the terms of Sections 16 and 17 of the General Elections Law are, also invalid. The Court finds it conceivable that residents of a district might wish to vote for and elect a candidate who is, at the time of the election, not eligible to hold office in the belief that the candidate will subsequently become eligible. In this case, however, the best evidence available to the Court indicates that Godzilla, Rodan, and George Leroy Tirebiter are not natural persons and, so, are not capable of ever meeting the qualifications established by the General Elections

Law. Thus, it is not reasonable to consider votes for such fictional beings as fitting under any legitimate definition of "votes cast." We hold, therefore, that the write-in voted for Godzilla, Rodan, and George Leroy Tirebiter are not valid votes.

* * *

The defendant, Gordon, is ordered to conduct a recount of the votes in this election disregarding the three votes in question and to convene the elections board to certify the results of the election in accordance with that recount and this opinion. The judgement and order of February Thirteenth, 1973 is hereby incorporated as part of this opinion.

It is so ordered.

Syllabus

JAMES PETER SREBRO, PLAINTIFF *v.* LEO MAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD

ORIGINAL

No. 73–002 Orig.

On January 26, 1973, Defendant Gordon submitted materials to UNC Duplicating printers for the purpose of having ballots printed for the general election to be held on February 6, 1973. Included among the ballots to be printed was the ballot for the office of Councillor in CGC On-Campus Undergraduate District II. Among those persons who had submitted petitioner for purposes of being included on said ballot were Plaintiff Srebro and Miss Deryl Davis. On January 29, 1973, the Compulsory Candidates Meeting prescribed by Section 18 of the General Elections Law (BR–54–28) was held. Ms. Deryl Davis did not attend that meeting. At a time within forty-eight hours of the meeting a telephone conversation was held between Defendant Gordon and Ms. Davis. During that conversation Ms. Davis indicated that she had not attended the meeting because she had decided to withdraw as a candidate. On January 31, 1973, Defendant Gordon released to the *Daily Tar Heel* information to the effect that Ms. Davis had withdrawn her candidacy. This information appeared in an article in the paper on the following day. Defendant Gordon received the printed ballots from UNC Duplicating on Friday, February 2, 1973. The name of Miss Davis was among those on the ballot for District II. On February 6, 1973, the election was held. At that time Defendant Gordon caused a notice to be posted at the Granville polling place, informing voters that Miss Davis had withdrawn as a candidate. Similar notices were not posted at the district's other two polling places. At 11:34 a.m. on the day of the election Plaintiff Srebro went to the polls to vote and discovered that Miss Davis' name was on the ballot. The results of the election as certified by the Elections Board show that Miss Davis received 20 votes (none of which were write-ins); Plaintiff Srebro received 92 votes; Christina Ewendt received 117 votes; and Kyle Terrell received 96 votes. Thus, according to the General Elections Law, a run-off between Ms. Ewendt and Ms. Terrell was necessary. Plaintiff brings suit claiming that the presence of Ms. Davis' name on the ballot was in violation of Section 18 of the General Elections Law, and that this violation might reasonably be presumed to have adversely affected his chances of winning the election. Plaintiff therefore asks that a new election be ordered.

Held: Failing to withdraw Ms. Davis' name from the ballot rendered the election illegal and a new election is ordered.

Plaintiff granted relief.

MEDFORD, J. delivered the opinion of the Court in which CRUMP, C.J., CARPENTER, and MEDFORD, JJ. Joined. PONDER, J. took no part in the argument or consideration of this case.

JUSTICE MEDFORD delivered the opinion of the Court.

I

We accept Plaintiff's contention that the appearance of Miss Davis' name on the ballot might have materially affected the outcome of the election. Since only three votes separated plaintiff from Ms. Terell, there is a reasonable possibility that, in the absence of Ms. Davis' name, plaintiff would have received more

votes than Ms. Terrell. This would have placed Plaintiff in run-off.

II

The defendant maintains that § 18 B gives him authority to accept any reasonable excuse for a candidate's failure to attend the compulsory meeting and, following such acceptance, to retain the candidates name on the ballot. The defendant further contends that he accepted Ms. Davis' statement that she did not attend the meeting because she had decided to withdraw from the election, as a reasonable excuse and that he, therefore, allowed her name to remain on the ballot. Additionally, the defendant argues that, because the General Elections Law makes no provision for a candidate's withdrawal and because he received no written communication from Miss Davis regarding her intention to withdraw, he was under no obligation to assume that she had, in fact, withdrawn.

Assuming without deciding that the defendant's contentions regarding his authority are correct, we find that his actions in causing the story to be printed in the *Daily Tar Heel* (hereinafter also "DTH") and in having the notice at one polling place impeach his claim to have assumed that Miss Davis had not withdrawn. The defendant cannot maintain that Miss Davis had not officially withdrawn when his actions indicate that she had, indeed, done so.

III

The defendant contends that the story concerning Miss Davis' withdrawal which appeared in the DTH and the notice posted at Granville polling place are evidence of a good faith effort to remedy the alleged violation.

There is inherent in the power to administer elections laws which § 1.1.4.5. of the Constitution confers upon the Elections Board, the authority to correct violations of said laws. The legislative history of the General Elections Law indicates that its authors recognized that, for the election machinery to function properly, the Elections Board should have such authority. Therefore, had the defendant posted notice of Ms. Davis' withdrawal at each polling place this court would be very reluctant to overturn the result of the election.

However, the defendant did not do this. Notice of Ms. Davis' withdrawal was posted at only one polling place. Thus, voters at the other two polling places were not informed of this significant factor. Nor can the defendant claim that the article which appeared in the *Daily Tar Heel* was sufficient notice of Ms. Davis' withdrawal. The shortcoming of the distribution process of the DTH and the frailties of human memory are such that the Court

is convinced that many of those who voted were not aware of Miss Davis' withdrawal. Therefore, notification by publication is not an adequate substitute for notices at all polling places.

* * *

The defendant is ordered to grant a new election and to omit the name of Deryl Davis from the ballot in that election.

It is so ordered.

Syllabus

ALLEN GREEVE MASK, PLAINTIFF *v.* LEO MAURY GORDON, CHAIRMAN OF THE ELECTIONS BOARD, ET AL.

ORIGINAL

No. 73–003 Orig. Decided January 17, 1974

On February 6, 1973, a campus-wide election was held for the purpose, inter alia, of electing a President of the Student Body. Ten people qualified as candidates for President. The results of the ballot may be seen in Appendix A. The differences between the number of ballots cast for the second-place finisher, Runge and the number of ballots cast for the third-place finisher, Mask, was 34 votes. Section 13(a) of the General Elections Law provides that polling places shall be open from 10:00 a.m. to 7:00 p.m. The Plaintiff in the instant case claims that the polling places in Everett Dormitory were closed for various periods of time throughout the day on February 6, and because the polls were closed during these times, he was deprived of the thirty-five votes which would have made him the second-place finisher rather than Mr. Runge. Counsel stipulated that the Everett polling place was closed from 3:30 p.m. until 5:00 p.m. and that during that period no votes were permitted to be cast. They have further stipulated that those 319 votes were certified as validly cast at Everett polling place, and that the Plaintiff was the leading vote-getter at the Everett box. Accepting only the evidence of the Plaintiff as true, the Plaintiff established that the polls opened approximately ten minutes late, although he did not establish that any voters were turned away because of the late opining. Plaintiff further established that that the poll was closed for about forty-five minutes during the stipulated time period and that more than thirty voters were turned away during that period of time. The people turned away during that time were told that the poll was closed because the poll had run out of ballots for one or more of the several races, that the efforts had been made to get more ballots, that the poll would open again at a later time, and that if they returned, they would have been permitted to vote. The poll had enough ballots for the Presidential race at this time. The Plaintiff further established that the poll at Everett polling place was closed at about 5:15 p.m. and remained closed until about 5:30 p.m. The polls were closed about three minutes before 7:00 p.m. and at least two voters were disenfranchised due to the early closing. The physical set up of the Everett polling place is indicated in Appendix B. On the door marked "Closed Door" was a sign indicating that Morehead College polls would close at 5:30 p.m. The Morehead Residence College was holding Residence College Elections simultaneously with the General Election. The College Council thought that the polls in the General Election would close at 5:30 p.m. The Plaintiff attempted to show that voters were turned away by the presence of the sign (App. B).

Defendant Gordon spent the day of February 6 taking ballots to polling places if they ran out and administered the election. Two or three other persons were present in Suite C of the Student Union (Student Government Executive Offices) taking telephone messages for Gordon and other members of the Elections Board. The poll tender in charge of the Everett polling place made at least one telephone call to Suite C requesting ballots to be sent to the poll. William March of the *Daily Tar Heel* took enough ballots to the Everett polling place to permit it to reopen about 5:00 p.m. The poll tender did not request that the poll be kept open late to compensate for the periods during which the poll was closed, despite knowing the poll had been closed and persons prevented from voting for about forty-five minutes. He admitted he thought that something should have been done to compensate. Defendant Gordon was not aware that the poll had been closed at all until about 9:30 p.m. of February 6.

Syllabus

Plaintiff was in Everett Dormitory from 3:45 p.m. to 4:10 p.m. campaigning. He personally discovered that the Everett polling place was closed, called Suite C and talked to Richard Epps, Student Body President, and informed him that the poll was closed, and talked to the poll tender.

Held: The relief will be denied because the errors alleged are insufficient to establish the severity by which the results of the election might have been compromised.

Relief denied.

CRUMP, C.J. delivered the opinion of the Court in which MEDFORD and CARPENTER, JJ. joined. HANCOCK, J. filed a dissenting opinion. PONDER, J. took no part in the argument or consideration of this case.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

I

Jurisdiction is vested in this Court under § 25(a), Supreme Court Act of 1968 and §§ 11 and 25 of the General Elections Laws.

II

The prima facie showing required in order to have the results of an election set aside is set out in *Levy* v. *Ruffin*, No. 71–002 S.S.C. (1972) as follows:

> In deciding to void an election, an extreme and extraordinary act, the Court must look at every available aspect of the election process. In the past, the Court has restrained from voiding an election because there was some error in the administration of the election, and has further required that in addition to the showing of some error, the petitioner must also show that the error was of sufficient degree and quality as to compromise the results of the election, of sufficient degree and quality as to compromise the results of a (questioned) box, and that, even if the box were voided, in a campus-wide election, that the given box would substantially affect the results of the election (citing cases in this Court) of that the election was so unfairly and so incompetently administered with such flagrant disregard of the rights of the candidates as to make a fair election impossible to obtain, *Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969). In short, error or defectiveness alone is not enough to warrant voiding an election unless the error is substantially harmful.

Since that opinion was written, much has been made in the cases here of the class aided by *Robertson* v. *Cordon*, No. 72–004 S.S.C. (1972) where it said that:

> While the surplus (of ballots over registrants) standing alone is not sufficient evidence of fraud, the surplus combined with the fact that either the gross or the net surplus in this case would be sufficient to alter the outcome of the election is enough to attribute the surplus to sources other than simple human error. We do not hold that only in cases where the surplus is sufficient to be outcome determinative will a new election be granted. We do hold, however, that where surpluses sufficient to drastically alter the result of an election are found, this factor without more shall be sufficient to mandate the calling of a re-election.

Two other sources of law relevant to this case have been called to our attention. The first of these is § 7(c) of the General Elections Law, which provides:

> In the event that one or more provisions of this act are materially violated, the Elections Board shall order a reelection notwithstanding section 12 [sic] D 1.

Section 13 D 1 provides that after the certification of returns in an election, a re-election may be called only by this Court.

Counsel for the defendant has made much of the fact that the word "materially" was inserted in § 7(c) after the decision of this Court in *Robertson* v. *Gordon*, *supra*. And that by the use of this word, the Legislature meant to incorporate *Robertson*'s outcome determination test. We intimate no opinion as to the merits of that argument, nor need we do so. Section 7(c) by its terms applies to the Executive Committee of the Elections Board and its determinations in certifying the results of elections. Section 7(c) evidences no intent on the part of the legislature to alter the common law of this Court as applied to elections, and the common law remains in full force until altered by statute.

The Plaintiff, on the other hand, has attempted to make much of the presumption in *Robertson*, *supra*. That the votes represented by a surplus of ballots over registrants could have gone to the complaining candidate. In order to assess the validity of this argument it is necessary to attempt to describe the case which has been made here.

First, this is not a case where it is alleged that the election as a whole was so incompetently administered with such flagrant disregard for the rights of the voting public that the results could in no way reflect the popular will. *Dorrol* v. *Oliver* (1969). Only one box is questioned, and it seems to be clear that even if the results of that box were ordered stricken from the certified return the Plaintiff's position in the return would not be improved.

Second, this is not a case in which the ballot itself was physically defective such as *Banta* v. *Ruffin*, No. 71–001 S.S.C. (1971); *Levy* v. *Ruffin*, *supra.*; *Callahan* v. *Gordon*, No. 72–002 S.S.C. (1972); *Srebro* v. *Gordon*, No. 73–002 (1973). In such cases relief has been ordered on one of two theories. In cases such as *Banta* and *Levy* relief was ordered because the boxes on the ballots were so badly misaligned with the names that it was not possible for a voter to be able to tell with certainty for whom his vote would be counted. This was believed by the Court to have had a material and substantial effect on the outcome of the election. In *Callahan* the requested relief was given because the ballot did not conform to the standard set by the Legislature. It was determined by the Court in that case that it was within the power of the Legislature to establish rules for the information which should appear on the ballot. The fact that the same information might be conveyed to the voter by an alternative means was deemed to be immaterial by the Court because of the superior power and knowledge of the Legislature.

Third, this is not a case in which voted which should not have been counted because cast for a person who could never become capable of holding the office. *See Kaleel* v. *Gordon*, No. 73–001 (1973).

Finally, this is not a case of fraud, at least as that term has been used in cases decided to the prese3nt time. *See Crawley and Hussey* v. *Gordon*, No. 72–003 (1972); *Robertson* v. *Gordon*, *supra*. The term "fraud" as used in those cases was used to mean the same thing as ballot box stuffing. The "rule" of the *Robertson* case was nothing more than an attempt on the part of the Court to even out the effects of the "stuff" in order to see how the plaintiff in that case might have been affected by the stuff. The basis of the *Robertson* rule does not apply with equal force in this case. The *Roberson* rule was developed to meet a case where the ballots were already in the box not where they had not yet been marked. Furthermore, the nature of ballot box stuffing is such that if one wishes to stuff a ballot box, he is most likely to stuff the box for one candidate. The decision in the *Robertson* case was correct there, but its basis for decision does not easily import itself onto this case.

The only thing left then is to return to the principles of the *Levy* case and attempt to apply them to this case. Clearly Plaintiff has shown that the elections laws were not strictly complied with. The cases decided in this Court during the last two terms should indicate that it is possible to straighten up the effect of violations of the elections laws on elections day. *Callahan* v. *Gordon*, *supra.*; *Srebro* v. *Gordon*, *supra.*; *Crawley and Hussey* v. *Gordon*, *supra*. Despite the fact that the relief has been granted in a number of election challenges during these last two terms,

that should indicate no change in the traditional reluctance of this Court about upsetting an expression of the will of the Student Body. The question raised in this case is not whether the Plaintiff's evidence is credible, but whether, believing all of the Plaintiff's evidence, it is reasonable to believe that the errors he complained of were "of sufficient degree and quality to compromise the results of the election." We think not. The Plaintiff has shown that enough people were turned away that, had they all voted for him, the Plaintiff rather than Defendant Runge would be in the run-off election. But, as we have attempted to show, the rational basis for imputing votes to an unsuccessful candidate in a fraud case does not exist here. Furthermore, the Defendants have shown, largely from cross-examination of the Plaintiff's witnesses, that a number of the people who were turned away while the poll was closed later returned and voted. If we accept that thirty-four or five, or more voters were turned away during the periods in which the poll was closed, and if we accept the Defendant's proof that some ten or twelve of these disappointed electors returned and voted, the Plaintiff has not shown that the closing of the poll would have made a difference as to him, even if we assume that all the voters who were turned away would have voted for him.

Other factors in the evidence point to a contrary conclusion. The Plaintiff has introduced as a witness at least one voter who was deterred from voting because he had heard about the sign which indicated that the polls would close at 5:30, rather than 7:00. It is perhaps reasonable to infer that others were turned away by the sign, believing the poll was closed when, in fact, it was open for another hour and a half. It is further reasonable to infer that others were turned away when they heard that the poll was closed. But we have no way of knowing how many people were deterred from voting because of the sign or because they heard that the poll was closed. But we have no way of knowing how many people were deterred from voting because of the sign or because they heard that the poll was closed. We do not feel free to speculate too far. We do not feel free to substitute our judgement for that of the electorate unless compelling reasons are shown for so doing. Neither we nor the Plaintiff can now canvass the residents of Morehead College to determine the number of people turned away because of these secondary communications. Nor can we ask these people how they would have voted. It is perhaps reasonable to assume that if everyone who was turned away from the polling place had been permitted to vote the Plaintiff would have continued to perform well at the polling place. It is further reasonable to suppose that many of the people turned away from the poll during the 3:30–5:00 p.m. closing would have voted for the Plaintiff, since the Plaintiff and his campaigners

were in the buildings of Morehead College trying to get out the vote. But for present purposes on the basis of the evidence before us, we do not feel free to tell the Student Body that if they wish the results of their elections to be cleared from a possibility of being thrown out by this Court that they must turn out heavily for one candidate.

We agree with Plaintiff that something should and could be done to remedy the problems of which he now complains. The legislature could add to the Elections Laws a requirement that a number of ballots equal to the number of voters who voted at the polling place in the last general election plus a given percentage be placed at each polling place. The Legislature could require that if a Residence College election is held simultaneously with a general election, then the polls for the residence college in question must be open during the same hours that the polls are open for the general election. The Legislature or the Elections Board could pass a law or a regulation requiring poll tenders to keep the polls open even when the poll is temporarily out of ballots, permit voters to cast their ballots in such races as the poll may have ballots for, note on the polling sheet the races in which such voters did not vote, and later inform such partially disenfranchised voters that the poll has obtained ballots and that they may return to the poll and vote in such races. At the minimum, greater diligence could have been exercised here to see to it that the poll be kept open.

* * *

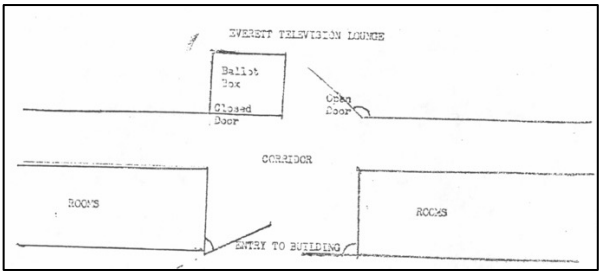
At the present time, despite the errors complained of in this election, we see no reason to set aside the results of this election. The relief requested will be denied.

It is so ordered.

APPENDIX A TO THE OPINION OF THE COURT

PITT DICKEY	1,124
FORD RUNGE	1,016
ALLEN MASK	982
MELVIN WESTMORELAND	941
RALPH YOUNT	610
DAVID REPHART	227
RANDY WOLFE	144
DAVID BOONE	120
WINGO JOHNSON	55
CAGEY OLSON	26
Write-in Votes and Voided Ballots	77

APPENDIX B TO THE OPINION OF THE COURT



JUSTICE HANCOCK dissenting.

I

Jurisdiction is vested in this court under Section 25(a), Supreme Court Act of 1968 and Sections 11 and 25 of the General Elections Law.

II

The prima facie showing required in order to have the results of an election set aside is set out in *Levy* v. *Ruffin*, No. 71–002 S.S.C. (1971) as follows:

> In deciding to void an election, an extreme and extraordinary act, the Court must look at every available aspect of the election process. In the past, the Court has refrained from voiding an election because there was some error in the administration of the election, and has further required that in addition to the showing of some error, the petitioner must also show that the error was of sufficient degree and quality as to compromise the results of the election, of sufficient degree and quality as to compromise the results of a (questioned) box, and that, even if the box were voided, in a campus-wide election, that the given box would substantially affect the results of the election (citing cases in this Court) of that the election was so unfairly and so incompetently administered, with such flagrant disregard of the rights of the candidates as to make a fair election impossible to obtain, *Dorrol* v. *Oliver*. In short, error or defectiveness alone is not enough to warrant voiding an election unless the error is substantially harmful.

Section 7 (c) of the General Election Law provides:

> In the event that one or more provisions of this act are materially violated, the Elections Board shall order a reelection, notwithstanding section 12 [sic] D1.

Section 15 of the Plaintiff's complaint states:

> That upon the presentation of the above claims to the Executive Committee, no proper hearing was held, no evidence was properly admitted, no formal decision was rendered, and in all respects, Plaintiff herein was not afforded a hearing which comports with the requirements of fairness and due process of law.

In answer to this allegation, the defendant stated:

Plaintiff alleges a mandatory duty on the defendant which was merely discretionary, according to Section 13(c) of the Elections Law.

Section 7(c) of the General Elections Law, while not explicitly providing for a hearing, certainly does not forbid such. In the context that the Plaintiff made complaint of the results of the election on the basis of error(s) on the part of the Defendant, it follows that the Defendant, Mr. Gordon, should have held some form of hearing to determine merits of the Plaintiff's charges. Failure so to do can only be held as disregard for the rights of the Plaintiff. It is questionable that the Defendant could determine whether or not the provisions of the elections law were "materially violated" without some form of inquiry into the matter.

It is not held that the entire election was conducted incompetently with such flagrant disregard for the rights of the voting public that the results could in no way reflect the popular will. *See Dorrol* v. *Oliver*, *supra*. Yet, in this particular case, considering the light turnout of voters, it must be concluded that the unknown number of voters who were turned away could have influenced the outcome of this particular election. Therefore, it is held that the Plaintiff has met the requirements of a *prima facie* showing in which the outcome of the election was or could have been materially affected by the irregularities which occurred.

Cases decided in this court during the last two terms indicate that it is possible to correct in part and/or remedy the effects of violations of the elections law on election day, *Callahan* v. *Gordon*, *supra*., *Srebro* v. *Gordon*, *supra*., *Crawley and Hussey* v. *Gordon*, *supra*. Also, Section 13(e) of the General Elections Law provides that the polling place could have been allowed to remain open for one hour beyond the 7:00 p.m. closing. While this remedy was available to the Defendant, it was not employed.

While this Court must show a reluctance to interfere with the will of the student body, it must also consider the rights of every student over considerations of convenience for the agencies of the student body. Again, in light of the small turnout for the election in question and the closeness of the Plaintiff's vote total to that of Mr. Runge, it is indeed doubtful that a grant of relief for the Plaintiff by this Court could have been construed as an encroachment on the will of the Student Body. Had the vote total differences been larger between the Plaintiff and Mr. Runge, perhaps interference would indeed have been an encroachment on the will of the Student Body.

While fraud in its traditional sense of Ballot Box Stuffing is not the question, it is questionable whether or not qualified voters being denied suffrage as a result of the Defendants' error is

potentially as unfair. This type of irregularity certainly compromises the fairness of the election and throws its results into grave doubt, especially in this particular case.

Other factors further substantiate the Plaintiff's allegations of irregularities. At least one witness has confirmed that he failed to vote because of a sign which he read indicating that the poll closed at 5:30 rather than 6:00. It is impossible to know how many other voters were misled by this sign with possible injurious effects accruing to the Plaintiff.

* * *

In light of the facts presented by the Plaintiff, I hold that a *prima facie* case was shown and that sufficient evidence produced to show that the possible outcome was materially affected by irregularities much to the disadvantage of the Plaintiff. I do therefore dissent with the majority opinion in this case.

Syllabus

BARBARA ANNE SMITH, PETITIONER *v.* U.N.C. STUDENT BODY

CERTIORARI TO THE HONOR COURT OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

No. 73–004 Argued February 1973–Decided March 10, 1973

Petitioner was found guilty of a violation of the Honor Code on January 18, 1973 for plagiarizing a passage of M. H. Rosenthal's *The New Poets* in a paper submitted for credit in English 24 on or about October 20, 1972. Petitioner was sentenced to one semester's definite probation. On appeal, petitioner alleges improper conviction since she lacked the requisite intent to have committed a violation of the Honor Code. This Court ordered the lower Court to produce a statement on findings of fact and conclusions of law and copies of relevant materials including petitioner's notes for English 24.

Held: The Court develops a four-prong test for establishing necessary proof for conviction. Under this test, the Honor Court did not err in its finding of guilt.

(1) Historically, plagiarism has required an affirmative showing of intent. *See Welfare* v. *U.N.C. Student Body*, No. 72–005 S.S.C. (1972). More recent innovations seem to indicate that the affirmative showing of intent need not be required. *See e.g.*, *Instrument of Student Judicial Governance* (2d draft, May 1971).

(2) Intent is by nature impossible to directly prove, some mediation is required. We establish a four-pronged test to establish whether or not a plagiarism offense has occurred: (a) there was a submission of writing presented as one's own; (b) the submission was substantially similar to those of an identifiable other; (c) credit was not given to the identifiable other; and (d) there is an explicit or implicit assertion of creation. The Court does not reach the question of whether or not the student's submission guarantees a claim to the originality of the work.

(3) Inference of intent was appropriately made from the evidence. The petitioner in this case was reasonably aware that their library notes were or contained the work of an identifiable other, had a reasonable opportunity to discover the appropriate sources which she did not take.

Affirmed.

CRUMP, C.J. delivered the opinion of the Court in which MEDFORD and HANCOCK, JJ. joined. PONDER, J. not sitting. CARPENTER, J. excused from argument and final consideration of the opinion for personal reasons.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

On January 18, 1973 the petitioner herein was found guilty of a violation of the Honor Code in that she had plagiarized a passage from M. H. Rosenthal's The New Poets in a paper she submitted for credit in English 24 on or about October 20, 1972. Petitioner appeals from a judgment of guilt and the imposition of a sentence of one semester's definite probation. It is the contention of the petitioner on this appeal that she was improperly convicted because she lacked the requisite intent to have committed a breach of the Honor Code. The Court below having entered a general verdict, this Court ordered the Court below to reconvene and certify to this Court a summary of their findings of fact and conclusions of law. The following statement was prepared for us,

and insofar as it implies a finding of fact is binding on this Court, Supreme Court Act of 1968, § 26:

> Having examined the definition of plagiarism found in the Student Codes of Responsibility pamphlet, the Honor Court found Miss Smith guilty of plagiarism. Specifically, we found her guilty of plagiarizing a sentence from *The New Poets* by Rosenthal. This sentence as well as several other lines had been taken directly from her notes and was presented by Miss Smith without quotation marks or footnote in her paper. The vote for guilt was unanimous based on the evidence of the paper, the notes, and the book.
>
> The majority of court members believed the plagiarism to be intentional in that we felt Miss Smith was aware that her notes were taken basically from research and were not her own thoughts.
>
> Because the original source of only one sentence had been discovered and because of the family and academic pressures on Miss Smith at the time of the violation, the court felt that one semester definite probation was a fair sentence.
>
> /s/ M. Jo Ramsey
> Chairman
> Women's Honor Court
>
> Attest: Lisa Whisenant, Clerk of the Supreme Court

This somewhat cursory statement of the case was supplemented by the following facts: the notes to which the Court below referred were research notes taken by the defendant while a student at the Governor's School of North Carolina; the notes referred to were taken by Miss Smith in the course of library research concerning the poet Sylvia Plath; the notes did not include references to library research sources, and were a combination of quotations from those sources and the petitioner's own observations; the petitioner utilized the Governor's School notes *in extenso* in preparation of the paper which became the subject of the prosecution; because of the petitioner's not inconsiderable writing ability, she could easily and reasonably have mistaken the quotations from library sources as her own writing.

I

The parties to this appeal have argued this case on the single question of whether intent is required to make out the violation of the Honor Code referred to as plagiarism. While that question is certainly involved in the resolution of this case, it is not the only question necessarily to be decided. The real issue in this case is

whether the intent required for a violation of the Honor Code was proved, or what sort and quantum of proof is required to make out intent as part of the case for plagiarism. This statement of the issue subsumes a decision of the issue as made by the parties, and therefore it is necessary to answer that contention before proceeding to the Court's statement of the issue.

In deciding whether intent is required to make out a case for plagiarism, a page of history is worth dozens of pages of analysis. The "Student Codes of Responsibility" pamphlet to which the Court below referred in its findings and in its decision is essentially a reprint of the Honor System section of the University Catalogue, *see e.g.*, Record of the University of North Carolina at Chapel Hill: The Undergraduate Bulletin, at 122 *et. seq.* (June 1, 1972). Therein under the heading "Examples of Honor Code Violations" it is said:

> A. Cheating—representing someone else's work as being your own[. . .]
>
> 3. Plagiarism—the intentional or unintentional use of someone else's words or thoughts without giving him proper credit. All uncited work is assumed to be the sole product of the author. Therefore, when using material from outside reading, reference material, etc., the source must be indicated by a footnote or other device. Record, *supra.*, at 122-123.

This statement has represented the "official" definition of and attitude toward the substantive concept of plagiarism for as long as memory serves. The Record is not the sole arbiter of the meaning of acts which have traditionally viewed as violations of the Honor Code, however. The Judicial Reform Commission has been engaged continuously for about the last five years in an evaluation of and consideration of the restructuring of the student court system here. The first Tentative Draft (December 18, 1969) of that Committee's Report included no definition of plagiarism, but merely stated that the offense was subject to "[e]xpulsion, or suspension, or lesser sanctions, . . ." This reliance on the past experience and precedent of the student courts to define the meaning of enumerated violations continued in the first Official Draft (Draft, 21 August 1970). Later, when this report had assumed a firmer shape, it was promulgated for analysis and discussion as *The Instrument of Student Judicial Governance for the University of North Carolina at Chapel Hill* (2d Draft, May 1971). This draft at Title II, § C(1)(a) included an innovation when it stated:

> 1. Expulsion or suspension, or lesser sanctions, may result from the commission of any of the following offenses:

> a. Academic cheating, including (but not limited to) copying, unauthorized collaboration, unwarranted use of notes or books on examinations, and plagiarism, defined as the intentional representation of another person's words, thoughts, or ideas as one's own.

This innovation, defining plagiarism as an intentional representation, has con-tinued, and is now § D(1)(a) of the current report of the committee (3d Draft, January 1973). Neither I nor any of my brethren are now, nor have we ever been members of the Judicial Reform Committee or privy to its discussions and deliberations. Furthermore, neither the Committee nor any of its members chose to submit an *amicus curiae* brief in this case so that we might have some indication as to the cause of the change in the Committee's definition of plagiarism between the August 21, 1970 and May 1971 drafts, see, *Welfare* v. *Student Body*, No. 72–005 S.S.C. (1972), at 40, n. 13. At any rate, the evidence of the Third Draft Report is here before us, and counsel for the petitioner has urged mightily before us that the Report and not the Record is the appropriate statement of the definition of plagiarism, whether under the Honor Code *per se* or under the statutory scheme envisioned by the *Instrument*. We agree.

Throughout the history of the Honor Code the prohibited acts have been lying, cheating, and stealing. None of those three terms are terms of art, they are terms of ordinary parlance. Words used in their ordinary sense should be given their ordinary and usual meaning unless their context indicates otherwise. "Lying" in its ordinary sense means the intentional misrepresentation of the truth. "Stealing" in its ordinary sense is the intentional taking of the property of another. "Cheating," especially in an academic community, is nothing other than the academic counterpart of "lying" or "stealing"—it is the theft of the intellectual property of another, the intentional misrepresentation of the truth of authorship. The important question therefore is not why the authors of the Judicial Reform Committee Report chose to define plagiarism as an intentional act, but why the authors of the Record chose to define plagiarism as an intentional or an unintentional act. We believe that the answer to that question lies in the nature and type of proof available to prove intent, and it is to that question that we now turn.

II

The intent to do an act is necessarily a private, subjective, personal phenomenon on the part of the actor. Direct proof of intent, proof of the subjective state of an actor's mind at the time of the commission of the *actus reus*, is rarely if ever available at the later time of a trial. There is, we suspect, rarely if ever a

defendant who will say that he copied directly from a book with the meaning and desire to have someone else believe that he was the creator of the thoughts, words, and ideas so created. Proof of intent must then come from less immediate sources than such declarations. From time to time the proof of intent from these indirect sources is so powerful that a court is entitled to deny belief to the defendant who declares that he "didn't mean to do it." Yet there is a natural human reluctance to call any person a liar if it is possible to avoid doing so. The definition of plagiarism which says that it is the "intentional or unintentional use of someone else's words or ideas" is most simply explained then as a shield for the feelings of the court and of the defendant. So long as that definition is used, the defendant can say, "I did not mean to plagiarize;" the court can say, "We know you didn't, but plagiarism does not require you to so intend;" and everyone can go home with the defendant not having been impliedly told he is a liar, but the normative proscription of his act effectively vindicated.

Proof of intent is in such cases not direct, but an inference from other facts which is so eloquent that the denials of the accused are not to be believed. We believe that the authors of the Record defined plagiarism as intentional or unintentional so that student courts might be spared a case in which the inference of intent from the evidence is strong, but in which the defendant was acquitted because he denied intent. To so define plagiarism is essentially to insult the intelligence of the student courts.

We believe that the proof required to obtain a conviction for plagiarism is as follows:

(1) First, the prosecuting agency must first show that some writing which the student represented to be his own was submitted. In this case, that proof was that petitioner submitted a paper for English 24 on October 20, 1972.

(2) The prosecuting agency must show that the paper contained thoughts, words, or ideas substantially similar to those of an identifiable other. The proof in this case was that a sentence in the petitioner's paper as submitted is identical to a sentence in Rosenthal's *The New Poets*. While there is proof in the record that other sentences in the paper as submitted are identical to sentences in her Governor's school notes, the sources of those sentences in her notes have not as yet been linked to any source other than the creativity of the petitioner. While those sentences are possibly not her own intellectual product, it must be assumed that she wrote them. The Constitution requires that she must be presumed to be innocent of wrongdoing until the contrary is proved. Even the most traditional statement of the definition of plagiarism states that "[a]ll uncited work is assumed to be the sole product of the author." The only basis for this prosecution,

therefore, is the uncited inclusion of a sentence which has been linked to an identifiable other.[1]

(3) The prosecuting agency must prove that credit was not given to the identifiable other for the thoughts, words, or ideas so used. In this case that proof is that the sentence in question was not placed in quotation marks nor was it footnoted. Whether placing the sentence in quotation marks without crediting the original author by means of a footnote is sufficiently giving credit to the identifiable other for those thoughts, words, or ideas is a question which we are not called upon to decide, and which we do not decide.

(4) The prosecuting agency must prove that the use of the words, thoughts, or ideas of the identifiable third person was such as to reasonably imply an assertion by the defendant that he was the author or creator of those thoughts, words, or ideas. Some ideas are of such wide circulation that they are surely to be thought of as general intellectual property although most people will automatically recognize that they are not original with the speaker. Thus, we can be certain that one might discuss the concepts of *id*, *ego*, and *superego* in a paper without ever footnoting Freud and still be safe from prosecution for plagiarism. Even concepts of a more specialized nature are of such general recognition that they need not be credited, and their use by a student does not in any way imply an assertion on his part that he is the originator thereof. The standard to be utilized in such cases is one of the general uses of an idea or concept within the community to which the work of the student is addressed.

Once the prosecuting agency has established these four things, it has established its *prima facie* case In the absence of evidence from the defendant which would negative the implications of the proof so adduced, the court is free to draw the inference that in including the statement in his paper the defendant acted with knowledge that the words, thoughts, or ideas were not his own or that, having reasonable opportunity to discover that the words, thoughts, or ideas were not his own, he nevertheless included them without taking advantage of such opportunity.

The court below in this case found as a fact that the petitioner, in preparing her paper in English 24 used certain notes which she had taken about a year before the time she wrote the paper in question. The court below further found as a fact that those notes

[1] Whether the inclusion in a paper of a single sentence identical to a sentence written by some identifiable other is the intentional representation by a student that he is the author of those words, thoughts, or ideas was not questioned at this Bench. We therefore take this opportunity to express a doubt that the duplication by a student of a sentence which occurs in the work of an identifiable other is a sufficient use of the thoughts, words, or ideas of that identifiable other to constitute plagiarism. That question not having been raised on this appeal, it is not decided.

were "basically from research." This would imply to us that the court below believed that the petitioner, knowing that the bulk of the notes she was using in preparing her paper had been taken from library resources had a reasonable opportunity to discover the original sources of those statements, and knowing them to be, at least in part, not her own, refused to avail herself of that opportunity. While we are not required to hold, and do not hold, and do not imply an opinion on the question of whether a student is a guarantor of the originality of his work; we do hold that the inference of intent in this case was appropriately made and supported by the evidence.

* * *

The verdict and judgment of the Honor Court in this case is affirmed.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1974

ALVIA GASKILL, PLAINTIFF *v.* LINDSEY HUGHES WRENN, CHAIRMAN OF THE GRANVILLE COLLEGE ELECTIONS BOARD

ORIGINAL

No. 74–001. Orig. Decided February 18, 1974

On February 5, 1974 an election for the officers of Granville Residence College had been conducted, and the Plaintiff had been a losing candidate for Governor of the Residence College. The Plaintiff alleged, *inter alia*, that irregularities had occurred in that his name had been cut from an undetermined number of ballots; that there was electioneering within fifty-feet of the polling place; that a candidate had served as a poll tender; that a member of the elections board was a candidate for office; that there had been no formal candidates meeting to explain the elections laws; that there were no announced elections rules in force; and that the runoff was improperly scheduled. The theory of the Plaintiff is that in the absence of Granville College elections rules, the General Election Law as enacted by the Campus Governing Council is applicable. The Defendant moved for an order dissolving the injunction on the grounds that the injunction is overbroad, *i.e.*, the injunction restrains the holding of any runoff, and Plaintiff has standing only as to the election for Governor; on the grounds that the elections rules of the college are controlling, and the General Elections Law does not apply; on the grounds that the statute of limitations has run; on the grounds that the errors complained of did not affect the results of the election; on the ground that the suit is spurious. The Plaintiff, shortly after petitioning the Court, filed a formal complaint with the Residence Hall Association, requesting that a tribunal to determine his complaint be appointed.

Held: The Plaintiff is entitled to the T.R.O., the T.R.O. is modified in scope to the Governor of the College Election, and the Residence Hall Association Tribunal will determine the merits.

(1) Plaintiff is entitled to a T.R.O. until the Resident Hall Association convenes a tribunal to preserve the judicial *status quo* so that the Tribunal may determine the merits of Plaintiff's case. This is ordered without prejudice so that Defendants may seek a writ of mandamus requesting the president of the Residence Hall Association to appoint a tribunal in the event of undue delay.

(2) The injunction is narrowed in scope to apply only to Plaintiff's case, *i.e.*, the Election for the Governor of the College. The Residence Hall Association Tribunal will rule on the merits, but this Court retains jurisdiction to preserve or aid the Tribunal.

Affirmed in part, reversed in part.

Crump, C.J. delivered the opinion of a unanimous Court.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

This case is clearly controlled by the cases of *Dunn* v. *King*, No. 72–001(0) S.S.C. (1972) and *Dorrol* v. *Oliver* discussed therein. The Supreme Court has jurisdiction of this cause and the jurisdiction to enter an injunction when necessary to protect the rights and remedies of the Plaintiff. The applicable law is not the General Elections Law, but the common law of elections, using the General Elections Law as a policy guide. That much determined, the rest of the Defendant's motion to dismiss and to dissolve the injunction must be determined. It is clear under the decision of the Court in *Dunn* v. *King*, *supra*., that if the Residence Hall Association has a court, then this Court must remit its jurisdiction of the cause to that forum. The Residence Hall Association Constitution of November 15, 1972 in its Article VI provides as follows:

Section 1.

The RHA Tribunals shall be established on a temporary basis, as needed to hear cases. The President of the RHA shall appoint three (3) students living in University owned or approved undergraduate residence halls, with the approval of a majority of the members of the Governing Board, to form a RHA Tribunal. None of the members shall have any previous contact with the case for which the Tribunal is formed.

Section 2. Jurisdiction

The RHA Tribunals shall have original jurisdiction in controversies concerning executive and legislative action raising questions of law under the constitution of any residential unit in University owned or approved undergraduate residence halls, or the laws enacted under the authority of such constitution.

Section 3.

An appeal of a decision made by a RHA Tribunal may be made to the Supreme Court of the Student Body, as provided for in the Student Constitution of the University of North Carolina at Chapel Hill, and as provided for by Student Law.

The Residence Hall Association Tribunal then, clearly has jurisdiction of this case under the principle of *Dunn* v. *King*, *supra*. May the Supreme Court nevertheless enjoin the conduct of a runoff election in Granville Residence College? We hold that we may. The Residence Hall Association Tribunals are *ad hoc* forums. There is no identifiable person or persons to whom a Plaintiff may turn for injunctive relief, unless to the President of the Residence Hall Association. Clearly the President of the Residence Hall Association may not issue a temporary restraining order, for to permit that would be for this Court to delegate judicial functions to an executive officer. The Residence Hall Association Constitution seems to envision a gap in time between the presentation of the complaint to the Residence Hall Association and the appointment and ratification of a Residence Hall Association Tribunal. In the interim between such complaint and such appointment substantial prejudice may be worked to the rights and remedies of the Plaintiff. Thus, in this case, if the runoff election had been held, the Granville Elections Board could have certified the returns and the new officers have taken office. Thus, Plaintiff would be put to a more onerous burden of proof to show that the results should be declared void than to declare that such further action should be stayed until the intervention of the judicial process. Further-more, denial of an injunction to a plaintiff who has otherwise shown himself entitled to it subjects both the voters, officers, and elections board to needless expense and hardship. There is no reason to have four elections if three will do, or to create an interregnum when there are no residence college officers because the term of office of the old has ended and the new removed from office by a decree of nullity from the Residence Hall Association Tribunal or of this Court on appeal. We therefore hold that while the Residence Hall Association Tribunal has primary jurisdiction of this case, the Plaintiff is entitled to an order from this Court restraining the Elections Board from holding a runoff until such time as the Residence Hall Association Tribunal can meet with the parties to determine the merits. This action would be without prejudice to the right of the Defendant to bring an action requesting mandamus to the President of the Residence Hall Association to appoint a Tribunal if the Association were to unduly delay the appointment.

As to the Defendant's argument that the present order is overbroad, we agree.

* * *

Plaintiff has standing to challenge only such races as he stood for election in. The injunction is modified to prohibit Defendant from conducting any runoff election for Governor of the College, and impounding the evidence for the use of the Residence Hall

Association Tribunal. All other defences go to the merits, and we leave it to the Residence Hall Association Tribunal to rule on them. But let there be no doubt that this Court will issue an injunction to preserve or aid the jurisdiction of the Residence Hall Association Tribunal.

It is so ordered.

Syllabus

DENNIS HORN, PLAINTIFF *v.* FORD RUNGE, PRESIDENT OF THE STUDENT BODY, ET AL.

ORIGINAL

No. 74–002. Orig. Argued February 11, 1974–Decided February 25, 1974

On October 17, 1972, the Legislature passed BF–53–92, directing the Student Services Commission to appropriate $2,500 from its self-generated surplus account to be used in the Student Instant Loan Fund (hereinafter also "Loan Fund"). Moneys for the Loan Fund were to be lent in amounts of no more than $15, and any student "more than twenty days delinquent. . . shall be judged to have committed an honor code violation". *Id.* art. V, § 1. By BF–55–75 passed October 21, 1973, the Campus Governing Council (hereinafter "CGC") states that the Loan Fund should continue in operation through the 1973–1974 academic year, using "the funds appropriated. . . for the 1972–1973 academic year." *Id.* art. II. Then BF–55–86 was passed with recitative ("whereas") clauses indicating a difference of opinion about the desirability of forcing debt collection through the small claims courts. Defendant Clark decided that further loans would be made using the appropriation of $2,500 originally from the operating surplus in December of 1973.

Plaintiff Horn filed this action on February 11, 1974 alleging that Defendants had terminated CGC's Loan fund and that the Attorney General had threatened to bring Honor Court actions against those students who had defaulted on their loans, contrary to the legislative direction of the CGC. Default judgement was entered against Defendants Runge and Whiseant on February 14, 1974, but the judgement was stayed until resolution of the case on the merits. An order was entered dismissing Reid James, Attorney General as a defendant and adding Mickey Clark and Trey Doak as defendants with a period of three-days to answer.

The essential question posed was whether the Director of the Student Services Commission, acting in good faith belief that the method of collection of delinquent debt provided for by the Legislature is inadequate, suspend the operation of the Loan Fund.

Held: The Director may not suspend the Loan Fund, even if in good faith, believing the method of collection devised by the Legislature to be inadequate.

While the legislature may permit the executive to terminate or suspend a program from time to time, the action is essentially legislative and not readily inferred absent a clearly mandated legislative permission. The Director of the Student Services Commission's actions are administrative and do not include the authority to terminate or suspend such operations. The constitution prohibits executive departments from by their own action doing that which the Legislature specifically refused to do.

The Court appoints as Special Masters and Commissioners: Kirt Cox, George Hearn, Steve Jones, and Trey, Doak to determine (1) may any student represent the Student Services Commission or Student Body in a small claims court in the State of North Carolina; (2) if the answer to the first question is in the negative, what resources are available for the stated purpose and what are the relative costs; and (3) by what means may debt be collected consistent with present legislation? Commissioners are directed to meet with the Office of Student Life on at least one occasion for input. Commissioners are directed to report to the Court ten days from the entry of judgement with a written report. Defendants are ordered to reinstitute the Loan Fund program within one-week of this judgement.

Judgement entered for the Plaintiff.

CRUMP, C.J. delivered the opinion of the Court in which CARPENTER, HANCOCK, and HUGHSTON, JJ. joined.

Dennis Horn, *pro se*.
Reid James, *Attorney General of the Student Body for Defendants*.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

The Plaintiff commenced the instant action by a duly filed complaint filed on the 11th of February 1974 alleging that the Defendants herein had terminated a program established by the Campus Governing Council (hereinafter called "CGC") which required that the Student Services Commission (hereinafter called "SSC") to lend money in amounts up to fifteen dollars ($15) to students at the University of North Carolina at Chapel Hill; and alleging that the Attorney General threatened to prosecute in Honor Court under the Honor Code such persons as had defaulted on their promise to repay the loan, contrary to the legislative direction of the CGC. On the 14th of February, default was entered against the Defendants Runge and Whisenant, but execution of that judgment was stayed until a resolution of the cause on the merits, and an order was entered dismissing Reid James, Attorney General of the Student Body as a defendant for the reasons stated in the judgment. Plaintiff's motion to add Mickey Clark and Trey Doak as defendants was granted by the same order and they were granted a period of seventy-two (72) hours to answer.

The bulk of the facts of this case may be stated by reference to certain bills passed by the CGC. By BF–53–92 dated October 17, 1972 the Student Legislature directed that the Student Services Commission appropriate $2500 from its self-generated surplus account to be used in the Student Instant Loan Fund (hereinafter, Loan Fund). Such moneys were to be lent in amounts of no more than $15, and according to the eighth article of that legislation: "Any student that becomes more than twenty days delinquent in repayment of his outstanding loan shall be judged to have committed an honor code violation and shall be tried in student courts accordingly." A notice to this effect was printed on the face of the promissory note which the borrower was required to sign. By BF–55–47 dated April 17, 1973 the CGC passed certain By-Laws of the Student Services Commission, establishing its Board of Directors, granting it certain powers, and investing it with responsibility "for the administration of programs and services authorized by the CGC to be under the direction of 1the SSC." *Id.* art. V, § 1. By BF–55–75 dated October 21, 1973 the CGC provided that the Loan Fund should continue in operation during the 1973–1974 academic year, that the moneys should be

"the funds appropriated by the Student Legislature for the 1972-1973 academic year." *Id.* art. II. The details of the operation of the program were substantially unchanged except that Article VIII of BF–55–75 read as follows:

> The name of any student who becomes more than twenty days delinquent in repayment of their outstanding loan will be turned over to the Student Body Attorney General for possible civil action concerning collection, except in cases of written application for loan extension pursuant to the provisions of Article 15.

The program requiring prosecution by civil action for collection of delinquent debts seems to have been less than satisfactory to either the Attorney General, the SSC, the Finance Committee of the CGC, or all three. By BF–55–86 certain changes were made respecting the number of days a loan should be delinquent before reference to the Attorney General, and certain changes not here important. The important things about that bill are that the recitative ("whereas") clauses indicate, some division of opinion among those persons and groups about the desirability of forcing debt collection through the small claims courts. The minutes of the Clerk of the CGC indicate that BF–55–86 was passed as amended by striking Article 2 of the bill. Article 2 reads in full as follows:

> The operation of the Instant Loan Fund, as set forth in BF–55–75 and above is hereby suspended pending establishment of an appropriate enforcement mechanism, satisfaction to the Attorney General and CGC Finance Committee. The operation of the Instant Loan Fund may be reinstituted by majority vote of the CGC Finance Committee, upon establishment of such a mechanism; if the establishment of such a mechanism requires further amendment of BF–55–75, such reinstitution shall occur only when the amendment is lawfully approved by the CGC. The resolution of this matter shall be reported to the CGC at its next regularly scheduled meeting by the Finance Committee.

Sometime in December of 1973 Defendant Clark acting then as Director of the SSC, because of what seemed to him to be unsolvable difficulties in the collection of defaulted loans declared that no further loans would be made under the program until such time as a workable collection procedure was established.

It seems to be conceded by all parties in interest that even though the appropriation of $2,500 came originally from an operating surplus generated by the Student Services Commission,

that the original "start up [sic]" money for the programs administered by the SSC came from appropriations by Student Legislature from either the Student Activities fee or from the Student Government General Surplus account.

I

The essential question posed for our decision in this case is simply this: May the Director of the Student Services Commission, acting in the good faith belief that the method of collection of delinquent debt provided for by the Legislature is inadequate, suspend the operation of the Loan Fund?

The jurisdiction of this Court is established under Section 25 of the Supreme Court Act of 1968, *Bailey and Williams* v. *Waddell and Perez*, No. 70–___ S.S.C. (1970). The requests of the Defendants to have omitted as parties C. Ford Runge, President of the Student Body and Jim Whisenant, Refrigerator Rental Officer of the SSC are hereby denied, and the judgement against them shall continue to be in full force and effective to the full extent of their authority over the matter in controversy. *See* § 38, Supreme Court Act of 1968.

Plaintiff's motion to strike paragraph six of the answer is hereby granted. *See* § 71 Supreme Court Act of 1968. The argument of the Plaintiff may be summarized as follows: The Student Constitution in Article I creates the Legislature and vests it with supreme legislative power. Among the enumerated powers of the CGC are the power to "appropriate all revenue derived from the Student Activities Fees…" and to "make laws necessary and proper to promote the general welfare of the Student Body." *Id.* Article III of the Constitution vests the executive powers of the Student Body in the President. Among his powers are: "To appoint the Chairman and members of all standing committees and bodies not otherwise provided for in this Constitution, …"; "To enforce and administer laws enacted by the Campus Governing Council;" "To issue orders to the standing committees and to require reports from them." Finally, Article VII of the Constitution provides that the Constitution and the laws enacted under its authority shall be the supreme law of the Student Body. From the Constitutional principles so announced, the Plaintiff would have us find that the bills discussed in the statement of facts to this opinion are laws within the power of the CGC and that there is no constitutional power in the executive of student government which may interpose its will to frustrate the legitimate legislative goals established in those bills.

The Plaintiff's argument is essentially an accurate statement of the general principles upon which the decision of this case must rest. It is, we suppose, little more than a grade school civics lesson: The Legislature makes the laws; the Executive administers

and executes the laws; the Judiciary must interpret the laws. Student Government is in these respects like the government of the nation or a state. Two principles of construction follow from this: All laws are presumed to be constitutional until the contrary is shown, and all executive acts are presumed to be lawful until the contrary be shown. The Plaintiff would have us to draw an analogy between this case and the acts of President Nixon in impounding moneys appropriated by Congress, or the acts of Howard Phillips in dismantling the Office of Economic Opportunity. There can be no doubt that the Legislature may from time to time as it may find convenient permit the President or the head of some agency to terminate a program or to suspend its operation, but such an action is essentially legislative in nature, and the existence of such power should not be readily inferred in the absence of some clearly mandated legislative permission. Defendants argue that the Director of the SSC has such authority, and that such authority should be inferred from Article V of BF–55–47 which defines the powers of the Director of the SSC. Those powers include the power to administer the programs and services placed by the CGC under the stewardship of the SSC; to control the financial administration of those programs, subject to a duty to account at monthly intervals to the Finance Committee of the CGC; to negotiate, enter into, and enforce contracts with the employees of the SSC, other student organizations, and "outside concerns;" to establish a general budget; to determine the disposition of its surplus and the method of payment of the organization's debts; to transfer funds within the accounts of the agency. It will thus readily be seen that the powers directed to the SSC are the powers to financially administer the programs placed under the authority of the agency. We find nothing in those powers which includes the power to terminate or suspend the operation of an appropriately legislated program because of disagreement with the CGC about the nature of debt collection. The legislature, by defeating the amendment of BF–55–86 Article II has demonstrated its own reluctance to suspend the operation of the Loan Fund. In fact, it might be reasonably inferred that by defeating that amendment while leaving the same recitative clauses in the bill that the Legislature thought that it had already taken the necessary steps to enforce debt collection. We believe that the constitution prohibits the executive departments from by their own action doing that which the Legislative has specifically refused to do.

Judgment must be therefore entered for the Plaintiff. We realize that entry of the judgment for the Plaintiff does not solve the underlying problem of how the Attorney General is to go about collecting debts.

* * *

Therefore, we hereby appoint Kirt Cox, George Hearn, Steve Jones, and Trey Doak as masters and commissioners of the Supreme Court to attempt to find answers to the following questions: (1) May an undergraduate student or a Law student represent the Student Services Commission or the Student Body in the small claims courts of the State of North Carolina? (2) In the event that the first question must be answered in the negative, what resources for the delivery of legal services are available within the University and within the community which may be available for the stated purpose, and what are the relative costs of those services? (3) By what means may the debts be collected within the University which are consistent with the existing legislation?

We direct these Commissioners to meet with the Office of Student Life or at least one meeting to gain input from that source on these questions. In the event that these Commissioners may have need for the power to subpoena any records of any student or any student organization, such subpoenas shall be granted on application to this Court. We direct these Commissioners to report to this Court two hundred forty hours (240) from the entry of this judgment, and to submit their written report at that time.

We hereby order the defendants, under penalties prescribed by law to reinstitute the Student Instant Loan Fund Program within one hundred sixty-eight (168) hours of the entry of this judgment. The Supreme Court retains jurisdiction of this cause for the entry of such further orders as may be necessary and proper to appropriately remedy the plaintiff, to protect the rights and remedies of all parties in interest, and for the enforcement of its orders.

It is so ordered.

Syllabus

ALVIA GASKILL, PETITIONER *v.* LINDSEY HUGHES WRENN, CHAIRMAN OF THE GRANVILLE COLLEGES ELECTIONS BOARD

ON WRIT OF CERTIORARI TO THE RESIDENCE HALL ASSOCIATION TRIBUNAL

No. 74–003 Argued February 18, 1974–Decided March 6, 1974

The factual background of the case is set forth in *Gaskill* v. *Wrenn*, No. 74–001 S.S.C. (1974). Since the decision of *Gaskill*, the Residence Hall Association Tribunal rendered a 2–1 judgement voiding the complaint of appellant on the grounds that the complaint was not filed within the 96-hour limitation pursuant to Section 25 of the Elections Laws. Appellant appealed that decision to this Court.

Held: The Tribunal clearly erred in its application of Section 25.

The lower court should have rendered its decision proceeding from analysis of Granville and Residence Hall Association-specific Elections Laws, then this Court's common law, and then the text of the General Elections Law.

Reversed.

Per Curiam judgement and order filed February 25, 1974. CRUMP, C.J. delivered the opinion of the Court in which HANCOCK and HUGHSTON, JJ. joined. PONDER and CARPENTER, JJ. did not participate in the consideration or decision of this case.

PER CURIAM.

This Court transmitted a copy of our decision in the case of *Dunn* v. *King*, No. 72–001(0) S.S.C. (1972) to the President of the Residence Hall Association prior to the time the trial panel in this cause was appointed. This Court said in the cite case, "He further announced that, in the absence of other controlling rules, the General Elections Laws should serve as a guide to the Court in determining the policy of the common law of elections." That statement should have made abundantly clear to the Court below that the General Elections Laws do not, by their own terms, apply to dormitory elections The General Elections Laws are called by that name, not because they apply to elections generally but because they apply to general elections, *viz.* those in which all students may vote. The Court below erred in applying the General Elections Laws because they do not apply at all to dormitory elections The Court below entered no findings as to whether Granville Residence College has any elections laws. If Granville College has any such rules, they must be applied If Granville College has no such rules, or if those rules supply no answers to the questions posed by the complaint, then the Court should enter findings as to whether the Residence Hall Association has promulgated any rules governing elections. If the RHA has such rules, then the RHA Tribunal should apply those rules to the facts of the case If the RHA has no elections rules, or if those rules do not answer the points raised by the complaint, then the Court should apply the common law of this Court, and if this Court has

no decision on the points raised, then the Court below may look to the General Elections Laws as a policy guide to its decision in deciding the points in controversy.

Had the Court below assigned any reason for its decision other than that Section 25 of the General Elections Laws contains a limitation on the bringing of an action, this Court should, on this appeal, be required to conduct a hearing to determine the sufficiency of those grounds as a matter of common law, *i.e.*, as a matter of fundamental right and of fundamental fairness No such grounds having been assigned, there could be no more clear case of error.

* * *

The judgment below is reversed. The appellant may have an order enjoining the appellee from conducting a runoff election for the office of Governor of Granville College until such time as the Residence Hall Association constitutes a Tribunal to resolve this controversy according to law.

It is so ordered.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

The facts of this case are set forth in No 74-1 of this Court and need not be repeated Since the Per Curiam Opinion in this case and the issuance of an order staying the execution of the judgment of dismissal of the complaint by the Residence Hall Association Tribunal that stay of execution and injunction have been modified so as to permit the Defendant Board to conduct balloting in the runoff election for the office of Governor of Granville College but to enjoin the Defendant Board from counting the ballots or certifying a return. On the oral motion of the Defendant a rehearing was granted on the judgment of the Residence Hall Association Tribunal pending the delivery to us of their full opinion. Portions of that Opinion are set out herein and a copy thereof is attached hereto.

We find no reason now appearing in the judgement of the Residence Hall Association Tribunal to change our position in this case. The Per Curiam opinion issued on the 25th of February 1974 is adhered to. The judgment of the Residence Hall Association Tribunal will be quoted here and its errors explained in full:

> The Residence Hall Association Tribunal met Wednesday, February 20, 1974 to hear the formal complaint of Alvia Gaskill, Jr. The Tribunal decided that it could not hear the complaint because the complaint was not filed within the 96 hour deadline, as stipulated in the Campus General

Election Laws. The Tribunal ruled that the 96 hour deadline for complaints to be filed was in effect for the following 3 reasons:

> 1) Granville Election Chairman Wrenn stated to the Tribunal that campus general election laws and/or common election laws were in effect in the absence of Granville's own election laws which do not exist in writing. A copy of general campus election laws was available all week preceding the election, said Lindsey Wrenn. On account of the fact that information on general campus election [laws?] was available to Gaskill, he could have ascertained that there was a 96 hour statute of limitations on the filing of appeals.

The statements attributed to Lindsey Wrenn we take to be the Court's explanation of Wrenn's explanation of the holding of this Court in *Dorrol* v. *Oliver* and *Dunn* v. *Kin*. The difficulty with the explanation is that it does not recognize that campus general elections laws are applicable to residence college elections only as a last resort policy guide as is explained in the opinions in the cases above referred to. Furthermore, that copies of campus election laws were available to the Plaintiff herein is immaterial As we said in the per curiam opinion, the general elections laws are so called because they govern general elections, not because they govern elections generally. Furthermore, the opinion does not indicate that the Court below took any evidence in an attempt to ascertain what the elections rules of Granville College are. That prior to the approval of Granville's Constitution a written election code did not exist is immaterial—the election laws of Granville, if unwritten are subject to proof by oral evidence taken from members of the elections board, from the of icers of the college or the senate. The Plaintiff had the right to expect that some minimal standards of regular procedure would be complied with, or that some parliamentary authority would be consulted, as was indicated by Wrenn in the hearing here. The opinion continues:

> 2) Linsday Wrenn stated that the vote had been certified on the night the election took place—February 5. The 96 hour period was over Saturday evening. When Gaskill's objection here overruled by the Granville Elections Board on Thursday there was no recertification of the vote. This meant that the Saturday evening deadline was still in effect.

This bold conclusion does not even apply the General Elections Laws, Act of January 1, 1973. That bill in § 11 provides for appeals from administrative acts of the Elections Board in campus

elections. Surely the dismissal of a complaint is an administrative decision of the Elections Board of Granville College. But the General Elections Laws do not apply to this election. If Section 11 is thus applied, then by filing his protest to the Residence Hall Association and to this Court on Sunday night, then Mr. Gaskill is within the ninety-six-hour limit. The third assignment of reason is:

> 3) Alvia Gaskill, Jr. filed his appeal Sunday night which fell outside of the legal 96 hour period for filing of the complaint.

As noted, if this action is viewed as an appeal from the decision of the Elections Board dismissing the complaint of the Plaintiff, then he action is timely. But since the General Elections Law is inapplicable to the facts before the court below, they were bound to apply the common law. That common law, by reference to the rules of *Dunn* v. *King* and *Dorrol* v. *Oliver* is simply to determine on the facts of this case whether there is any reason that the complaint should not be heard. If reference to the General Elections Law is necessary at all to decide the case, then §§ 11 and 25 do indicate that the Governing Council has found a limitation of action to be a desirable policy. At the same time, it should be clear from the opinions of this Court that the statute of limitations is not a favored defence, *Welfare* v. *Student Body*, No. 72–005 S.S.C. (slip. op., at 6) (1972). Use of a common law approach was the shorthand form this Court used to indicate that the Court below should inquire into the acts and circumstances of the case to determine if any reason appealed therein to prevent the action from going forward. So long as the action was filed prior to the date set for the runoff, we see no reason by prejudice to the rights of the Defendant or of the people of the College that the action is not permitted to be heard on the merits of the complaint and disposed of in accordance with the law. The remainder of the opinion follows:

> Let us look now at the interpretation of the 96 hour limit on appeal as approved by the RHA Tribunal.
>
> 1) By this action the Tribunal confirms the right of the Granville Election Board to apply the 96 hour appeal provision of the campus general election law to its own area.
>
> 2) By this action the Tribunal sets a precedent for a 96 hour limit on the time allowable for filing an appeal or

complaint to the RHA Tribunal from any resident of an autonomous residence hall governed by RHA.

3) By this action the Tribunal is stipulating that only [S]ection 11 of the General elections law is in effect over any residential unit in University owned and approved undergraduate residence halls. (section [sic] 11 sets the 96 hour statute of limitations or filing appeals).

This action reflects the need for RHA to work for standardized election procedures in undergraduate residence halls.

/s/ Peter Gilmore
/s/ Peter Ripley

The support which the Defendant urges for these conclusions is that the meeting of the Residence Hall Association Tribunal in this case was the first meeting of the Tribunal, that it was necessary for the Tribunal to set its procedures at this time, that the Residence Hall Association Tribunal was free to adopt §§ 11 and 25 of the General Elections Law as its common law and to apply them to the case. This conclusion we must find to be incorrect. The conclusion that the 96 hour limit applies is essentially a legislative conclusion, and the Residence Hall Association Constitution of November 15, 1972 vests the Legislative authority of the Residence Hall Association in its Governing Board. art. II. Any determination that an appeal from action of the Elections Board of a Residence College must be brought within any arbitrarily mandated number of hours, days, months, etc. is a legislative finding, and must be supported by the factfinding and political resources of a legislative body. The fining that the appeal here was not brought within the appropriate time is not supported by the evidence in the record which was before the Residence Hall Association Tribunal. The Tribunal here was not acting in a judicial manner when it delivered this result. The opinion clearly discloses that the Tribunal was far mor concerned with its role as a setter of precedents than its role as a court. The decision of cases is the judicial role *qua* judicial role. If those decisions of cases have in the long run some precedental value, that is all well and good, for judicial precedent is far to be preferred in Court to a historical precedent, which may well be wrong, *see Callahan et. al.* v. *Gordon*, No. 72–002, (slip op. at 3) (1972). The Court, acting as a Court may not adopt a rule such as this, barring the right to a hearing and the right to assert a substantive right, unless that holding finds its support in the evidence This bald conclusion based on clearly inapplicable law has no such support.

The only procedures in need of which the Court below stood were procedures governing the trial of actions. If the Governing Board of the Residence Hall Association has enacted no such procedures, the he Residence Hall Association Tribunal might have promulgated its own rules or the trial of actions, and in that effort it could have referred to the procedures used in Honor Court, this Court or to trial procedures described in any parliamentary authority. The Court below had no need to adopt a statute of limitations; it had only to ask itself if any reason appeared in the facts of the case why the claim should not be heard on the merits. This it did not do.

Promoting the need of the Residence Hall Association for uniform Election procedures is an objective which the Court below can accomplish without barring the claim herein. The Court below may hear the case and apply the rules of fundamental right and fairness to the various claims which the Plaintiff asserts, thus making rules which will apply to residence college elections in the absence of rules promulgated by the Residence College or by the Governing Board of the Residence Hall Association. The Residence Hall Association Governing Board may promote uniform election procedures in those living units within its authority by passing a set of elections rules which shall apply legislatively to all residence halls in the absence of their own rules. Or the Residence Hall Association Governing Board may legislatively approve a set of elections rules to be used as a model for individual residence units, and encourage those units to approve those election procedures. But the Residence Hall Association Tribunal is a Court and not a legislative authority Its action here is high handed judicial legislation.

This fully disposes of the issues capable of judicial resolution in the Court below. We must now speak briefly to the objection pressed strenuously and frequently, formally and informally here by the Defendant to the continuation of an injunction against him issuing out of this Court. A brief recapitulation of the events of this case is in order:

February 5, 1974—primary election held in Granville College.

February 6, 1974—Granville College Elections Board dismisses charges of Gaskill's complaint.

February 10, 1974—Gaskill files action for an injunction in the Supreme Court and action seeking an order granting him a new election in the Residence Hall Association Tribunal. Injunction issued.

February 18, 1974—Hearing on continuation of injunction held in Supreme Court—injunction issued.

February 20, 1974—Residence Hall Association Tribunal dismisses Gaskill's complaint.
February 21, 1974—Gaskill files oral notice of appeal.
February 25, 1974—Supreme Court reverses Residence Hall Association Tribunal per curiam.
February 25, 1974—Stay of execution of judgement of Residence Hall Association Tribunal entered by Supreme Court.
February 26, 1974—Order above modified on motion of Defendant to permit conduct of voting in runoff on February 27 but enjoining counting of ballots or certification of return.
February 27, 1974—Runoff vote conducted.
March 6, 1974—Hearing in the Supreme Court on the motion of the Defendant for a rehearing on the reversal of the judgement of the Residence Hall Association Tribunal which had been granted on February 26, 1974.

The objection of the Defendant to the continuation of the injunction is essentially as follows: Plaintiff, he says, is afforded two judicial remedies—an injunction against the counting of the runoff ballots or a decree that the election of February 5, 1974 was conducted in an invalid manner at some time after the officers elected thereby are installed. During the pendency of the numerous hearings in this case the government of Granville College, he alleges, has been crippled by the resignation of numerous officers. The people of Granville College have a right, he says to the programs and benefits of the College government, and these programs can be carried out only by their officers. The College has no remedy against the Plaintiff if his suit is later shown to have been motivated by malice to cripple the functions of the college or if his suit is shown to be spurious. The injunction should therefore he dissolved, he says. This analysis misses the point, and is predicated at several points on spurious assumptions.

The statutory predicate for the issuance of temporary restraining orders by this Court is to be found in the Supreme Court Act of 1968, § 72, which reads in full:

Section 72. Temporary restraining orders.

a. Before the trial of an action, a party may file a motion requesting that an order be issued restraining the other party from doing a particular action until the rights of the parties may be adjudged.

b. A motion requesting a temporary restraining order shall be granted and the proper order issued only if it is determined that:

1. The granting of the temporary restraining order is necessary to preserve the jurisdiction of this court or the rights and remedies of the party requesting the order, and

2. The party requesting the temporary restraining order be issued is clearly entitled to the relief requested under the principles of justice.

The General Elections Law statute of limitations which the Defendant has strenuously urged the courts to apply to this case provides in § 25 thereof:

§25. Protects and appeals to the Supreme Court.

In the event that any election held under the jurisdiction of the Student Legislature (Campus Governing Council after February 18, 1973) is protested on the basis of the provisions of this bill or any other official enactment of Student Government, the Supreme Court shall determine the validity of the protest and shall have the power to call a reelection when it shall deem necessary. All such protests and appeals shall be made in writing by the protesting candidate to the Supreme Court within ninety-six (96) hours of the certification of the election returns by the Elections Board *or before the elected officer is sworn in, whichever shall occur first*. (emphasis added).

The emphasised language of the quoted section reaches the same result we believe the Court should be required to supply as a matter of common law in the case of a residence college election. Once the elected officer is sworn in, the case becomes moot; challenges to his election must not be further permitted. This simply recognizes that once an officer is elected the public harm brought about by defects in his election is far outweighed by the public harm of this Court's or any other Court's declaring that election void. For example, all acts of the defectively elected officer would be void, and he could be held to account for all sums expended while he acted without authority as an officer. Furthermore, laws enacted during his pretension to office would become void, and repassage would be required to sustain their validity. The Plaintiff in this case therefore, under the law of the decision has no right to have a declaration that the election is void. It is an

impermissible remedy because once the officer takes office the judiciary should not for reasons of public policy declare the election void and declare a new election. There would be nothing against which the Judgment should be allowed to operate. This Court in *Barnes* v. *Albright* (1970), declared that we would not resolve a case where we were incapable of providing some effective remedy. Thus, the first standard of § 72 of the Supreme Court Act is met here—with the injunction, the jurisdiction of this Court and of the Residence Hall Association Tribunal is preserved, and with the injunction, the Plaintiff is with a right. Without the order, the plaintiff has a right without a remedy, which the law abhors. *See* Opinion No. 74–001 in this case.

The standard of §72(b)(2) of the Supreme Court Act is also met. The complaint, in either the short form in which it was filed in the original action, No. 74–001 in this Court or in its form on appeal in the case at bar alleges numerous violations of the rights of the Plaintiff as a candidate for Governor of the college. Those allegations come in a complaint which the Plaintiff has alleged to be true to the best of his knowledge, information, and belief, and which recites his witnesses to those allegations, and requests that subpoenas issue to those witnesses The injunction practice in this Court is a bit different from the injunction practice in the State or Federal Courts. The Supreme Court Act of 1968 recognizes only two levels of injunctive relief—the temporary restraining order and the permanent injunction. The proceeding for temporary injunction is a quite speedy proceeding: The Plaintiff files his complaint requesting an injunction, usually before its service on his adverse party. The Court reads the complaint assuming the facts alleged therein to be true and capable of proof. If on those facts and assumptions and on the logical inference from these facts which the Plaintiff has alleged he is clearly entitled to the order under the principles of some statute, some decided case, or the principles of justice, then the order issues *ex parte*. In not every case wi11 the injunction issue. For example, in *Kaleel* v. *Gordon*, No. 73–001 (1973) the Plaintiff was a candidate for Campus Governing Council. In the primary election he had received a plurality of the vote, if three votes cast for fictitious persons were counted in the vote total. If those votes were not counted toward the total, he had a majority of the vote, and should have been declared the winner His request for the order was filed about twelve hours before the runoff. The order was denied because it was possible that if he stood for election in the runoff the next day, he would win, rendering decision of the case unnecessary. Yet, even if he lost the next day's runoff, if his contention were decided in his favor, then he could be declared the winner of the election, and the runoff a nullity.

The Defendant in this case has shown a factual hardship—officers have resigned. But we cannot assume from the absence of officers through resignation that there is a void in the leadership of the college. We must assume that there is some orderly succession procedure in the college, and that those persons will discharge the trust of office until new of icers are elected under an order of reelection or until the action here is discharged. Other than this contention, the Defendant has shown no reason why the order should be lifted The Court, as the recitation of the history of this litigation demonstrates, has gone out of its way to make easier the life of the Defendant under this injunction, *supra*. There is nothing more that can be done until the Plaintiff' has his day in Court in the Residence Hall Association Tribunal and his relief is granted or denied according to the dictates of his proof and the principles of *Dorrol* v. *Oliver* (1968).

* * *

The judgment of the Residence Hall Association Tribunal is reversed and the case is remanded to them or further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

THOMAS PRITCHARD, PLAINTIFF *v.* REID JAMES, ATTORNEY GENERAL OF THE STUDENT BODY, ET AL.

ORIGINAL

No. 74–004 Orig. Decided March 22, 1974

An election was held on February 27, 1974 to election, *inter alia*, the President of the Carolina Athletic Association (CAA). The certified return of that election showed that the Plaintiff was the leading vote-getter in that election with a plurality—but not majority—of the votes. Plaintiff's lead over the Intervenor (Robert Friedman) was about forty-votes. William Daughtridge, Defendant, on the advice of Reid James, Defendant, directed that a runoff election between Pritchard and Friedman be held on March 6, 1974. At the runoff election, Friedman prevailed by about four-hundred votes.

Defendants stated that their decision to hold a runoff election was neutral and not based on any relationship to any of the parties. In the interim, the actions of the Plaintiff between the elections we the subject of some dispute. Plaintiff's testimony indicates that he was uncertain about his right to contest the runoff. Pritchard also got in touch with Henry Farber, a reporter at the *Daily Tar Heel*, who told him that his (Farber's) understanding of election laws was that no runoff should have been required in his case. Pritchard also indicates that he contacted both Defendants to obtain advice about whether a runoff was necessary, how he could prevent a runoff until its necessity was decided, and why a runoff was being held at all. Plaintiff also submitted an affidavit from the previous CAA President testifying that elections of its President were solely governed by the General Elections Law. Defendants' proofs indicate that the Plaintiff contested the runoff, agreed that a runoff could be held, and campaigned in anticipation of the runoff.

After the runoff, Plaintiff filed this action demanding the certification of the February 27th Results as final.

Held: The violation of the Elections Law by the Elections Board nullifies concerns for Plaintiff's consent to the runoff election. The February 27, 1974. results are final.

§13(c) plainly does not require a runoff election for the CAA President. Moreover, §7(a) does nothing more than grant authority to the Elections Board to recommend solutions to administrative problems. Since this was not a special election for the Office of CAA President and §13(c)'s language does not provide for a special election for this office, the February 27th results must be final.

Judgement entered for Plaintiff.

CRUMP, C.J. delivered the opinion of the Court in which CARPENTER, HANCOCK, and HUGHSTON, J.J. joined.

Thomas A. Pritchard, *pro se*.
Reid James, *Attorney General of the Student Body*, for the Defendants and Defendant-Intervenor.

CHIEF JUSTICE CRUMP delivered the opinion of the Court.

On February 27, 1974 an election was held under the authority of the General lections laws for the purpose, *inter alia*, of electing the President of the Carolina Athletic Association. The certified return of that election showed that the Plaintiff was the leading vote-getter in that election but he had a plurality, not a majority Plaintiff's lead over Intervenor was about forty-votes.

Subsequently, Defendant Daughtridge on the advice of Defendant James, directed that a runoff election with Plaintiff and Intervenor as candidates be held on March 6, 1974. At the runoff election, Intervenor prevailed over Plaintiff by about four-hundred votes. The total returns indicate that about eighty-percent of the people who voted in the first election voted in the runoff. The Defendant Daughtridge indicated in his testimony here that the decision to conduct a runoff election for the office of President of the Carolina Athletic Association (hereinafter also "CAA") was arrived at in a neutral manner, he not knowing either of the candidates personally, and having no interest in which of them obtained at the office. Defendant Daughtridge ordered the runoff in the belief that the election should proceed on the principle of majority rule.

The actions of the Plaintiff in the interim between the election of February 27 and the runoff of March 6 have been the subject of some dispute in the testimony. The Plaintiff's testimony would indicate that in the interim he was uncertain whether he had a right to have the run off enjoined and by whom. It further indicates that he was in touch with Henry Farber, a reporter from the *Daily Tar Heel*, who told him that it was his (Farber's) interpretation of the election laws that no runoff was required in the race in which Plaintiff was a candidate. It further indicates that Plaintiff was in touch with both Defendants on one or more occasions in an attempt to gain advice from them as to whether a run off was necessary, how he could go about stopping the holding of a run off until its necessity be decided, and why a run off was being held. There are two other relevant showings in the Plaintiff's proof. There is no indication that he did not attend the compulsory candidate's meetings, and there is no indication that copies of the General Elections Laws were not available to him. Plaintiff has introduced an affidavit from the immediate past President of the CAA which indicates that it is the understanding of the CAA and its officers that its election of its President is governed solely by the General Elections Law.

Defendant's proofs indicate that the Plaintiff consented to the holding of a runoff. These indications arise from proof that the Plaintiff agreed with both Defendants that the runoff could be held and from the act that the Plaintiff caused posters to be put up and carried on campaign activities in anticipation of the runoff election. The final act from which the Defendants urge a finding of consent is that the Plaintiff did not file an action until after the certification of the return in the runoff election; his silence in the interim, they say, is an attempt on his part to have his cake and eat it too, all at the expense of the intervenor.

The evidence thus introduced on this important point would support any of a number of findings: (1) that Plaintiff consented

to the holding of a runoff thus barring his right to seek relief now; (2) that Plaintiff actively sought to learn how to go about asserting any rights he might have against the Elections Board; (3) That Plaintiff consented to the holding of a runoff, but only under a reasonable misapprehension of law. We adopt none of these findings as will appear below.

The Plaintiff bases his argument on the Act of January 18, 1973, "A Bill to enact a General Elections Law," § 13(c):

> Run-off elections shall be held as provided under the following conditions and provisions: (1) should no candidate for a seat in Campus Governing Council, Student Body President, Chairman of the Residence College Federation or its successor, or Editor of the *Daily Tar Heel* receive at least a majority of the votes cast in that race, a run off [sic] election shall be held to determine the winner, . . .

Since the statute does not mention the office of President of the Carolina Athletic Association, the Plaintiff says, the Legislature did not intend that that officer should be required to be elected by a majority vote.

The argument of the Defendants and the Intervenor is that the Legislature did not intend by the language of the above quoted section to limit the principle of majority election to the four named offices. They argue that if the Legislature had intended to so limit the principle, the Legislature would have limited the language of the section by requiring majority election only for such officers. The office of President of the CAA is an office of a "similar magnitude" to the listed offices in that the CAA President must be elected in a campus wide election; furthermore, one of the listed officers, Chairman of the Residence College Federation or its successor, they say, is of lesser magnitude than the rest because the President of that organization may be voted for only by university residence college residents. They would have us to say that any officer elected by a substantial number of voters, such as all voters or all voters residing on campus must be elected by a majority of the voters. The Defendants do not succeed on this bare constructional argument. The office of the President of the Carolina Athletic Association has often gone to one candidate by default, and at no time during the past five years have there been more than two candidates for the office. Thus, they reason, it must have been within the contemplation of the Legislature that the President would always be elected by a majority anyway. The election this year was unique in that four candidates ran for the office. This is a situation which the Legislature did not contemplate. Furthermore, the

Legislature in § 7(a) of the Elections Law has given the Elections Board the flexibility to meet new situations. Section 7(a) provides:

> It shall be the duty of the Executive Committee of the Elections Board to administer all laws governing elections passed by the Student Legislature . . . and to conduct such special elections as may be necessary to fill vacancies in office. The Executive Committee of the Elections Board shall recommend to the Student Legislature . . . from time to time, such legislation as it shall deem necessary and proper.

The defendants argue that the second quoted sentence gives the Elections Board the requisite discretion to order a runoff election in the circumstances of this case.

We have no difficulty in agreeing that the Elections Board as an administrative agency of Student Government has and must have a certain discretion in the administration of elections. That judgment for the defendant follows from that broad proposition is incorrect. The opinions of this Court in nearly every case concerning an election have attempted to guide the Elections Board in the use of its discretion so as to assist them in conducting an election which should be immune from successful challenge. Yet, as those guides will demonstrate, the exercise of discretion by the Elections Board is limited by two powerful factors, the language of the Elections Laws and the public interest in the results of the election. This public interest in elections it should be noted, is a public interest of the highest order.

As will be noted from the language of §13 (c) of the Elections Law, the Board was under no duty to hold a runoff here, for the race under question is not among the four listed offices. The question for our decision is whether the Board had the power to direct the holding of a runoff. We believe that it did not. The Constit1tional and statutory authority of the Board is to administer the laws governing elections. We find no license in that broad command for the Elections Board to add, in a substantive sense, requirements to the Elections Law, nor the authority to deviate therefrom. The dispute in the instant case comes down to one of whether the runoff re1uirement of § 13(c) must be read *e jusdem generis* or *expressio unius*. The language of § 13(c)(1) refers only to four offices. Since the language of the section requires majority election of less than all officers subject to election in the Spring Elections, and since the language of the section requires that the four offices be elected by a majority, we believe that it was the intent of the Legislature to limit the requirement of majority election to the four named officers. It is a well-recognized principle of the law of construction of statutes that every word in

a statute should be construed as having meaning. The meaning to be ascribed to this statute is that the Legislature, which recognized in § 14 that at least ten offices were open for election at the Spring election, intended that only the four named offices be subject to the requirement of majority election and recognized a presumption that election of other officers should be by plurality.

The language of §7 (a) adds nothing to the requirements of § 13(c)(1) by creating additional powers in the elections board. Rather, § 7(a) is consistent with the analysis advanced above. That section authorizes the Board to recommend to the Legislature such changes in the Elections Law as experience in administration of elections may require. The section does not recognize the adaptability of the Board to meet new situations which the Intervenor asserts that it "grants," rather it insists on Legislative primacy in the formulation of elections law and policy. That the section authorized the Board to conduct special elections adds nothing to the power of the Board to authorize the conduct of a runoff here; the term "special election" is a technical term to which the Legislature affixed a clear and unequivocal meaning. A "special election" is an election to fill a vacancy which occurs during a term of office, and we cannot see how the language of § 7(a) can be read to admit of more.

There is, of course, a presumption that the official actions of the agencies of the Executive branch of Student Government are correct until the contrary is shown. *See Horn* v. *Runge*, No. 74–002 S.S.C. (1974); *Gaskill* v. *Wrenn*, No. 74–003 (CRUMP, C.J.) (1974). We believe that the explanation here partly suffices to demonstrate the incorrectness of the Board decision. We intimate no finding on the consent of the Plaintiff to the decision here because we are of the opinion that even if we presume the worst against the Plaintiff, that he did fully and knowingly consent to the procedure used here, that consent would be ineffective to validate the action of the Board in this case. The reason that this consent would be ineffective is the same reason for which the decision of the Board is incorrect—the high nature of the public interest in the return of an election. When by the action of the Legislature declaring an election, the voters are called to the polls, they have a wholly justifiable expectation that the election will be conducted in such a way that they may make known their wishes as to who should hold the offices and that the election procedure will be such as to give a return accurately reflecting the popular will so expressed. When the Elections Board certifies a return to an election, the public has the right to expect that such persons as are declared to be elected by the Board are entitled to their rights, privileges, and immunities of that office in accordance with the requirements thereof. To permit the Board to enlarge the requirements for holding an office by its own judgement as

to the necessity or desirability for additional qualifications is to impinge in a material way on that justifiable expectation.

There is a further reason that there is no need to adopt a finding as to Plaintiff's consent. It is settled law that injunction does not readily lie against the Elections Board to stop a runoff election. In *Kaleel* v. *Gordon*, No. 73–001 S.S.C. (1973), the Plaintiff had received a majority of the votes case in the race for Councillor if votes cast for a fictitious person were not counted as votes cast, but fell three votes short of a majority if those votes were counted. An application for an injunction was denied because, in the opinion of the Court, there was no showing of a threatened injury. If the Plaintiff won in the runoff, he had no injury, yet if he lost in the runoff, then he might still have the remedy of an order to the Board to certify the return in accordance with the results of the first election, disregarding the votes cast for fictitious persons. In that case, the application was brought only a few hours before the runoff, and there might have been a different result had the application come at such a time that a plenary hearing could have been held and a result entered before the scheduled runoff.

Any construction of § 13(c) which requires that the President of the Carolina Athletics Association be elected by a majority of the voters would do violence to the language thereof. If the Legislature had desired majority election, they could have required it by express language. For the Court to read § 7(a) as anything more than a grant of authority to the Elections Board to recommend solutions to problems in the administration of the elections laws would be the rankest sort of judicial legislation.

* * *

Judgement will be entered directing the Defendant Daughtridge to certify as the final return the results of the election held on February 27, 1974.

It is so ordered.

Syllabus

JOYCE DALGLEISH, ET AL., PLAINTIFF *v.* MIKE O'NEAL, PRESIDENT OF THE RESIDENCE HALL ASSOCIATION

ORIGINAL

No. 74–006 Orig. Argued April 16, 1974–Decided April 19, 1974

On March 25, 1974, the Women's Residence Council met and elected Joyce Dalgleish to be their Chairperson. Then, on April 1, 1974, the Governing Board of the Residence Hall Association (RHA) met and during this session considered a complaint by Loy Barbre challenging the Women's Residence Council (WRC) meeting on March 25th, alleging it to be illegal and invalid on accusations of modifying the definition of "house" under Article IV, Section 1 of the RHA Constitution and because the meeting did not have adequate representation due to modification of high rise dorms' apportionment—by units as opposed to floor by floor due to the allegedly invalid definition of "house." On April 1st, the Governing Board declared the March 25th meeting illegal and voided its enactments, including the election of Ms. Dalgleish as Chairperson.

Plaintiff petitioned for, and was summarily granted an injunction barring Mr. O'Neal from calling a meeting of the WRC on April 15, 1974. Plaintiffs alleged that the word house in § 1 of the RHA Constitution should be construed to mean a physical building in the case of South Campus Residence Halls as well as North Campus Residence Halls. Defendants alleged that a "house" should be interpreted as the individual floors, or the smallest autonomous body in any residence halls receiving funds from student fees on a per student basis.

Held: Defendant's semantic arguments are accepted, but the altered definition of the word "house" is insufficient to nullify the election of Ms. Dalgleish. The T.R.O. is dissolved and the Judgement of the Governing Board reversed.

(1) The WRC and Men's Residence Council (MRC) are both bound to the dictates of the RHA Constitution since they are established under the authority of the RHA Constitution.

(2) The Defendants offer the correct concept of a "house" for the purposes of § 1. The Court also accepts the view that "house" shall be construed to mean "the smallest autonomous unit of a residence hall which received student activity fees on a per student basis." *Infra*. at 119.

(3) The quorum requirement of the RHA Constitution applies solely with respect to the Governing Board. Any figure which is established extra-constitutionally is arbitrary and of questionable legality. Lacking a quorum requirement for the WRC, we reverse the April 1, 1974 judgement of the Governing Board.

Governing Board reversed. T.R.O. reversed.

HANCOCK, C.J. delivered the opinion of the Court in which PONDER and HUGHSTON, JJ. joined. CARPENTER, J. took no part in the argument or consideration of this case.

CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

At 7:00 p.m. on Monday March 25, 1974, the Women's Residence Council (hereinafter also "WRC") met and elected Joyce Dalgleish Chairperson of the same organization. On April 1, 1974, the Governing Board of the Residence Hall Association (hereinafter also "RHA") met and during its session considered the

complaint of Lay Barbre which alleged that the WRC meeting of March 25, 1974 was illegal and invalid because:

> a. The WRC met on September 19, 1973 and defined the word "house" under Article IV, section 1 [sic] as a physical building. (defendants [sic] consider this a modification of section 1 and therefore illegal).
> b. Representation was incomplete because high rise dorms were represented as units rather than on a floor by floor [sic] basis (according to the defendant's definition of "house") based on the alleged invalid definition of the word "house."

The Governing Board on April 1st, declared the March 25th meeting of the WRC and all of its enactments illegal and invalid. Specifically, the election of Ms. Dalgleish as Chairperson.

On April 15, 1974, the plaintiffs petitioned this Court for an injunction barring the defendant, Mr. O'Neal from calling a meeting of the WRC based on the strength of the allegation found in their complaint attached hereto. This Court granted the plaintiffs a temporary restraining order the strength of their complaint. In their arguments before this Court, both parties have built their cases around the definition of the word "house."

The plaintiffs, through their Counsel, Mr. Levy, have suggested that the word "house" in Section 1 of Article IV of the RHA constitution should be construed to mean a physical building in the case of South Campus Residence Halls as well as in the case of North Campus Residence Halls for the purpose of representation on the WRC and presumably for the MRC since both organizations are considered to be parallel. As evidence to support this claim, Mr. Levy introduced the following:

(1) An affidavit from one Stephanie B. Murray verifying the fact that in effect, the WRC determined that high rise dorms on South Campus did constitute houses at their September 19, 1973 meeting. (2) An affidavit from one Susan Dillingham similar to (1) above and stipulating in effect the same fact as in (1) above. (3) A letter from James D. Condie, Director of Housing which basically stipulated that in his opinion, the administration has no standard definition or policy concerning the designation of a "house." (4) A petition by 15 women acting as friends of the Court supporting the opinion that they act merely as floor officials. (5) A second petition by 21 women acting as friends of the Court supporting in effect the "physical building" definition of "house."

The defendants, through their counsel, Mr. Martin, suggest that the word "house" as in Article IV, Section 1 of the RHA Constitution should be construed to mean individual floors as in the case of South Campus Residence Halls. More specifically, the

defendant suggests that the smallest autonomous body in any residence hall which received funds from student fees on a per student basis constitutes a "house." In support of his claims, the defendant has brought into evidence before this Court the following:

(1) A copy of the RHA Constitution wherein the defendant demonstrates the status of the MRC and WRC under the RHA. (2) A copy of an undated Ehringhaus Constitution demonstrating the historical distinction between the Residence Colleges and "houses" within the college as had pertained to Ehringhaus. (3) A copy of an undated Hinton James Constitution which draws the same historic conclusions as above with respect to Hinton James. (4) A roster of the 1973 MRC representatives which demonstrates the setup of the MRC under the defendant's interpretation of the word "house." (5) Correspondence to and from Mrs. Frances Sparrow, director of the Student Activities Fund Office, which demonstrates that office's interpretation of "house" for the purpose of distributing student activity fees.

Based on these facts, the defense holds that the MRC interpretation is historically correct. That is, a floor constitutes a house in the case of South Campus Residence Halls.

In addition to the above evidence, the defendant, through the testimony of one Ralph Yount, a drafter of the RHA Constitution, has provided further material support to his claims. Mr. Yount testifies that, to the best of his knowledge, the framers of the RHA Constitution had the position of the defendants in mind when the word "house" was used. This is contrary to the view of the plaintiffs who hold that the word "house" was intentionally ambiguous for the express purpose of allowing the WRC and MRC to arrive at their own conclusions.

I

Jurisdiction is vested in this Court under § 32(a)(3–4) of the Supreme Court Act of 1968.

II

In the final determination of this matter, this Court has determined to address itself to three matters: (A) the nature of the relationship between the RHA and the Men's and Women's Residence Councils, (B) the definition of the word "house," and (C) the question of what constitutes a quorum (a question which is central to the status of Ms. Dalgleish).

A

This Court holds that by virtue of the fact that the MRC and WRC are established under the authority of the RHA, that these organizations within the RHA are subject to all rules which may

apply to them under the Constitution. That is, the RHA Constitution is supreme over any individual constitutions which either the MRC or WRC may establish. Likewise, all acts which may results from the MRC or WRC are subject to testing under the RHA Constitution.

This Court agrees with defendants that under Article IV, Section 2 of the RHA Constitution that the power "to establish procedures for the performance of its business" does not include the power of the WRC to alter its membership. Membership is proscribed under Section 1 of the same Article. The definition of the word "house" by this court for the purpose of litigation in this matter follows in the Part B of this opinion.

This Court chooses to refrain from offering any opinion with regard to the question of the Governing Board's power to correct what it feels are errors on the parts of its inferior bodies. This Court will take this opportunity to make suggestions concerning possible ways to solve this dilemma: (a) empower RHA Tribunals to decide such questions which may arise under the Constitution. (b) Vest authority with the Governing Board to settle questions such as have arisen in this case (this is basically what was done in this case without a concrete basis in the RHA Constitution).

The question of the status of the plaintiff, Miss Dalgleish with regards to this matter will be handled in Part C of the opinion.

B

This Court basically agrees with the defendant's concept of the word "house." Although the current validity of the Ehringhaus and James constitutions entered into evidence by the defendant is questionable, they do serve to give a historic view of the concept of the word in question in the case of South Campus Dormitories. This Court, however, wishes to go further and accept the definition that suggests that a "house" shall be construed to mean *the smallest autonomous unit of a residence hall which receives student activity fees on a per student basis.*[*] This definition goes much further with respect to the question of equity involved in representation. In this opinion, the Court recognizes that the plaintiffs have expressed concern that a quorum may be difficult to obtain under this definition.

C

In the course of the arguments before this Court in the instant case, the striking fact has come before us that the RHA

[*] This Court has chosen this definition as being most reasonable for the purpose of litigation in this case. This Court would certainly deem it proper for the RHA to derive an official definition through appropriate channels. This matter is basically a legislative one and not judicial.

Constitution only makes provisions for a quorum with respect to the Governing Board. The Constitution indicates that a majority of the members of the Governing Board constitute a quorum for that body. This Court holds that any figure which is not established constitutionally is arbitrary and of questionable legality. Once again, this Court wishes to refrain from an opinion in this matter and suggest that by appropriate action, that the RHA make adjustments to specify quorum figures and/or percentages for the WRC and MRC.

In light of these findings, this Court determines that in the absence of any rules specifically establishing a quorum at the March 25 meeting of the WRC, that those in attendance did in fact, constitute a quorum.

* * *

Miss Dalgleish is hereby declared to be the duly elected chairperson of the WRC. The temporary restraining order pursuant to this action is hereby dissolved.

It is so ordered.

Syllabus

ALVIA GASKILL, JR., PETITIONER *v.* LINDSAY HUGHS WRENN, CHAIRMAN OF THE GRANVILLE RESIDENCE COLLEGE ELECTIONS BOARD

ON WRIT OF CERIORARI TO THE RESIDENCE HALL ASSOCIATION HALL TRIBUNAL

No. 74–007. Decided July 31, 1974.

This case comes to this on appeal from the same set of facts as in *Gaskill* v. *Wrenn*, No. 74–001 S.S.C. (1974) and *Gaskill* v. *Wrenn*, No. 74–003 S.S.C. (1974). After the Residence Hall Association (RHA) Tribunal entered judgement on remand from *Gaskill* v. *Wrenn*, No. 74–003 S.S.C. (1974), Appellant Gaskilll again appealed to this Court.

Held: that violations of election laws did occur is assumed harmful and the Appellant was entitled to relief.

(1) If elections errors produced no harm or were insubstantial, they do not come under the rules of *Levy* v. *Ruffin*, No. 70–001 S.S.C. (1970) and *Srebro* v. *Gordon*, No. 73–002 S.S.C. (1973). The Court instead finds that *Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969) is the applicable standard. On this standard, electioneering near polls is objectionable *per se*. Similarly, the presence of candidates on an elections board is similarly objectionable under the *Dorrol* standard.

(2) The Court flatly rejects the RHA Tribunal's assertion that "no written elections laws" are "sufficient." Neither the Granville Residence College nor the RHA Tribunal possesses any clairvoyance permitting them to ascertain an unwritten procedure. Not writing procedures constitutes prejudice *per se* because it is certain to be inimical to rights of freshman.

(3) The Granville Residence College Elections Board is ordered to conduct new elections no longer than two (2) weeks after the start of the Fall 1974 Semester, for the race at issue. Copies of the Court order must be posted in the Granville Residence Hall, and adequate materials shall be provided for the new election.

Reversed and Relief Granted.

HANCOCK, C.J. delivered the opinion of the Court in which PONDER and HUGHSTON, JJ. joined. CARPENTER, J. was excused for personal reasons from final determination of this case.

CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

The judgement of the Residence Hall Association Tribunal will be quoted here, and its errors explained in full:

> The Tribunal has determined that two ballots were miscut, *i.e.*, without Alvia Gaskill's name on them. One of the two ballots was voided and the other was in Gaskill's possession. Of the total ballots printed, 1179 of the 1180 were accounted for. Lindsey Wrenn, GRC Elections Board Chairman, testified that all such miscut ballots would have been voided, with the votes going to no one. The Tribunal feels that the miscut ballots had no effect on the outcome of the election and that the election was conducted well in that regard.

The procedure used by Wrenn is commendable. When the proof satisfies the finding of fact that the error produced no harm, or was insubstantial as in the present case, the violation of it does not come within the rule of *Levy* v. *Ruffin*, No. 70–001 S.S.C. (1970) and *Srebro* v. *Gordon*, No. 74–003 S.S.C. (1974).

> The Tribunal has determined that there was electioneering within 50 feet of the polls. Although General Election Laws do not apply to dorms, Mr. Wrenn has informed us that GRC election rules are modelled after the General Election Laws. The effect of the electioneering on the outcome of the election is unknown. One witness, Andy Howe, claimed in an affidavit that "at least 50 people" were effected, [sic] though later while giving testimony, he admitted that the number could have been as low as 10 or as high as 100. Mr. Wrenn has informed us that he ended the electioneering as soon as he was informed of the activities. The Tribunal feels that the electioneering may have been detrimental, but since the electioneering activities were ended in an expeditious manner, we feel that the outcome of the election was not substantially effected.

Overlooking the obvious contradiction in the wording of the Tribunal's finding, we must look to the case of *Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969), which seems to rule here. *Dorrol* indicates that electioneering near polls is objectionable *per se*. *Id.* That Wrenn did what he could to stop it is not material. The truth of fact found this to have had some detrimental effect. There is no need, given the gravity of the violation and construed in the light of the other violations to inquire into the effect in fact. It is conclusively presumed in law to have been harmful.

> The Tribunal has determined that the nickname 'Crazy Man' attributed to Richard Langston, has been used by that person for a significant period of time, and is in fact the name by which he goes. Mr. Gaskill claims that the use of this nickname influenced the outcome of the election. The Tribunal disagrees for the reason above, and feels that since Mr. Gaskill had no readily applicable nickname, that the usage of the nickname by Mr. Langston had no effect on the coucome [sic] of the election.

Within taste and reason, nicknames would appear to be satisfactory, but only in the context of a legal name such as in the instant case, *i.e.*, Richard "Crazy Man" Langston.

> The Tribunal has determined that Julie Nelson was a member of the Constitution and Elections Board, a composite board of GRC. However, her activities in the election were limited to listing the names of those who were organizing the GRC election. After listing these persons she became an inactive member of the GRC Elections Board, and she was not in charge of setting up the polling places as charged by Mr. Gaskill. The Tribunal feels that Miss Nelson had no prejudicial or deciding influence on the operation or outcome of the election.

Just as electioneering near polls has been held to be prejudicial *per se*, likewise the presence of any candidate on an elections board is prejudicial *per se* and must be conclusively presumed in law to have been harmful. The question of what role Ms. Nelson played in the board if immaterial. The mere fact of her presence is satisfactory to constitute the prejudice and compromise fairness.

> The Tribunal has determined that Karen McDonald was a member of the Constitution and Elections Board of GRC. Mr. Wrenn stressed that the board is a composite one, and that Miss McDonald became inactive on the Elections part of the Board as soon as her candidacy for GRC office was announced. The Tribunal feels that Miss McDonald had no prejudicial or deciding influence on the operation or outcome of the election.

This situation is essentially similar to that of Ms. Nelson. Ms. McDonald's presence on the Election board in this situation constitutes prejudice *per se*. Members of the Elections Board who wish to seek office in elections which are subject to the same board should tender their resignations prior to announcing their candidacy.

> The Tribunal ahd [sic] determined that there were no written election laws covering GRC elections. However, Mr. Wrenn stated that there has been an elections procedure for GRC elections for several years. The Tribunal feels that such a procedure has been sufficient, though we urge the GRC to codify the procedure.

This Court fails to follow the logic or reasoning of the Tribunal in finding that "no written elections laws" are "sufficient." Proof certainly finds no existence of any elections laws. The finding of the Tribunal in this area constitutes a gross error. The self-serving declaration of the interested official alone will sustain a

finding of fact that election procedures did in fact exist. Specific findings of fact as to what the election procedures were must be made prior to the determination that they are "sufficient." This Court has not been convinced that the residents of Granville Residence College possess some sixth sense or clairvoyant power which permits them to ascertain unwritten procedures concerning elections. That procedures were not written constitutes prejudice *per se* because it is certain to be inimical to rights of freshmen.

There exist several similarities between the instant case and the case of *Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969), which serves as precedent. Obviously both concern Residence College elections, but looking further, are concerned with serious errors committed in the conduct of elections. In *Dorrol* v. *Oliver*, the Court held that the Plaintiff was entitled to relief because of the circumstances surrounding the election. Several of those circumstances were paralleled by similar circumstances in this action. In *Dorrol*, Alexander Residence College held elections without any rules or laws to govern the election. Any contention on the part of the Granville Residence College that rules were in effect is not sustained by proof. There is no warrant to assume that the result from elections similar to these will result in a fair election which accurately reflects the desire of the voters. This type of election is ripe with opportunities for fraud; that members of the Elections Board also stood as candidates for office in the same election certainly does not enhance the prospects for a fair election. The result of the absence of any specific codified rules is a hodgepodge of confusion such as we have seen in this instance. This Court has on the one hand seen Mr. Wrenn claim that there were no written laws and on the other hand make an effort to invoke parts of the General Elections Laws to suit his purpose. Specifically, the attempt to apply a statute of limitation from the General Elections Law to stifle Mr. Gaskill's challenge. This is a clear case of "making the rules as the game progresses." This clearly indicates the dangers and inherent unfairness of any contest which proceeds without rules.

Two other findings of *Dorrol* have direct bearing on this case. (1) The Court held that candidates could not serve as members of the Elections Board, *id.*, and (2) candidates could not be present within sight of the poll. The facts presented in this case confirm that both (1) and (2) above were violated in the Granville elections. It is not necessary to examine their effect on the outcome of the election, that the violations did occur is assumed conclusively in law to have been harmful.

* * *

It is ordered that (1) Defendant Granville Residence College Elections Board is hereby ordered to conduct new elections in the race in question, *viz*. the contest for the Governorship of the Granville Residence College. (2) Defendant Granville Residence College Elections Board shall conduct said new election no later than fourteen (14) calendar days following the commencement of Fall 1974 Semester, such election to be conducted in accordance with the provisions of this order. (3) Defendant shall post copies of this order in no fewer than ten (10) prominent places within the Residence College and shall post therewith a resolution of the Elections Board stating the date on which such election shall be conduct d, the location of the polling place(s), and the hours during which the polls shall be open. (4) Defendant shall provide such polling place with all materials required to conduct such new election, including an adequate number of ballots therefore.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1975

ALVIA GASKILL, JR., PLAINTIFF *v.* GRANVILLE RESIDENCE COLLEGE

JUDGEMENT OF CONTEMPT

No. 75–003. COC. Argued September 29, 1974–Decided October 2, 1974

On September 26, 1974, CHIEF JUSTICE HANCOCK entered an Order for the Court in this Case holding the Granville Residence College (GRC) in Contempt of the Student Supreme Court pursuant to § 27 of the Supreme Court Act of 1968. The order suspended GRC from the Residence Hall Association (RHA) for a period of twenty days or until GRC purged itself of contempt. GRC was ordered to be purged of all benefits of RHA membership during this time. GRC submitted a petition to vacate the Order in accordance with the principle of representation by the RHA, the RHA Constitution, and the UNC Student Constitution.

Held: The order is vacated and the Granville Senate is instead held in contempt.

As a practical matter, given that the GRC is practically incapable of its theoretical reach over the Granville Senate. The GRC is not, therefore, strictly responsible for the acts of the Granville Senate. Holding GRC in contempt is therefore unduly harsh. The Granville Senate, through its refusal to permit the Court ordered election is held in contempt.

No. 75–002 vacated. Contempt Order issued.

FORD, E.J. delivered the opinion of the Court in which HUGHSTON, J. and BEAM, E.J. joined. HANCOCK, C.J. participated in this case but abstained from the determination of this case.

EMERGENCY JUSTICE FORD delivered the opinion of the Court.

Petitioner brought this action to vacate a contempt order issued against Granville Residence College (hereinafter also "GRC") for failure to comply with the order of this court in *Gaskill* v. *Wrenn*, No. 74–007 S.S.C. (1974), whereby the defendant in that election was ordered pursuant to the decision of this Court to hold another election for the office of Governor of GRC. Petitioner urges in ¶ 1 of his petition that GRC was improperly brought into this suit. The Court does not agree. To so hold would

be to allow the circumvention of the order of this Court through the refusal of the GRC through its agent the Granville Senate to appoint an Elections Board as is the duty of that body. The effect of this would be a denial of the rights of the plaintiff in the original action and it is the position of this Court that its actions were taken to ensure that the rights of said plaintiff are enforced. As it is the duty of the Granville Senate to appoint an elections board which is a necessary prior step to the enforcement of the judgement of the Court, that body in refusing to carry out its duties has acted to prevent the enforcement of the order of this Court and therefore *we find that said body is in contempt of this Court.*

The theory upon which a representative government is founded is that the governing agencies in the exercise of their powers act with the consent of the governed; in this case the GRC. In theory, therefore, the Granville Senate acted with the consent of the GRC and therefore that body, in theory, is in contempt of this Court. The Court however, is not unaware of the fact that as a practical matter, the GRC does not exercise the control over the Granville Senate which it theoretically should. In view of this fact, the Court is of the opinion that it would be unduly harsh to hold the GRC strictly responsible for the acts of the Granville Senate.

In view of its holding with regard to Point 1 of the petition, the Court upon reconsidering its actions feels that the holding of the GRC in contempt is unduly harsh. Therefore, *the order citing the GRC is vacated.* In view of this holding, the Court does not feel it necessary to address Points 2–4 of the petition. The action of this Court in vacating its order in No. 75–002 is not to be construed as acceptance by this Court of the proposition set forth in points 2–4 of the petition; nor is it to be construed as a rejection of them.

* * *

As this Court has vacated its original contempt citation in this matter, the Court now issues a new order in this matter in which it holds: (1) That the Granville Senate, by its refusal to take steps which would allow the election ordered by this Court, is to be found in contempt of this Court. (2) The office of governor of GRC which was ordered to be filled by the election ordered by this Court, and such election not having been held is declared to be vacant and may not be filled by any method other than the election which has been ordered by this Court. Anyone claiming to exercise the powers of the office of Governor of GRC does so without legitimate authority and any action taken in exercise of the powers of that office by such persons are illegal and of no consequence. (3) That a letter will be sent by this Court to the

Chancellor of the University advising him of the refusal of the Granville Senate as agent of GRC to comply with the lawful authority of the Student Government of this University, and requesting that said Residence College's status as university approved housing be reviewed in light of this refusal.

It is so ordered.

Syllabus

IN RE A BILL TO ENACT A GENERAL ELECTIONS LAW, SECTION 13(C)(4)

PETITION FOR CLARIFICATION

No. 75–006 Advisory Heard and Decided February 27, 1975

Petitioner Richard B. Bryant, Jr., Chairman of the Elections Board, petitioned this Court for clarification of § 13(C)(4) of the General Elections Law.

Held: The Court yields interpretation to the individual judgement of the Elections Board Chairman and his Staff.

Dismissed.

HUGHSTON, J. delivered the opinion of a unanimous Court.

JUSTICE HUGHSTON delivered the opinion of the Court.

On this day, the 27th of February, 1975, the Student Supreme Court heard the petition for clarification of Section 13(C)(4) of the General Elections Law. It was heard that this section is vague on the issue of the date of run-off elections. This particular question is based on the statement that follows:

> any run off [sic] elections shall occur on the second Wednesday after the initial election except where this should fall during a vacation or examination period, in which case it shall occur on the next Wednesday of a full week of classes after the scheduled date.

It is the opinion of the Court that: (1) that whereas this point in question was carried over from past Elections Laws, and has never been questioned as to meaning, and therefore the present Law carries traditional interpretation, and (2) that traditional interpretation takes into account conduction of elections with the minimum of delay, and (3) the law states is vague, and the explicit meaning of the law unclear, that we therefore yield any interpretation of point in question to the individual judgment of the Chairman of the Elections Board and his staff members.

So ordered.

Syllabus

TIM DUGAN, ET AL., PLAINTIFFS *v.* RICHARD BRYANT, CHAIRMAN OF THE ELECTIONS BOARD, ET AL.

ORIGINAL

No. 75–007 Orig. Decided March 15, 1975

A campus-wide election was conducted on February 26, 1975 to elect the next Student Body President and other officials. Bill Bates (Defendant) received 1,436 votes and the second-place finisher; Jamie Ellis (Defendant) received 1,170. Plaintiffs Dugan, Askew, and Edwards received 1,149, 482, and 168 votes respectively. Plaintiffs brought this action pursuant to the proximity of votes received by the Principal Plaintiff, Mr. Dugan, and the second-place-finisher, Ellis. The Court summarily entered a temporary restraining order enjoining the Elections Board from conducting a runoff election. Plaintiffs alleged certain irregularities designed to benefit Mr. Bates.

BR–54–29 requires that campaign spending must be kept within limits for certain offices. At issue in this case was an endorsement by the *Avery Advocate*, a "publication" of the Avery Dorm supporting Bill Bates for Student Body President. Plaintiffs allege that the endorsement was designed to disproportionately favor Defendant Bates.

Held: while Plaintiffs have certainly suffered substantial injury, that the injury was not caused by misinformation is enough to determine that the *Advocate* did not act fraudulently. The jurisdictional issue shall be dealt with separately.

(1) This Court will not interfere in editorial decisions of campus newspapers. No misinformation was printed by the *Advocate* and no actual malice was proven. This Court is not in the business of regulating morality. The *Advocate* did not act *in fraudem legis*.

(2) The Court must determine how far to apply RR–54–29 given that the letter seems to have taken it into conflict with the principles of free speech and a free and independent press. We cannot regulate mere endorsements of candidates, nor the means used by a publication to express those endorsement absent misinformation, fraud, or malice. Moreover, the decision to grant relief may only be granted in accordance with the *Dorrol* and *Levy* standards. *See Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969); *Levy* v. *Ruffin*, No. 70–001 S.S.C. (1970).

Relief denied and judgement entered for Defendants.

HANCOCK, C.J. delivered the opinion of the Court in which HUGHSTON, HARRINGTON, JJ, and FORD, E.J., sitting by designation, joined. PONDER and CARPENTER, JJ. took no part in the argument or consideration of this case.

CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

On February 26, 1975 a campus wide election was held for the purpose, *inter alia*, of electing a President of the Student Body and other lesser officials. Of the top six contenders in the Presidential race, the results were as follows:

CANDIDATE	VOTES
Bill Bates	1,436
Jamie Ellis	1,170
Tim Dugan	1,149
Joe Knight	794
Jerry Askew	482
Keith Edwards	168

The issue in this matter was a result of the proximity of the number of votes received by the principal plaintiff, Tim Dugan and the second-place finisher, Jamie Ellis. As a result of what Plaintiffs considered to be irregularities which directly benefitted the defendant, Mr. Bates, the instant suit was brought. On the strength of the Plaintiffs' verified complaint, this Court issued a temporary order restraining lections Board Chairman Bryant from conducting a run-off until this matter was disposed of.

RR–54–29, a campaign spending act, requires that not only all actual campaign expenses must be kept within certain limits for various offices, but also that all gratuitous services and contributions must be reported in compliance with methods set out in RR–52–29. At issue here is an endorsement by the *Avery Advocate* (hereinafter also "*Advocate*"), a "publication" of Avery Dorm supporting Bill Bates for resident of the Student Body. For simplification of this matter, the Court will address itself to the following issues: (I) legitimate publications and (II) the scope of RR–54–29.

I

Editorial endorsements by the *Daily Tar Heel* have not been questioned under RR–54–29 and rightly so. The *Tar Heel* is supported by student fees collected from all students and is regulated by the Student Constitution, student laws, and the Publications Board. The *Tar Heel* is an established publication and enjoys all of the freedom which its tradition and journalistic responsibility have earned it. This is not intended to suggest that publications must earn their freedoms, but rather that they have a responsibility to exercise their freedom in a responsible and impartial manner.

Mr. Dugan suggests in his complaint that candidates and their staffs can use publications as a means of furthering campaigns with all expenses accruing to the sponsors of said publications. The Court concedes that this is a very real possibility, however, in the University Community, we would like to think that the possibility would be remote.

Past records of the activities of the *Avery Advocate* along with sworn affidavits presented to the Court and entered as evidence are sufficient to establish that the *Advocate* has been an established "publication" for at least two-years and that it has in the past on at least one occasion endorsed candidates for campus office. In the opinion of this Court, the *Advocate* is a *bona fide* campus publication in a broad interpretation of what should constitute the same. As such, the *Advocate* enjoys all of the rights and privileges of publications on this campus, including the right to

endorse candidates in an impartial fashion. Similarly, the *Advocate* has responsibility to exercise its rights and privileges in a reasonably objective and conscientious manner.

The complaint in regard to the *Advocate* has much merit. The fact that the usual number of copies printed for each edition of the paper runs around 160 and that the edition in question exceeds 2,000 leads the Court to wonder what the motives of the *Advocate* were; to influence the campus vote? Or, as Mr. Dugan suggested, to further the campaign of Bill Bates? We need not be concerned inasmuch as Mr. Bates has testified that he had no part in the planning of the endorsement nor unduly coerced other to do so.

As long as the residents of Avery Dorm are satisfied to have their social fees spent on campus-wide circulation of their paper, we need not be concerned. We can only commend their generosity and trust that readers who choose to read the *Advocate* will determine the intent of the editors and writers and judge the paper for what it is.

This Court will refrain from interfering with the editorial policy of campus papers. We can only suggest that editorials which endorse candidates should not be published on the night before elections when there is no opportun-ity for rebuttal, candidates to defend themselves against unfair comments, or errors to be corrected. There can be little doubt that had the *Advocate* printed down-right lies and misinformation that a plaintiff who suffered because of such misinformation and lies would be entitled to some form of relief for any damage suffered. Such is not the case here No misinformation has been alleged, although the reporting and editorials reek of favoritism and extreme slanting.

The idea of a conspiracy to use the *Advocate* by Mr. Dugan is not unfounded. It seems logical that Mr. Dugan would become suspicious at the presence of Bates campaign workers on the staff of the *Advocate*, especially when some of the persons involved were not even residents of Avery Dorm. While the action of these person(s) is morally questionable, we cannot attempt to regulate the morals of misguided students or determine who may participate on a campus publication staff. Here again, the Court can only suggest that in the future, members of the staffs of all publications will recognize conflicts of interest and voluntarily step aside, recognizing their responsibility as members of the press to function in an objective, professional fashion.

The often-confusing testimony by the editor of the *Advocate*, Kelley Summey, certainly did not leave the Court with the impression that he current staff of the Advocate operates in a professional, conscientious fashion. While the plaintiff, Mr. Dugan presented sufficient evidence to make it clear that the motives and methods of endorsing candidates by the *Advocate* was

somewhat less than purely objective, he has failed to show that they acted *in fraudem legis* although many may have good reason to believe otherwise.

II

It is logical to conclude that anyone who is endorsed by any publication on campus receives some gratuitous benefit from such endorsement (although in many cases, quite the opposite can be true as endorsements in the eyes of many by certain publications can be tantamount to the "kiss of death."). The question here is how far should RR–54–29 be enforced? If each candidate who received endorsement by a campus publication were forced to report its cost as a campaign expense, any endorsement would in fact be the "kiss of death." If the intent of the legislature had been to include endorsements by papers as a campaign expense, it would amount to an attempt to restrict publications from endorsing candidates of their choice for fear of disqualifying them. The right to endorse candidates is a legitimate function of *bona fide* campus publications.

While this Court cannot purport to know the intent of the legislature in regard to RR–54–29, it must be out position to waive enforcement of this act to the letter because of the obvious impairments which would accrue to campus publication and the tradition of free press on this campus.

* * *

The relief requested by the plaintiffs cannot be granted in this case. Aside from the fact that this Court declines to interfere with the editorial matters of publications, we must remember that the decision to grant relief must be considered only after the requirements have been met according to *Dorrol* v. *Oliver*, No. 69–002 S.S.C. (1969), as reported in the decision of *Levy* v. *Ruffin*, No. 70–001 S.S.C. (1970). Judgement is entered for the Defendants.

It is so ordered.

WILLIAM "BILL" BATES III, PRESIDENT OF THE STUDENT BODY, PETITIONER, ET AL. *v.* DAN BESSE, SPEAKER OF THE CAMPUS GOVERNING COUNCIL

ADVISORY OPINION

No. 75–009. Advisory. Decided April 27, 1975

Petitioners seek to establish whether or not the Constitutional requirement of a 2/3 majority in the Campus Governing Council. (CGC) refers to 2/3 of the total membership or 2/3 of present members sufficient to establish a quorum.

Held: Absent reference to the "entire" membership, 2/3 should be construed as 2/3 of members necessary to otherwise conduct business.

PONDER, CARPENTER, and HARRINGTON, JJ. absent from argument and deliberation. Cohen and Pits, EJJ. sitting by designation.

PER CURIAM.

Judgement is entered for the petitioners. This is an action brought by the plaintiffs who seek to establish the meaning of a 2/3 majority as required by the Student Constitution for the approval of certain presidential nominations before the Campus Governing Council, (hereinafter also "CGC"). The issue at contest here is whether the 2/3 majority required under the Student Constitution means: (1) 2/3 of the total membership of the CGC or; (2) 2/3 of those present when there are a sufficient number to constitute a quorum.

* * *

The Court holds that in the absence of specific reference to 2/3 of the "entire" membership, the definition should be construed in the normal sense to mean 2/3 of a sufficient number of CGC members to otherwise conduct business. Because of the political nature of this action and the loathness of the Court to enter the arena when political questions are involved, the opinion will cease here. The ruling herein is sufficient to settle the question raised.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1976

GEORGE BASCO, PLAINTIFF, ET AL. *v.* DAN BEESE, SPEAKER OF THE CAMPUS GOVERNING COUNCIL, ET AL.

ORIGINAL

No. 76–001 Orig. Decided September 26, 1975

On September 16, 1975, the Campus Governing Council (CGC) passed Bill RA–57–74, C.G.C. ("the Bill"), establishing bylaws for the UNC Media Board. Plaintiffs, members of that Board, filed suit alleging that the Bill unconstitutionally usurped their existing bylaws without their consent. *See* Student Const. art. IV, § 2. This Court was called to decide whether or not the Bill or the previous bylaws (BR–56–134, C.G.C. (1974)) now binds the UNC Media Board. A temporary restraining order (T.R.O.) was entered by the Court prior to argument.

Held: RA–57–74 unconstitutionally usurped the UNC Media Board's authority, and the Board remains bound only to BR–56–134, C.G.C.

(1) Judgement is entered for the Plaintiffs. The Media Board did not "approve" the Bill, *i.e.*, its new bylaws in violation of Article IV, Section 2 of the Student Constitution. *See also Id.* art. I, §§ 5,12.

(2) The Court also considered the important interest of sheltering the media from the Legislature in deciding this case. *Cf. Id.* art. I, § 4(d) (granting the *Daily Tar Heel* editor explicit immunities).

RA–57–74 null and void. T.R.O. dissolved.

HANCOCK, C.J. delivered the opinion for a unanimous court.

CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

The facts in this case are substantially as follows: On September 16, 1975, the Campus Governing Council (hereinafter also "CGC") passed a bill (#RA–57–74) establishing by-laws for the UNC Media Board. In regard to said bill, Plaintiffs alleged that the bill was invalid, null, and void for several reasons chief among which were that the Media Board already had a set of by-laws and that even disregarding this fact, the new law could not stand because of constitutional flaws in the manner in which it was enacted. In support of their constitutional argument, Plaintiffs rely on Article IV, Section 2 of the UNC Constitution which states as

follows: "The Media Board shall have the power to supervise financial administration of all student media financed under the authority of the Campus Governing Council, subject to the limitations in the by-laws of the Media Board which the Council shall *approve*." (emphasis added). To support their contention that by-laws were in existence, Plaintiffs produced a copy of the bill and through witnesses and other evidence, showed to the satisfaction of the Court that the bill had passed and was in existence. *See* BR–56–134, C.G.C. (passed December 2, 1974).

The issue before this Court is whether the more recent enactment, RA–57–74, *supra*., or the previous set of by-laws, BR–56–134, *supra*., shall be in effect and binding.

Defendants assert that the more recent enactment of by-laws for the Media Board supersede the previous by-laws. Their contention rests on a liberal interpretation of Article IV, Section 2 of the Student Constitution. Specifically, Defendants contend that the power of the CGC to "approve" the Media Board's by-laws is sufficiently broad to allow the CGC to also draft the same. In order to ascertain the intent of the framers of the Student Constitution, it is helpful to examine the document in other areas where the word "approve" is used. In Article I, Section 5, the Constitution reads: "The council shall have the power to: (C) Approve or reject all appointments made by the President. . ." Under the same Article at Section 12 the Constitution reads: "The by-laws of all organizations receiving funds from the Campus Governing Council shall be subject to review and approval by the Campus Governing Council yearly." If the contentions of the Defendants are upheld, we might well assume that the CGC of its own initiative could appoint the Student Body Treasurer, Attorney General, or any other official which required their "approval." Likewise, they could write the by-laws of the BSM, N.C. Student Legislature, Campus Gay Association, or any other group which received student funds, becoming for all intent and functional purpose those organizations.

The power to "approve" throughout the Constitution is intended to give the legislative branch of Student Government a check on organizations which function through its benevolence. The very nature of specialized organizations such the Media Board require that they be allowed to use their expertise to draft by-laws to suit their special needs.

The function of the Media Board and its scheme in the Constitution lend further support to their right to propose their own by-laws. As the organization with sole power to supervise the finances of all campus publications, it is apparent that the framers intended to create a buffer to insulate the media organizations from the direct influence of the political pressures which the Legislature could bring to bear.

The idea of insulating the media from the control of the legislature and political forces is seen in the explicit immunity which the Constitution gives to the Editor of the *Daily Tar Heel* under Article I, Section 4(d).

Both the Campus Governing Council and the Media Board are creatures of the Student Constitution. The CGC enjoys a position superior to that of the Media Board as evidenced by its discretion to allocate funds to the various media organizations and power to ratify their by-laws. Approval by the CGC must be limited to ratification of by-laws which the Media Board Presents.

It seems clear that from the evidence produced before this Court that the Media Board by-laws passed on September 16, 1975 were not the product of the Media Board, nor submitted by them for approval and are therefore fatally defective under the Student Constitution.

* * *

Judgement is entered for the Plaintiffs and the following relief granted: (1) the by-laws established under RA–57–74 are hereby declared null and void; (2) the by-laws established under BR–56–134 as introduced before this Court are declared to be the actual and true by-laws of the Media Board; (3) the Temporary Restraining Order issued in this matter is dissolved.

It is so ordered.

Syllabus

MICHAEL E. O'NEAL, PLAINTIFF *v.* WILLIAM "BILL" BATES III, STUDENT BODY PRESIDENT

ORIGINAL

No. 76–005 Orig. Argued October 9, 1975–Decided October 15, 1975

On September 30, President Bates signed an Executive Dismissal Order to remove Michael O'Neal from the position of Treasurer after O'Neal refused an informal request to resign the petition. President Bates requested O'Neal's resignation, arguing that, "he has not been able to contain his talents to the treasurer's office," that Treasurer's office possessed too much authority, and that he intended to pursue legal action to remove O'Neal. *Bates says O'Neal overstepping powers*. The Daily Tar Heel. Sept. 29, 1975, at 2 (quoting Bates). President Bates used, as legal grounds for the firing, his simultaneous constitutional power to hire.

O'Neal filed suit in this Court seeking to enjoin and invalidate President Bates' Dismissal Order. O'Neal contends that he cannot be removed from his position short of impeachment proceedings, *i.e.*, that no removal power is inherent in the Office of the President of the Student Body. Moreover, O'Neal contends that there is no strict separation of powers in our constitutional schema—the President, for example, is a voting member of the Campus Governing Council (CGC). For his part, the President argued that the treasurer is an executive position over which the President commands authority.

Held: O'Neal must comply with the Dismissal Order as a valid act of executive authority.

(1) The Treasurer's constitutional position is insufficient to invoke impeachment under BR–51–63 (stating that dismissal of "Constitutional Officers" may only be achieved by impeachment), *infra*. at 141. While the Constitution provides for a treasurer, this is done both as a necessity and as an extension of broader executive authority under the office of the President. *See* Student Const. art. III, §§ 2(d), 5. Moreover, the Treasurer in the instant case is not charged with having committed an impeachable offense and therefore BR–51–63 is inapplicable.

(2) The Treasurer is an executive office for the purpose of dismissal. The Treasurer's role essentially implicates the administration of law. It cannot be that the Treasurer's approval by the CGC implicates inherently legislative duties. The mere fact of *operation* in multiple branches of government is insufficient to establish that a position *exercises power* in multiple branches. If the Court accepted Plaintiff's contentions, then the constitutional division of Article III would be reduced to nothing. So, while the Treasurer *operates* in both legislative and executive arenas, they derive *power* from the executive branch. Therefore, the executive branch is the "final authority" over the Office of Treasurer, *infra*. at 144.

(3) While the Constitution does not explicitly provide for a clear, synchronic process of removal, the Court infers that this process was intended to be similar to the process of appointment. Therefore, the initial authority of appointments resting with the Executive—specifically the President—the authority over dismissals. The supreme executive authority of the President cannot be divorced from that office wholesale as O'Neal's interpretation would require. The Treasurer must follow the commands of the President or be subject to removal.

Judgement entered for Defendant.

HUGHSTON, CARPENTER, HARINGTON, JJ. and HANCOCK, C.J. delivered the opinion of a unanimous Court.

JUSTICE CARPENTER, JUSTICE HARRINGTON, JUSTICE HUGHSTON, and CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

In this action, the Plaintiff attempts to invalidate the action of the student body president in removing the treasurer from office. This Action in the Supreme Court is perhaps the most controversial matter to be heard before this Court in its eight-year existence. The question of whether Plaintiff Michael E. O'Neal is Treasurer by authority of the Constitution after the request of his resignation by the Defendant E, William Bates III is such that it cannot be easily answered by a battery of lawyers and counsels, nor even of the Supreme Court for that matter.

Plaintiff contends that the defendant violated powers given him by the Student Constitution, and that he allegedly overstepped his authority as President of the student body and head of the Executive Branch of government when Defendant asked for his resignation as Treasurer of the same. Plaintiff goes on to ask this Court to legally confirm him as said Treasure and restrain the Defendant from "any action in derogation of Plaintiff Mike O'Neal [sic] duties and powers as Treasurer . . ."

Defendant answered that the Plaintiff was asked to resign in accordance with the authority granted him by the Student Constitution. He also stated, "That to grant Plaintiff's prayer for relief would unjustly hinder the future operation of the executive and legislative branches." It is not necessary to recite the facts leading up to the dismissal to render a decision. The case has received adequate (we might add exceptional) coverage from the reporters of the *Daily Tar Heel*, and most students interested in the history of the dispute are already well acquainted with the arguments.

After hearing arguments from both parties, the Supreme Court then retired to discuss the implications of the arguments and the Constitutionality of the actions and allegations of both sides. Due to an unforeseen mishap in communication of location and time of the case, one of the Justices of the five-man Court failed to appear at the presentation of arguments. In private sessions before the presentation, the Court decided that it would hear the case with the four remaining Justices, and waive the right to swear in an Associate Emergency Justice. This decision was done due to a number of factors all relating to the severity of the matter at hand. The implications of this decision, the worst being the possibility of a two-two split of the Court, became readily apparent to the Justices in their deliberations, and therefore they decided upon the following course of actions. Due to the immense Constitutional considerations involved in this interpretation, and due to its importance in the future of not only the two

parties represented in this Action, but also in the future of the financial obligations and responsibilities of the Legislative and Executive Branches of Student Government, this Court determined that in the best interest of all involved that it should make a unified decision, fully endorsed and supported by each Justice.

Such an action by the Court implies a number of things. First it shows the serious nature in which the case was handled; an effort was made throughout the week end to secure all relevant facts pertaining to the case and consider each argument made by both parties. A case that has stymied student government for almost two months cannot be tossed out with a decision in one or two days. Secondly, it shows the efforts of this Court to present an interpretation of the matter at hand and the Student Constitution that we all agree on (whether in precisely the same manner or not). Lastly, it prevented the possibility of a two-two decision and resulting stalemate.

In listening to the case, and in making this decision, the Court wishes to express the fact that this decision is not a reflection on "who we think is right." It is obvious that in a sense, both parties are right, at least, each party acted under the assumption that each was correct. And, as any observer can see, each of the parties thought they had strong Constitutional sanction for their actions. This statement should be carefully noted. From the counsels of both the plaintiff and the defendant, strong Constitutional arguments were delivered, both sides showed understanding of the issues and definite, legitimate backing for the actions and complaints of the President and the Treasurer in question. The question of "who is right" is indeed a question shrouded in mystery. Plaintiff O'Neil has done no Constitutional wrong. He has abided by, and adhered to a strict set of Campus Governing Council and Constitutional regulations. In no way has he maliced the office of Treasurer nor com-mitted any overt act to disregard or renege on his responsibilities. Indeed, he has satisfied all that, was required of him—and more. But what happens when the Treasurer, though doing no Constitutional wrong, is no longer wanted to fill the position that he was appointed and confirmed to fill? Had he maliced the office; had he embezzled funds, or misrepresented the wishes and appropriations of the Campus Governing Council, the Constitution is clear and. specific as to the recourse that the Legislative branch or the President might have. Section 9, Article III, states, "A bill of Impeachment shall allege specifically by what acts, upon what dates, and in what manner the Officer shall have failed to perform the duties of his office as prescribed by the Constitution of the Student Body and the laws enacted thereunder . . ." Plaintiff did nothing that merits this course of action. If he had, this Case would not be heard in the Court but in the Legislature and indirectly by the people of

the University of North Carolina themselves. No, impeachment is not the case here. The Plaintiff attacks the actions of the President first by suggesting that he cannot be removed short of impeachment. Is there any other method of recourse available? We need not consider whether the impeachment and removal power of the legislature extend to the treasurer, but rather if there is a removal power inherent in the office of the President extending to the appointive offices of the Executive branch.

During the first years of this decade, conflicts and tempers abounded in the Student Government branches. No one can say that disagreements and conflict do not exist in the government structure today as well. The difference lies in the fact that at that time, the Constitution did not provide a clear impeachment act. It was the result of a particular impeachment trial, that of Chairman Joe Beard, that led to the making of the current Impeachment Act BR–51–63.

Thus, the Court lays aside one of the arguments presented. by the Plaintiff, and that is the fact that this Case is not a case of the meaning of Constitutional Impeachment. We need to first exhaust the remedies given us by the Constitution before any interpretation ls required or given. A strict reading of BR–51–63 implies that the only mention for the removal of Constitutional Officers is by Impeachment, and not, it can be implied, left to the discretion of the President, or any one officer. If this be the case, and if it can be proven that the office of Treasurer is, in fact, a Constitutional office, then, judgement would go to the Plaintiff, and the matter be taken up by the Campus Governing Council under Rules for Impeachment. Let us review this action further.

The Plaintiff attacks the actions of the president first by suggesting that in the constitutional system of government at the University of North Carolina at Chapel Hill, there does not exist a strict separation of powers. To support this proposition, the Plaintiff portrays a degree of integration between the executive and legislative branches. Specifically, they show that the President of the Student Body sits on the Campus Governing Council and may exercise a vote, seeming to suggest that his duties as a legislator are primary and his duties as executive secondary. If this were so, there would not be any basis for the inherent power of the President to command those in the executive branch.

This line of reasoning fails to recognize that the President is a member of the CGC by virtue of the fact that he is President of the Student Body, and not vice-versa. His situation is not that of the Vice-President. The Vice-President seems to have dual-functions in both the executive and legislative branches of the government. Plaintiff argues that the dual-tendency of the Vice President serves to show that the branches interact and are more cohesive than the familiar three-branch system. Examination of

the position of the Vice President reveals that the position is not quite so cohesive as the Plaintiff wants us to believe. The Vice President is member of both branches in name and function only; not in actual realized power. His only power in the Executive branch comes if he were to succeed the President. Indeed, we agree with Plaintiff that the office has the ability to operate in both branches, but the Constitution sets up his office so that he can *exercise power* in only one branch or another; never the two concurrently. The analogy fails, or at least it is weak. On the other hand, even if we assume that the Vice-President is indeed, as the Plaintiff contends, a party in both branches, the President is elected by the entire student body, and is responsible directly to the elector-ate. As such he is charged by the Constitution with the "executive power" of the Student Government. This executive power is not shared with any other branch. It rests solely with the President. Is the constitutional division under Article III known as the "Executive Branch" a mere puff? This Court is not persuaded to the argument of the Plaintiff that the structure of the student government is as autonomous as he suggests. Indeed, there is some overlapping, but the system is basically a three-branch system despite the claims to the contrary. The question remains, then: "Under what branch, if any, does the Treasurer belong?"

It is true that the office of Treasurer is a powerful office on the campus. It could be argued, we feel, that the Office entails just as much responsibility as the other Constitutionally-established offices such as the President and the Speaker, even though it is technically (and constitutionally) an Office contained within the structure of the Executive Branch of Student Government (that shall be explained further). Because of this power and responsibility, however, the framers of the Constitution felt it necessary to include the Office of Treasurer in their document. It was simply too important to be excluded. Although the action of procuring a Treasurer is begun by the President, it is finalized by the ratification of the Campus Governing Council. Unlike any of the other Executive positions in Student Government, the Campus Governing Council has a particularly acute, vested interest in the Office of the Treasurer in that "The Treasurer of the Student Body shall disburse all monies appropriated by the Student Legislature." Student Const. Article III, § 5. Therefore, it is not unusual to find that the framers specifically required the approval of both the President and the Campus Governing Council. The problem that the framers left inherent in their decision is the fact that the Office of the Treasurer is *purposedly* rooted in both the Executive and the Legislative Branches.

In the action before this Court, the question is raised, "Who holds final authority over the Office of the Treasurer?" The

President feels that he does in that he selected the Treasurer in the first place, and the Campus Governing Council is justified in thinking that the Treasurer-appointed is not officially Treasurer until they ratify the decision by a two-thirds majority vote. The obvious fact appears that it takes both, according to the Constitution, to fill the Office of Treasurer. Because both approving actions are needed, one in each branch of Government, the answer to the question, "Who holds final authority" cannot be answered synchronically. We cannot ignore the historical progression leading to the approval of the Treasurer. In the synchronic sense, both share authority, and one office could not therefore remove the Treasurer (except by impeachment) without the approval of the opposite branch. Synchronically, it takes both branches to approve the Treasurer, and by logical inference it would therefore take both branches to approve the dismissal of the same. But the framers of the Constitution did not provide such an arrangement for specific removal of an officer unless by impeachment, and (as we shall see later) the Treasurer is indeed a part of the Executive Branch and derives its power from that branch, leading this Court to believe that the question of "final authority" is taken care of by the Constitution, although not explicitly stated.

Since the framers seem to have purposedly joined the Legislative and Executive branches together through the Office of the Treasurer, this Court then had to look for ways in which the Treasurer could be separated from either of the two branches. We have seen that viewed synchronically, the Office seems to lie in both branches, needing both of their respective authorization to remove the Officer in question. The obvious difference occurs in the chronological sequence of the selection of the Treasurer, and this Court feels that the framers of the Constitution had this in mind when writing the document. Viewed chronologically, the question of final authority over the Treasurer is an "open and shut" case. With the placement of the Office of Treasurer in the Executive branch, and it seeming that he has responsibilities and powers from both those branches, the framer must have viewed the Office from a chronological stand-point.

This is indeed a difficult conception to grasp, and this Court has struggled for days on the best way to make the distinction. Where the Campus Governing Council ratifies the appointment of the Treasurer, the first movement toward filling the position is taken by the President of the Executive branch. There would be no Treasurer to ratify should the President decide not to appoint someone to the office. In the chronological sense, the Executive Branch has the first authority to begin the process. It is a weakness of the Constitution that it does not provide a clear process whereby the process of removal is carried either synchronically or chronologically similar to the process of filling the

position. We can assume, however, that the process of removal of an officer was intended to be similar to the process of filling the office in the first place. In this case, a chronological appointment can be reversed by a chronological removal. This Court cannot "duck the question" even though a specific process is not delineated.

We have now established that, according to the chronological movement of filling the Office of Treasurer, the initial authority over the Office is vested in the Executive branch. This must be the thinking of the framers of the Constitution in that they are very specific in stating that the Office is contained within the Executive branch. Article III, Section 1 reads, "The executive power shall be vested in a President of the Student Body, who shall have the assistance of a Vice-President, A Secretary, and a Treasurer of the Student Body." This theme is again repeated in BJ–44–1: "A Department of the Treasury is hereby established under the Executive Branch of Student Government. . ." However, the question of "final" authority still looms at large.

Before addressing ourselves specifically to that question, let us look again at the Constitutional stance toward the Office of the Treasurer. The very ambiguity of the Office is clearly seen in Article III of the Constitution. Requoting again Section 1 of that article entitled "Executive Power Vested in President": "The executive power shall be vested in a President of the Student Body, who shall have the assistance of a Vice-President, a Secretary, and a Treasurer of the Student Body." The key word in this sentence is the word "assistance." This Court does not believe that the intention of the utilization of this particular word can be misconstrued. Assistance, or "the act of assisting of the aid supplied," is a derivation of the word assist, meaning "to give support or aid, HELP." Complete authority is not given to the assistant. It is the function of the Treasurer to *help* the President, not rule him or in any way govern him, in the context of the Executive branch.

In that same Article, Section 5, the Constitution states, "The Treasurer of the Student Body shall disburse all monies appropriated by the Student Legislature." Here, quite clearly, authority is in the Campus Governing Council. In a situation of appropriation of funds, the Treasurer is bound by the Constitution to appropriate according to the wishes of the Legislative branch—in this the President has no say, despite his personal financial objectives and wishes—he cannot disregard the Campus Governing Council.

Thus, the allegiance of the Treasurer lies in both branches as delegated by the Constitution in the very same article. The Court cannot pretend that no disparity and confusion exist and recommends that the Legislative Body of this University look toward

its correction. Where the Plaintiff based his arguments on the latter, the Defendant pointed to the former. Who is correct? They both point to perfectly legitimate origins of authority. The Court wishes both parties to pay particular attention to the titles of the different sections of that article, The first section is entitled "Executive Power Vested in President," and the second "Powers of the Treasurer." There can be no doubt that the framers intended that the Office of the Treasurer is located within the structure of the Executive branch, although they also recognize that the Treasurer has specific functions and responsibilities toward the Legislature. In Article III, the position of the Treasurer is clearly defined as an "assistant" position and although its power tenacles reach beyond the confines of the Executive branch, its own power is chronologically and constitutionally derived from the Office of the President. Its power and authority to function comes from within the structure of the Executive branch, and it is from this initial authority that the Treasurer is authorized to function in the Legislative branch as well.

Under Article III, Section 2(d) of the Constitution, the President is charged with the responsibility "to enforce and administer laws enacted by the Campus Governing Council." It is clear that the primary responsibility for carrying out the laws of the Legislature is given to the President. To assist the President, the Constitution supplies the Treasurer and the Secretary. The powers of the treasurer as listed under Article III, Section 5 are quite simple. An appropriation by the Campus Governing Council is a law enacted by the same body. As a law, its enforcement lies with the President, the treasurer is provided to assist him. The Treasurer is the agent of the President—of that there is no question. As such, he is responsible to the President whose responsibility is to see that the law is carried out. In all matters of administration of laws, the President is Paramount. Plaintiffs alluded to certain bills and enactments of the Legislature which vest certain authority to the Treasurer. It must be clear that the Constitutional power given to the President cannot be taken from him and transferred to another officer by a mere legislative enactment. If such were the case, we would have no need for a constitution. The Treasurer must follow the commands of the President or be subject to removal. Plaintiff also points out that the Campus Governing Council has enacted laws that govern the removal of other Executive offices, but these bills are of no consequence as the Campus Governing Council cannot confer or limit an inherent power. Such bills cannot implicitly limit the removal power of the President with respect to the other officers. Having reached this point, we must consider what forms of removal are available to the President.

The Treasurer has not been charged with any offense which requires a trial or determination of guilt by the legislature, and therefore the Campus Governing Council cannot consider Impeachment, not can the President have recourse in impeachment where no specific wrongdoing is concerned. The President must have some other form of remedy when his is hampered from administering the duties charged to him when his subordinates choose to ignore him. The reasons for the exercise of this power are of no concern to this Court or to the Campus Governing Council.

By the "chronological argument" before described, the President must have the authority to remove any "assistant" who becomes an obstacle to his ability to perform his constitutional function. Plaintiff argues that a constitutional officer approved by two-thirds of the Legislature requires that the Legislature also approve his dismissal. This contention would be true if the Treasurer had any form of primary responsibility to the Campus Governing Council but his only responsibilities are to the President, according to the Constitution as to where his (the Treasurer's) power derives. The provision requiring legislative approvals for appointees such as the treasurer merely prevent the President from providing an officer who the legislature feels is not qualified. The Constitutional provision for a Treasurer other than creating an office independent of the President's Executive branch seems to be a guarantee to the President that he shall have such assistance. The legislature will still exercise this prerogative when the President appoints replacements for those he dismisses. The President does not need the concurrence of the Legislature nor of this Court to perform his duties.

The position of the Constitution is somewhat vague, but present nonetheless: the office of the Treasurer is contained within the structure of the Executive Branch; the head of the Executive Branch gives the Office of the Treasurer the power and authority to function within the Legislative branch; and chronologically it is the President who initiates the placement of an official in the Treasurer's office. What this Court has established is the power structure of the Executive branch and the source of power given to the Office of the Treasurer. It has also taken the stand that the power to dismiss is separate and distinct from the power to impeach, and has supported this distinction from the Constitution. Impeachment deals with crimes committed against the Office; dismissment deals with any variety of reasons, but whatever they happen to be, the ability to dismiss is derived from the power structure of the Executive branch as delineated by the Constitution.

The Court has not attempted to base this interpretation on the popular phrase that the "power to hire is the power to fire." This

simply is not the case, although pragmatically considered the result is the same. Instead, this power is enjoined by the Constitution to the Executive Branch and thereby the President of the Student Body.

* * *

Be it therefore ruled by this Supreme Court that the prayers of the Plaintiff are denied, and that Plaintiff Michael E. O'Neal obey the Executive Dismissal Order dated effective September 30, 1975.

It is so ordered.

Syllabus

RICHARD E. BUTTNER, JR., PLAINTIFF, ET AL. *v.* THE CAMPUS GOVERNING COUNCIL, A.K.A. "CGC"

ORIGINAL

No. 76–007 Orig. Decided January 26, 1976

After the Campus Governing Council (CGC), Defendant, passed BRJ–57–155 (the Bill) establishing the office of a comptroller, it was vetoed by the President, and then overridden by the CGC. Plaintiffs (Richard Buttner Jr., Robert Loftin, and Barry Smith) then brough suit to void the Bill alleging it to be unconstitutional for both depriving the President of his executive duty to enforce the law through his desired appointed and due to infringement of the Treasurer's duty. The CGC stated that the Bill merely promulgated "legislative" powers, and therefore posed no such infringement.

Held: BRJ–57–155 unconstitutionally infringes the constitutional order of the separation of powers and delegation of authority.

Contrary to CGC's assertions, the 1975–1976 Fiscal Year Budget (BF–57–23) does not confer executive authority upon the Treasurer. Those powers are derived from Article III, Section 5 of the Constitution. Though the Budget may have conferred extra powers on the Treasurer, beyond the scope of Section 5, the apparent intention of the Bill to seize Executive power and the wholesale conflict in authority voids such a narrow reading. Furthermore, the proposed comptroller's duties under the Bill intersect on the constitutionally required duties of the Student Audit Board. *See* Student Const. art. IV, § 4. The absence of a severability clause further contributes to the defects.

BRJ–57–155 unconstitutional, null, void, and of no consequence.

HANCOCK, C.J. delivered the opinion of the Court in which PONDER, HUGHSTON, and HARRINGTON, JJ. join. CARPENTER, J. took no part in the consideration of this case.

CHIEF JUSTICE HANCOCK delivered the opinion of the Court.

Plaintiffs bring this suit to test the constitutionality of BRJ–57–155, "AN ACT TO ESTABLISH THE OFFICE OF STUDENT BODY COMPTROLLER" (hereinafter also "the Bill"). This much-discussed, highly-controversial bill was originally passed by the Campus Governance Council (hereinafter also "CGC"), vetoed by the President of the Student Body, and subsequently re-established by an override of the Presidential veto.

The positions of the parties here may be briefly summarized. Plaintiffs contend that BRJ–57–155 is unconstitutional in that it "(1) deprives the Student Body President of his executive duty to enforce and appoint those whom he desires in his place, laws enacted by the CGC; and (2) restricts the power of the Treasurer to carry out his constitutional duty to disperse monies."

Defendants counter with the contention that powers given to the comptroller by the Bill in question are those given to the Treasurer in BF–57–23, the Student Government Treasury Laws, and that those powers are legislative in nature, and they further contend that those legislative powers may be placed in any office by enactment of the legislature. As a "safety measure" to protect the powers of the Treasurer, the Bill contains in Article IV that the act shall "in no way abrogate the duties of the

Student Body Treasurer as outlined in the Student Body Constitution."

This action is the result of an attempt by the Legislature to change the Student Constitution through a mere legislative enactment and the failure of the legislature to comprehend the opinion of this Court in the much-celebrated case *O'Neal* v. *Bates*, No. 76–005 S.S.C. (1976). We find no merit in the contentions of the Defendant. BRJ–57–155 is fatally defective and must not be allowed to stand.

Defendant argues that the powers given to the comptroller are those which were given to the Treasurer by the Legislature. This is not entirely so. BF–57–23, the Student Government General Budget for the 1975–76 Fiscal Year, is a legislative enactment but does not generally confer upon the Treasurer the powers which he exercises. The powers of the Treasurer are derived from Article III, Section 5 of the Constitution. While it appears that the Treasurer may have been delegated some additional powers under BF–57–23 not concurrent with those given him by the constitution, it is beyond our province to attempt to separate those duties in an effort to salvage this ill-considered piece of legislation. The action of the Legislature here was a pure and simple attempt to transfer the Executive control of the Treasury to the Legislative branch.

There are other considerations which convince this Court that this Bill must fail. Article IV, Section 4 of the Constitution establishes the Student Audit Board. The bill in question clearly conflicts with the powers granted to the Student Audit Board to inspect the books of organizations receiving funds from the CGC and to supervise the Student Activities Fund Office. While Defendant agrees that powers of the comptroller would conflict with those of the Student Audit Board, they argue that those powers are not exclusive. We disagree. Nowhere in the Constitution where powers are delegated will the words "exclusive" be found, yet the very nature of the document implies that the powers delegated under it are exclusive. Will the legislature share its power to promulgate legislation with another branch? We think not.

Having found this piece of legislation constitutionally lacking in several aspects, we must now consider the absence of a severability clause. Defendant Steeleman testified that the absence is the result of an oversight. Since Mr. Steeleman is the co-author of the Bill, we will assume that this is so. Despite his testimony however, we cannot presume that the remainder of the CGC would have elected to add the clause. We therefore hold that the absence of a severability clause will cause the entire bill to fail. To hold otherwise would amount to a legislative act on the part of the Court. If the Legislature feels that there are any salvageable parts of this bill, they must rescue them without our aid.

* * *

Judgement is entered for the Plaintiffs. BRJ–57–155 is hereby declared unconstitutional, null, void and of no consequence whatever. The T.R.O. issued in this matter is made permanent.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

OCTOBER TERM, 1989

PETER HANCOCK, ET AL. *v.* U.N.C. ELECTIONS BOARD, ET AL.

ON CERTIORARI TO THE UNC BOARD OF ELECTIONS

No. 89–001 Argued February 16, 1989–Decided February 19, 1989

This case concerns the timeliness of petition-submission under IV S.G.C. § 2(A) (1988). Respondents Bobby Ferris and Greg Zeeman—candidates for Senior Class President and Vice President respectively—turned in their petition for the February 21st General Election at 6:30 p.m. on February 9, 1989. Elections Board Chairman Wilborn Robinson refused to place them on the ballot since the deadline had been 5:00 p.m., a ninety-minute tardiness in violation of IV S.G.C. § 2(A) (1988). Respondents Ferris and Zeeman appealed to the Elections Board which reversed (the Board Decision) on the grounds that no injury would result from the §2(A) violation and because the lateness was in the view of the Board, negligible. Petitioners Peter Hancock, Samuel Harris, David Rosin, and Danny Brayboy—all candidates for Senior Class Office—appealed to the Supreme Court.

Petitioners alleged that the Board Decision violated Article IV, § 2(A) and Article II, §§ 2(C) and 5(B) of the Elections Law since the 5:00 p.m. deadline was textually required and the Board lacked sufficient Graduate and Professional Student representation to constitute a quorum.

Held: The Election's Board decision is reversed. Ferris and Zeeman cannot appear on the ballot.

The 5:00 p.m. deadline must be strictly enforced since no leeway is permitted under Article IV, § 2(A) of the Elections Law. Moreover, the Board's decision to overrule the Chairman rested on an arbitrary rationale. Additionally, this Court agrees that absent sufficient Graduate and Professional Student presence on the Board, its actions in overturning the Chairman were a nullity. *See Hiday* v. *Elections Board*, No. 84–002 S.S.C. (1984).

Reversed.

EXUM, C.J. delivered the opinion of a unanimous Court.

CHIEF JUSTICE EXUM delivered the opinion of the Court.

On February 9, 1989 petitions for those candidates who wished to appear on the ballot for the February 21, 1989 regular election were due at 5:00 p.m. in the Elections Board office, 217–D,

Suite C of the Carolina Student Union. At approximately 6:30 pm Senior Class President and Vice-President candidates, Bobby Ferris and Greg Zeeman turned in their petitions to the Chairman of the Elections Board, Wilborn Robinson. The Elections Board Chairman ruled that the lateness of the Ferris-Zeeman petition was in violation of Article IV S.G.C. § 2(A) (1988) and as it relates to Election Laws, and therefore the Ferris-Zeeman ticket would be excluded from the ballot.

Respondents appealed the decision of the Elections Board Chairman to the Elections Board as is permitted under Article VIII, § 2 of the General Election Laws of the Student Code. The Elections Board overruled the Election Board Chairman's decision on the grounds that the candidacy of Ferris and Zeeman was generally known by the other candidates in the election and that there would be no injury incurred by the other candidates if Ferris and Zeeman's names were to be placed on the ballot. Also, the interval of time between the deadline and the time the petitions were received was not sufficient to give Ferris and Zeeman an unfair advantage over the other candidates.

An appeal of the Elections Board's decision was brought to the Student Supreme Court by Peter Hancock, Samuel Harris, David Rosin, and Danny Brayboy, all candidates for Senior Class Office. The plaintiffs claimed that the Elections Board s decision was in violation of Article IV, § 2(A), Article II, §§ 2(C), and 5(B) of the Elections Law. The CHIEF JUSTICE granted a hearing of the claims before the Court under the authority of III S.G.C. § 33(A) (1988) entitled "Standing to Bring Original Action based on Executive Action." The Supreme Court heard the case on Thursday, February 16, 1989 at 7:30 p.m. in the Frank Porter Graham Lounge of the Student Union. During this hearing the Student Supreme Court overruled the decision of the Elections Board.

Plaintiffs primarily raised two issues in this case. (I) The Elections Board violated Article IV, § 2 of the General Election Laws in that the 5 p.m. deadline should be strictly enforced. (II) The action of the Elections Board in overturning the decision of the Elections Board Chairman is a nullity in that the Elections Board has no Graduate and Professional student representation as is required by Article II, § 2 of the General Election Laws. This Court agrees with the Plaintiffs on both issues.

I

Where Student Congress sets a clear and specific deadline for the performance of a certain act, in this case the turning in of election petitions, such deadline should be strictly followed by the responsible agency, in this case the Elections Board and the Elections Board Chairman. Absent contrary language from

Student Congress, whereas Article IV, § 2 is concerned, 5 p.m. *means* 5 p.m.!

This Court is troubled by what appears to have been an arbitrary interpretive decision by the Elections Board to allow Ferris and Zeeman on the ballot in blatant rejection of guidelines set by Article IV, § 2. The Elections Board failed to even inquire concerning the reason the Ferris-Zeeman petition was an hour and a half late. Such ill-advised decisions bring into question the integrity of the elections processes. Are we to evolve into a system where rules are applied to some but not others? In the opinion of this Court the answer is a resounding *no*!

In dictum, we suggest that the Student Congress draft into Article IV, § 2 language which makes it clear that violation of this Article will result in the delinquent candidate's name not being placed on the ballot.

II

It is significant in this case that the plaintiffs first established that their campaign was harmed by an official action of the Elections Board, which was the overturning of the Elections Board Chairman's decision under the authority of Article VIII, § 2 of the General Election Laws. Having established harm based on an official action of the Elections Board, such action is necessarily a nullity when the Board is improperly composed. This Court considers an official action within the context of an interpretive decision of the Elections Board.

The issue regarding Article II, § 2(C) is controlled by this Court's decision in *Hiday* v. *Elections Board*, No. 84–002 S.S.C. (1984). In that decision, this Court held that, "The outcome of campus elections necessarily affects all students at this university, for the student body is composed of graduate and professional students, also. Fair and adequate representation and the opportunity to address concerns about the governing organizations of this university are legitimate reasons for protecting the interests of graduate and professional students."

We find the efforts of the Elections Board in recruiting graduate and professional students somewhat lacking. At minimum, the Elections Board should do the following to seek graduate and professional student representation on the Elections Board. (1) Seek the assistance of the G.P.S.F. (2) Make direct contact with Graduate and Professional student organizations in each department. (3) Place informational posters, fliers, etc. in graduate and professional departments. While the previous prescribed are suggestions, this Court will give close scrutiny to the efforts of the Elections Board in meeting the requirements of Article II, § 2(C).

* * *

This Court hereby overrules the action of the Elections Board and orders that the names of Robert Ferris and Gregory Zeeman not appear on the ballot for the election to be held on February 21, 1989.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

OCTOBER TERM, 1995

THE CAROLINA REVIEW, PLAINTIFF, ET AL. *v.* CALVIN "CAL" CUNNINGHAM, III, STUDENT BODY PRESIDENT, ET AL.

ORIGINAL

No. 95–001 Orig. Argued May 10, 1995—Decided May 12, 1995

After the Student Congress of the University of North Carolina at Chapel Hill denied funding to *The Carolina Review*, the plaintiffs filed a complaint on April 12, 1995 pursuant to III S.G.C. §§ 31, 32, 45, and 48. *See The Code of Permanent Laws of the Student Government of the University of North Carolina at Chapel Hill* (1995). A pretrial hearing was held on April 19, 1995 pursuant to III S.G.C § 74 (1995). An order was subsequently issued reciting the actions taken at the pre-trial hearing pursuant to III S.G.C. § 74(D) (1995). The defendants filed an answer on May 6, 1995 pursuant to III S.G.C. §§ 45, 49, and 68 (1995). Pursuant to III S.G.C. §§ 76–7, the Supreme Court convened for trial in the case *sub judice* on May 10, 1995 in the Kenan Courtroom in Van Hecke-Wettach Hall.

Held: Plaintiffs denied relief.

(a) The Student Constitution prohibits adjudication on the merits of plaintiffs' claims arising out of the United States Constitution and 42 U.S.C. § 1983. Student Const. art. II, § 3(B) (1995).

(b) *The Carolina Review* is a student organization with a single purpose: to produce and distribute a publication. The fundamental purpose of a publication is to provide a service. The Student Constitution and Title III expressly prohibit the Student Congress from allocating student fees to services of a politically partisan nature. *Id.* art. I, § 4(U) (1995), and II S.G.C. art. III, § 1(E) (1995). Following debate and deliberation, the 76th Student Congress deemed the services provided by *The Carolina Review* to be politically partisan in nature and denied funding for the 1995–96 fiscal year. The Student Congress's bedrock power to allocate student fees is established in Article I of the Student Constitution. *Id.* § 1(A) (1995). The Student Congress violated neither the Student Constitution nor the Student Government Code in denying allocation of student fees to *The Carolina Review* for the 1995–96 fiscal year.

Plaintiffs denied all relief.

DAVIS, J. delivered the opinion of the Court, in which McClean and Cox, JJ., and Sarratt, C.J., joined. McClean, J. filed a concurring opinion.

Charlton Allen argued the cause for the plaintiffs: Carolina Review; *Charlotte Allen*; and *Bryson Koehler*.

Mark L. Bibbs argued the cause for the defendants: Monica Cloud on behalf of the 76th Student Congress; Roy Granato on behalf of the 77th Student Congress; *Calvin "Cal" Cunningham III*, Student Body President; and *George Oliver*, Attorney General.

JUSTICE DAVIS delivered the opinion of the Court.

I

On March 22, 1995, the Student Congress adopted BFI–76–105 as it is required to do by the Student Constitution. *See* BFI–76–105. "A Bill to Approve the 1995–96 Fiscal Budget." *and* I S.G.C. art. I, § 4(Q) (1995). On April 3, 1995, the Student Body President signed the bill into law. In deliberating and voting on each paragraph of said bill, the Student Congress failed to allocate any student fees to *The Carolina Review*. The Student Congress denied funding to *The Carolina Review* on the basis of the political partisanship of the services it provides to the student body.

II

The Carolina Review maintains that the Student Congress is a "state actor" under 42 U.S.C. § 1983 inasmuch as it carries out the governmental function of allocating and disbursing money from the general fund of the State of North Carolina, *viz*. student fees. Further, plaintiffs contend that the denial of student fees on the basis of political partisanship by the Student Congress abridges freedom of speech in violation of the First Amendment of the United States Constitution.[1]

Plaintiffs petition the Court to revisit and amend an enactment of the Student Congress by concluding that the Student Congress violated the First Amendment of the United States Constitution. The Court finds that plaintiffs have sought remedy in the wrong forum. The Court's jurisdictional boundary is clearly established in the Student Constitution which reads, in relevant part: "The Supreme Court of the Student Body shall have original jurisdiction in controversies concerning . . . legislative action raising questions of law arising under *this* Constitution or law enacted under its authority." *Id.* art. II, § 3(B) (1995) (emphasis added).

Title III emphasizes this limited jurisdiction when it states, in relevant part: "The Supreme Court shall have original and final

[1] The First Amendment applies to the States through the term "liberty" in the Fourteenth Amendment. [originally n. 12 in slip op., at 2]

jurisdiction, as to both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority, of . . . legislative acts." *Id.* Act I, § 25(A) (1995). The intent of the founders to limit the Court to adjudication of issues of law arising out of the Student Constitution and the laws enacted under its authority.

While the Court recognizes that the Preamble to the Student Constitution asserts the goal of making "personal freedom secure," *id.* Preamble (1995), the Court does not believe that this phrase serves to incorporate the United States Constitution into the Student Constitution. Rather, the Preamble sets lofty goals in the hopes of fostering individual and collective action to form a more just and responsible University community.

The Court need look no further than the history of this great University to appreciate the necessity of this fundamental right to free speech. As Chancellor William B. Aycock reminded the University in a speech on June 6, 1960 as he led the fight against the Speaker Ban Law, "[o]n this campus and throughout North Carolina we have certain fundamental freedoms—including freedom of speech . . ." *Freedom of the University* (Aycock also remarking: "This institution was fathered by rebellion against oppression and mothered by a vision of freedom. It has become an instrument of democracy and a place in which the weak can grow strong and the strong can grow great."). In other words, while the Court embraces the right to free speech, the Court recognizes that it does not have jurisdiction to grant the relief sought by the plaintiffs.

III

In the alternative, plaintiffs contend that the Student Congress violated the Student Constitution and the Student Government Code in denying funding to the *Carolina Review.*

The Court holds that the Student Congress properly exercised its authority in the denial of student fees to *The Carolina Review.*

The Carolina Review is an officially recognized student organization. The mission statement of the organization refers to "[t]he basic underlying philosophy of our publication . . ." *Ibid.* Thereafter, the organization lists its officers as publisher, editor-in-chief, financial director, and associate publisher. Therefore, the Court concludes that the only purpose of the organization is to produce a publication. Additionally, the Court holds that the only purpose of the organization is to produce a publication. Additionally, the Court holds that the publication is a service. The Student Constitution and Title III expressly prohibit the Student Congress from allocating student fees to services of a politically

partisan nature. *See* I S.G.C. p. 1, art. I, § 4(U) (1995); III S.G.C. p. 6 art. III, § 1(E) (1995).

The Student Congress debated whether or not the services provided by *The Carolina Review* were politically partisan. While considering BFI–76–105, ¶ 17, the Student Congress decided that the services of the organization were politically partisan by an 11–10 vote. For that reason, the organization did not receive an allocation of student fees for the 1995–96 fiscal year.

The Court holds that I S.G.C. p. 1, art. I, § 4(U) bars the Student Congress from funding services of a politically partisan nature. The Court further holds that the Student Congress rightfully exercised its power to make a determination as to the politically partisan nature of the services provided by *The Carolina Review*.

The Court notes that an organization should be given fair and full consideration each year during the budget process. A determination of political partisanship on March 22, 1995 does not prevent *The Carolina Review* from proving to the Student Congress at a later time that the services it provides the campus are no longer politically partisan.

In the present case, the Student Congress acted within its authority and within the laws set forth in the Student Constitution and Student Government Code.

IV

Accordingly, the plaintiffs are denied relief.

It is so ordered.

JUSTICE MCCLEAN concurring.

"The undersigned concurs with the opinion of the Court. Though, he would like to denote for the record that the Court ruled that *The Carolina Review* was deemed a politically partisan service by Student Congress, not a politically partisan organization."

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

OCTOBER TERM, 1996

KATHERINE S. MCNERNERY, ET AL., PETITIONERS *v.* ANNIE SHUART, ELECTIONS BOARD CHAIR, ET AL.

CERTIORARI TO THE BOARD OF ELECTIONS

No. 96–002 Argued March 14, 1996–Decided March 18, 1996

After the Elections Board of the University of North Carolina at Chapel Hill denied the appeal of Katherine S. McNerney and Minesh Mistry contesting the Board's decision to certify the run-off elections of February 20, 1996, the plaintiffs filed a complaint on February 25, 1996 pursuant to III S.G.C. p. I, a. 2, §§ 5(A), 7, 8, and 9. *See* The Code of Permanent Laws of the Student Government of the University of North Carolina at Chapel Hill (1996). The defendants filed answers on February 28 and 29, 1996 pursuant to III S.G.C. p. I, § 11 upon request of the Chief Justice. *Id.* A pre-trial hearing was held on March 11, 1996 pursuant to III S.G.C. p. I, a. 1, § 74. *Id.* An order was subsequently issued reciting the actions taken at the pretrial hearing pursuant to III S.G.C. p. I, a. 1, § 74(D). *Id.*

Pursuant to III S.G.C. p. I, a. 1, §§76–7, the Supreme Court convened for trial in the case *sub judice* on March 14, 1996 in Classroom 3 in Van Hecke-Wettach Hall.

Held: The decision of the Elections Board is reversed, and a re-election shall be held on March 26, 1996.

The Election Board's certification of the run-off election for Senior Class officers is invalid based upon failure to properly prepare a report on the number of votes cast in an election, including the tabulations in each race according to the polling place in which the votes were cast.

Reversed.

SARRATT, C.J. delivered the opinion of a unanimous Court.

Mark Shelburne argued the cause for the petitioners.
Joesph Burby argued the cause for the respondents.

CHIEF JUSTICE SARRATT delivered the opinion of the Court.

I

A motion was submitted by the defendants alleging that the plaintiffs were disqualified from the race for Senior Class Officers because they exceeded the designated spending limit. Plaintiffs were fined $54 by the Elections Board for failing to remove posters, broadsides, or other campaign materials within ninety-six (96) hours after the close of the polls. *See* VI S.G.C. art. VII, § 2 (1996). The fines, when added to the amount spent by the plaintiffs in the general election and the run-off election, resulted in plaintiffs exceeding the spending limit allocated for candidates for Senior Class Officers involved in a run-off. The defendants argue that the plaintiffs are "automatically disqualified" under the auspices of Title VI. *Id.* art. VIII, § 6(A)(6) (1996).

Defendants petition the court to dismiss the case based upon the plaintiffs' disqualification from the race for Senior Class officers. The Court finds that the plaintiffs, and the defendants as well, should not have had fines levied against them by the Elections Board. Following the close of the polls in the general election held on February 14, 1996, a time period greater than ninety-six hours elapsed prior to the run-off election on February 20, 1996; nevertheless, candidates involved in the run-off election were not fined. In fact, the Elections Board issued two separate Punitive Decisions of the Chair regarding fines, the first on February 25, 1996 and the second on February 28, 1996, the effect of which, exempted candidates involved in the run-off election from fines resulting from campaign material remaining posted between the general and run-off elections. The Elections Board Chair testified under oath that "a gentleman's agreement" prevented the Board from fining candidates involved in a run-off election.

The Court finds that the rationale behind allowing candidates involved in a run-off election to keep general election campaign material posted extends beyond "a gentleman's agreement," a type of agreement which is not valid in this Court. The spending limits delineated in the Code, *id.* art. VI, § 2, along with provisions for campaign subsidies for students who receive financial aid, *id.* § 6, attempt to afford any eligible student the opportunity to run for office, regardless of financial situation. Candidates who are involved in a run-off election are allowed to spend a total of 150% of the original spending limit, extending the spending limits by an additional sum, but not the full amount again granted for the general election. *Id.* § 2(B). Forcing candidates to remove posters from the general election and replace them with new posters for the run-off election would lead to greater expense, which would contradict attempts by the Code to limit expenses. Clearly, candidates involved in a run-off election are not expected, nor should they be obligated, to remove campaign materials between the general and run-off elections.

The run-off election held on February 20, 1996 was certified on February 23, 1996. The complaint was filed by the plaintiffs on February 25, 1996, and included a request for a re-election as relief desired. Though the physical "close of the polls" had occurred at 7:00 p.m. on February 20, 1996, the outcome of the election remained in question. Though the court would have preferred that the plaintiffs include a request for an injunction against the levying of fines by the Elections Board in their complaint, said fines were not issued until after the complaint was filed.

The Court finds that because the final disposition of the run-off election was still in question, it was reasonable for the candidates involved in the run-off election to leave up any posters, broadsides, or other campaign materials. Thus, the Elections Board's punitive decision to fine both the plaintiffs, as well as the defendants, is overturned. Any payment of fines by the plaintiff or the defendant should be refunded by the Elections Board forthwith. The Court also recommends that Student Congress reconsider the wording of VI S.G.C. art. VIII, §§ 6, 10, as the Court finds that there can be no "automatic disqualification" without violating individual rights to due process of law. The Motion submitted by the defendants is denied.

II

On 20 February 1996 a run-off election for Senior Class Officials was held between two sets of running mates, Katherine S. McNerny and Minesh Mistry being one and L. Laddell Robbins and M. Amelia Bruce being the other. The ballots were counted in 106 Carroll Hall following the procedures outlined in Title VI. *Id.* art. V, § 4 (1996). The results were posted with the vote totals as follows: McNerney/Mistry 367, Robbins/Bruce 365. A recount of the ballots was conducted on February 21, 1996 at the request of the defendants. Upon recount, vote totals of 365 to 367 and 366 to 367 were obtained for McNerny/Mistry and Robbins/Bruce respectively. Each of these three counts were tabulated by poll sites. Due to the inability of the Elections Board to reach identical totals on any of the three counts, the ballots from all poll sites were combined, separated only by candidates receiving the vote, and recounted multiple times until a consistent count of 366 to 367 for McNerny/Mistry and Robbins/Bruce respectively was achieved on February 23, 1996. These results were certified.

III

The certification process, as outlined in Title VI, states that certification shall consist of four items. *Id.* art. II, §§ 5(F)(1–4) (1996). The first is described as, in relevant part: "Preparation of a report on the number of votes cast in each election, referendum,

and initiative, including the total vote tabulations, and the tabulations in each race broken down according to the polling place in which the votes were cast." *Id.* § 1. Plaintiffs argue that grouping the ballots together following the count in which the vote total was 366 to 367 for McNerny/Mistry and Robbins/Bruce respectively on Wednesday made it impossible for the Elections Board to meet this criterion for certification. The defendants argue that because the final count reached on Thursday contained the same results as the total reached on Wednesday when the ballots were still divided by poll site, the results reached on Thursday are certifiable. The Court finds this logic to be unsound. Although the vote totals are indeed the same numbers reached under conditions in which the ballots were broken down by poll site, the Elections Board was clearly not certain that the numbers reached for each individual poll site were accurate, as they proceeded to recount the ballots numerous times, and to reach different conclusions from the intermediate counts. While the total number of votes for each set of running mates may be accurate, it has not been and cannot be confirmed that the vote totals for each polling site are indeed the proper totals for each individual poll site. Therefore, the criterion for certification was not met and the Elections Board's certification of the run-off election is invalid.

IV

Plaintiffs argue that the other three criteria for certification were also violated by the Elections Board. The Court finds that the Elections Board adhered to the remaining provisions for certification to the best of their ability and understanding of Title VI. *Id.* §2. Title VI states that certification shall include, in relevant part: "Affirmation that the results reported are correct as counted." *Id.* In response to the plaintiffs' allegations that the ballots may not be correct as counted, the Court recommends that for future elections, the Elections Board devise a systematic method of counting and confirming the number of ballots from each box. Given the adverse conditions which often surround the counting of the ballots, particularly fatigue on the part of the Elections Board members, the use of systematic confirmation could decrease the potential for human error in the counting of the ballots. Having the poll site printed on the ballots themselves would also ensure the availability of a tabulation of the votes broken down by polling site in future elections.

V

Plaintiffs allege that election error occurred when poll tenders wrongly categorized students with respect to their eligibility to vote for Senior Class officers. Title VI states that certification shall consist of, in relevant part: "Affirmation that no Elections

Law violations, or other election irregularities have been detected which could change the outcome of the election." *Id.* § 3. Title VI also states, in relevant part: "the constituency is the pool of eligible voters for each respective office." For Senior Class officers, the pool of eligible voters is: "all duly registered fee-paying juniors or continuing seniors." *Id.* art. I, § 2(H)(2). Confusion as to who constitutes a junior or continuing senior, while it may or may not have altered the outcome of the February 20, 1996 election, requires clarification.

The minimum number of hours needed to be classified as a junior as determined by the registrar can be, and in fact was, utilized by the Elections Board computer program to set a lower boundary of eligibility. Problems arise, however, with individuals who have accumulated enough hours to be classified as seniors, though they do not intend to graduate in the same semester in which the general election is held. The Court finds evidence for the proper interpretation where Title VI lists the offices to be elected in the annual spring elections and includes, in relevant part: "*Rising* Senior Class Offices." *Id.* art. IV, § 1(6) (emphasis added). The individuals to be elected as "Senior Class officers" are clearly intended to represent undergraduates during their concluding year (or semester in the case of December graduates) in residence at UNC. The most accurate and inclusive definition of a "junior or continuing senior" is therefore an undergraduate who's anticipated date of graduation is December of the year in which the annual spring election is held or May of the following year. Therefore, an individual with a cumulative number of semester hours which qualifies him or her as a senior must not have filed for graduation in order to be eligible to vote for Senior Class officers in the regular spring election. Polling sheets should accurately reflect the number of voters who were eligible to vote for Senior Class officers, and should not vary by more than 5% from the number of votes cast for the office according to the provisions of VI S.G.C. art. V, § 3(I)(3) (1996). Any available measures should be taken to ensure that the proper constituency vote for Senior Class officers.

VI

Plaintiffs also allege that insufficient ballot security may have led to elections error. While tampering with the ballots may or may not have occurred in this case, several aspects of ballot security must be addressed. The Elections Board Chair testified that the blank ballots were stored overnight in the box containing the cast votes. Whether or not ballot tampering occurred, allowing blank ballots to exist following the close of the polls provides an inexcusable and preventable source for potential tampering.

The Court recommends that all blank ballots be immediately destroyed following the close of the polls.

The Elections Board did follow the provisions of Title VI for maintaining signed and sealed poll boxes between the close of the polls and the original count. *Id.* art. V, § 3(I)(2). Title VI does not specify measures to be taken following the initial count. In future elections, the Elections Board should be cognizant of the potential necessity of a recount and take necessary measures to ensure a reasonable level of ballot security between the initial count and the certification of the election.

VII

Plaintiffs further allege that the fourth criteria for certification was not met by the Elections Board. Title VI states that certification shall consist of, in relevant part: "Preparation of a report on complaints of any alleged violation of the Election Laws and whether the Elections Board considered them founded or unfounded, and what action was taken, if any." *Id.* art. II, § 5(F)(2–4). Though a certification report was prepared in the form of a memorandum to Student Body President Cunningham, the Court finds that future certification reports should be a separate document to which four documents fulfilling the provisions of Title VI are attached. These documents shall be created prior to the certification of the elections results by majority vote of the Elections Board.

* * *

Accordingly, the plaintiffs are granted relief. A re-election shall be held on March 26, 1996 pursuant to VI S.G.C. art. III, § 1(E)(4). Only the candidates from the run-off election shall be eligible candidates pursuant to § 1(E)(2). Spending limits shall be $125 per set of running mates, which represents the additional amount granted for candidates for the Senior Class officers in a run-off election.

It is so ordered.

Syllabus

AARON NELSON, PRESIDENT OF THE STUDENT BODY, PLAINTIFF *v.* JAMES KILBOURNE, SPEAKER OF THE STUDENT CONGRESS

ORIGINAL

No. 96–003. Orig. Argued October 6, 1996–Decided October 9, 1996

On September 25, 1996, in regular session, the 78th Student Congress of the University of North Carolina at Chapel Hill adopted SCR–78–020, A Resolution to Define "Ex Officio"[1] Member Status for the 78th Session (the "Resolution"), by immediate consideration. The Resolution purported to limit the right and privilege of an ex officio member of the 78th Student Congress to speak on the floor of the Congress and to offer motions or objections from the floor of the Congress. Student Body President Aaron Nelson, an ex officio member of the 78th Student Congress, filed a complaint alleging that the legislative act abridged his rights and privileges and that the legislative act violated the Constitution of the Student Body of the University of North Carolina at Chapel Hill (the "Student Constitution"). The complaint was filed October 4, 1996 pursuant to III S.G.C. p. 1, a. 1, §§ 25(A) and 25(B)(2) (1996). An answer was not required pursuant to III S.G.C. p. 1, a. 1, § 59, and James Kilbourne, Speaker of the 78th Student Congress, waived his right to file an answer. Both the case and the parties are properly before the Supreme Court. III S.G.C. p. 1, a. 1, §§ 25(A), 25(B), and 32(A). Thus, pursuant to Title III, the Court convened on October 6, 1996 in Chase Hall to hear arguments on the facts and issues. *Id.* §§ 75–77.

Held: Plaintiffs are granted relief, and SCR–78–020 is voided.

The Resolution adopted by the 78th Student Congress sought to "define ex-officio member status for the 78th Session" of the Student Congress. The Student Constitution establishes that the "Student Body President shall serve as a non-voting ex officio member" of the Student Congress. I S.G.C. p. 1, art. I, § 1(B). Thus, the 78th Student Congress attempted to define a term set forth in the Student Constitution. By attempting to define a part of the Student Constitution, the 78th Student Congress sought to review and limit the rights and privileges afforded an ex officio member of the 78th Student Congress by the Student Constitution. The Student Constitution neither empowers Student Congress to define a part of the Student Constitution, nor empowers Student Congress to limit rights and privileges afforded by the Student Constitution. The 78th Student Congress attempted to define a part of the Student Constitution without the power to do so; therefore, the Resolution adopted by the 78th Student Congress is unconstitutional.

Plaintiff granted relief.

DAVIS, J. delivered the opinion of the Court, in which SARRATT, C.J., and PETERS and LASTELIC, JJ. joined.

Terry Milner, for the Plaintiff.
James Kilbourne, *pro se*.

JUSTICE DAVIS delivered the opinion of the Court.

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[1] Despite the spelling in the Student Constitution, the Student Code, the Resolution, and the complaint, the term "ex officio" does not have a hyphen between "ex" and "officio." The Court encourages the Student Congress to correct this misspelling throughout the Code.

I

Late in the evening on September 25, 1996, some of the members of the 78th Student Congress introduced a resolution for immediate consideration. The 78th Student Congress, in compliance with the requirements for considering legislation by immediate consideration, considered SCR–78–020, "A Resolution to Define 'Ex Officio' Member Status for the 78th Session." II S.G.C. p. 2, art. II, §§7–8 (1996). The first whereas clause of the Resolution noted that the Student Constitution "grants the status of 'ex officio' member of Congress to certain Executive Branch officers." The second whereas clause of the Resolution stated that the "role of 'ex-officio' members is not defined in the Student Constitution." Based upon these two suppositions, the Student Congress decided to "define" the role of an ex officio member, at least for an ex officio member serving on the 78th Student Congress. The 78th Student Congress resolved that:

> 1. Ex officio members may only speak once on each bill or motion before the Student Congress;
>
> 2. Ex officio members may debate for no more than two (2) minutes; and
>
> 3. Ex officio members may not make motions from the floor of the Student Congress.

With fifteen (15) voting in the affirmative, six (6) in the negative, and three (3) abstaining, the Resolution was adopted. The Resolution was then properly signed by James Kilbourne, the Speaker.

II

Student Body President Aaron Nelson, the plaintiff, is a non-voting ex officio member of the 78th Student Congress. Plaintiff contends that his rights and privileges as a non-voting ex officio member have been abridged by the adoption of the Resolution.

First, plaintiff maintains that the Student Congress attempted to define a portion of the Student Constitution. Plaintiff points to the language employed by the Student Congress in the Resolution. In the Resolution, Student Congress noted that the role of ex officio members is not defined in the Student Constitution. The Resolution then expressly stated that "[t]he role of 'ex officio' member of the Student Congress be defined as follows for the 78th Session of the Student Congress." In the opinion of the Court, the Student Congress knowingly attempted to define the role of an ex officio member. Moreover, the Congress knew that the privileges of an ex officio member were a matter of constitutional interpretation. Thus, unless the Student Congress is

empowered to define terms in the Student Constitution, the Resolution adopted by the 78th Student Congress is unconstitutional.

Second, the plaintiff maintains that the Stu dent Congress does not have the power to define terms in the Student Constitution. The constitutional powers of the Student Congress are set forth in Article I of the Student Constitution. I S.G.C p. 1, art. I, § 4. The Student Congress has the power to "annually *establish procedures* for the execution of its business, provided the Congress[,] by majority vote[,] may call any measure from committee after the meeting at which the measure is introduced." *Id.* § 4(L) (emphasis added). The Court recognizes that the Student Constitution empowers the Student Congress to establish procedures each session to govern itself. The Resolution, however, purported to do more than establish procedures to govern the Student Congress. Nevertheless, assume that the Resolution had only attempted to establish procedures, the Student Congress is still prohibited from establishing procedures that violate the Student Constitution. In sum, the Student Constitution does not give the Student Congress the power to define the role of ex officio members for the 78th Session; thus, the Student Congress lacks the power to define terms in the Constitution, and the Resolution is unconstitutional.

III

The Court finds the Resolution unconstitutional and grants the plaintiff relief by permanently enjoining its enforcement.

IV

Having found the Resolution unconstitutional, the Court will now clarify the confusion surrounding the constitutional role of ex officio members of the Student Congress. The Student Constitution provides that certain persons, by virtue of their office, serve as "non-voting ex officio member[s]" of the Student Congress. *Id.* § 1(B). In other words, the Constitution expressly places a limit on an ex officio member of the Student Congress—an ex officio member is not allowed to vote. The Constitution neither expressly nor impliedly places other limits on an ex officio member of the Student Congress. Because the drafters of the Student Constitution placed a limit on an ex officio member of the Student Congress, the drafters clearly considered which privileges and rights to afford an ex officio member and which privileges and rights to deny an ex officio member.[2] The only privilege or rights denied an ex officio member by the Student Constitution is the right to vote. The Student Constitution does not limit

[2] The Student Constitution sets forth rights and privileges for the sagacious use of the non-voting ex officio members of the Student Congress. *Id.* [originally n. 11 in slip op., at 3].

an ex officio member of the Student Congress to one opportunity to speak on a bill or motion. Neither does the Student Constitution limit an ex officio member to only two (2) minutes in which to debate. Thus, an ex officio member of the Student Congress may speak on a bill as many times as other members of the Student Congress and for as long as other members of the Student Congress.[3] In addition, the Student Congress may not deny a non-voting ex officio member the opportunity to make motions from the floor of the Student Congress. Even if a non-voting ex officio member of the Student Congress moves the question or the previous question, the motion must be seconded and the body has the opportunity to vote on the question. The non-voting ex officio member does not have the right to vote on the motion—thus, the non-voting ex officio member may never be a part of the voting that closes debate. Because the Student Constitution did not afford non-voting ex officio members of the Student Congress with the right to vote, this same analysis is true with respect to other motions.[3]

* * *

The Court is not without sympathy for the members of the 78th Student Congress. Inasmuch as the intent of those who introduced the Resolution was to shorten the meetings of the Student Congress, the Court sympathizes with them.[4] Nonetheless, the Resolution adopted by the 78th Student Congress was unconstitutional on its face and is hereby null and void.

It is so ordered.

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[3] The Student Congress is constitutionally permitted to limit the number of times any member or ex officio member of the Student Congress may debate a bill or motion. *Id.* [originally n. 12–13 in slip op., at 3–4].

[3] The Student Congress may defeat any motion made by a non-voting ex officio member. [originally n. 14 in slip op., at 4].

[4] Recall that CHIEF JUSTICE SARRATT and JUSTICE DAVIS were formerly Speakers of the Student Congress. [originally n. 15 in slip op., at 4].

Syllabus

SCOTT SHANNON RUBUSH, PETITIONER *v.* ANGELA J. DICKS, ELECTIONS BOARD CHAIR

ON WRIT OF CERTIORARI TO THE ELECTIONS BOARD

No. 96–004. Orig. Argued February 6, 1997–Decided February 12, 1997

On January 30, 1997, after determining that Scott Shannon Rubush submitted an "invalid" petition to run for Student Congress in the 12th district, the Elections Board disqualified Rubush for the spring student body elections to be held on February 11, 1997.[1] The petition contained a signature by a constituent who had signed multiple petitions, which violated a pre-determined rule established by the Elections Board. Upon notification of his disqualification, Rubush began the appeal process with the Elections Board Chair, and filed an official appeal in the form of a complaint to the Student Supreme Court on February 5, 1997. Rubush claimed more than one "office" exists within each congressional district, and therefore constituents have the right to sign more than one petition. Under this interpretation, the plaintiff (Rubush) claimed he did not violate the clause of the Student Constitution which states, "no student shall sign more than one petition for each office." *Id.* As relief, the plaintiff requested his name be put on the ballot for the election. No answer to the complaint was required, and none was given.

On February 9, 1997, the Student Supreme Court convened in Room 218 of the Frank Porter Graham Student Union to hear the case pursuant to III S.G.C. p. 1, a. I, §§ 75–77 (1996). During the trial, the issue of meeting the Statute of Limitations for filing an appeal arose, and upon deciding the plaintiff's complaint did fall within the prescribed seventy-two (72) hour time period which followed the administrative decision, the Court decided to rule on the case. VI S.G.C. art. IX, § 2.

Held: Petitioner's name will be put on the ballot since they could not have been realistically responsible.

The Student Constitution requires that individual constituents be responsible in signing petitions. *Id.* § 2(B). The burden of determining whether a petition has been signed correctly or not lies with each signer, not with the potential candidate. Thus, if the clause which prohibits signing more than one petition is violated, the signer will be penalized, and not the potential candidate. Further, this section is silent concerning the validity of a signature which has been used on two petitions, as is the rest of the Student Constitution. Part G. of this same section simply requires twenty-five (25) signatures of constituents. Therefore, the petition submitted by the plaintiff was valid, and his name deserved to be on the ballot.

Reversed.

Peters, J. delivered the opinion for a unanimous Court.

Jason Jolley, for the Petitioner.
Angela J. Dicks, *pro se*.

JUSTICE PETERS delivered the opinion of the Court.

I

[1] The term "invalid" was used in the official notes from the trial which were kept by the court clerk. [originally n. 1 in slip op., at 1].

On January 30, 1997, Scott Shannon Rubush's petition for candidacy in Student Congress District 14 was deemed invalid by the Elections Board. Mr. Rubush collected the bare minimum twenty-five signatures needed to have his name on the ballot, and when one of these signatures was found to be duplicated on another petition, his bid for candidacy on the ballot was voided. VI S.G.C. art. IV, § 2(G)(4). Rubush was notified the evening of January 30, 1997 that his name was being left off of the ballot. He immediately appealed the decision verbally to the Elections Board Chair who did not know the proper appeal procedure in this situation. After conferring with her advisor, the Elections Board Chair informed Mr. Rubush of his duty to make the appeal to the Student Supreme Court. This was done on February 3, 1997. Mr. Rubush's complaint with the Court was filed on February 5, 1997. Because the decision was made to disqualify Mr. Rubush on January 30, 1997, the stated Statute of Limitations had seemingly expired by February 5, 1997. *Id.* art. IX, § 2. However, because of his good faith effort to appeal the decision, along with the lack of immediate decisiveness by the Elections Board Chair, the statute of limitations to file an official appeal with the Student Supreme Court did not officially begin until February 3, 1997. Therefore, the complaint was valid, and the Court will decide the matter.

II

The defendant, Miss Angela Dicks, claimed the decision by the Elections Board to disqualify Mr. Rubush was reached based on two legal references. First, the Student Constitution stipulates that "no student shall sign more than one petition for each office." *Id.* art. IV, § 2(B). Second, the Elections Board felt the Student Constitution is unclear about how this rule applies to multi-seat districts, and so on January 8, 1997 it made a decision to allow only one signature per constituent regardless of the number of representatives in that district.

The plaintiff, Mr. Rubush, countered that because two seats exist in District 14, two offices also exist. If two offices exist, then constituents have the right to sign two petitions in District 14, one for each office. Further, if some other district contains three congress seats, then constituents have the right to sign three petitions.

III

Before investigating the actual implications of the word "office," the Court finds relief necessary for the plaintiff on a different basis. The Elections Board did not have proper grounds to rule the plaintiff's petition "invalid." The Student Constitution states, "[n]o student shall sign more than one petition," however

it does not stipulate that a candidate shall be disqualified for submitting a petition which violates this rule. VI S.G.C. art. IV, § 2(B). It only requires twenty-five (25) signatures to be on the petition, and does not indicate the required nature of the signatures, except that they be of appropriate constituents. Further, the Student Constitution does not invalidate petitions which have violated this rule, while it does specifically violate votes in an election which have been declared void. *Id.* art. I, § 2(J). It says they shall not be, "part of the vote total."

Therefore, the petition submitted to the Elections Board by the plaintiff did not violate the Student Constitution and should have qualified the plaintiff for the ballot. The intent of VI S.G.C. art. IV, § 2(B), was not to place the burden of signing just one petition on the candidate, but on the signer. If the Elections Board were to take action it should not be against the candidate, but against the signer.

IV

Examination of the Student Constitution revealed the lack of an official definition of the word "office." However, several clauses indicate the domain of the word as it applies to this case. VI S.G.C. art. XI, § 2. states that upon installation of membership into Congress, each representative takes the oath of office. *Id.* If each representative takes this oath, then each must individually hold an office. Moreover, precedent has established that when the Student Constitution uses the word "the," it means "the" in the singular form, and cannot indicate a plurality of the noun which follows it. *Hall* v. *Lewis* (1994). Therefore, in § 2, which states, "[m]embers of the Student Congress shall be installed in office upon taking the oath of office herein provided," this is intended to mean each oath corresponds to a singular office. VI S.G.C. art. XI, § 2.

Congress members are also treated as individual officers in §1. *Id.* art. IV. This section declares the six types of office which will be elected in the annual spring elections, and just as the Student Body President is an elected office, so too is each Student Congress member. *Id.* §§ 1 and 4. So, if each representative of congress holds an office, then multiple petitions can be signed in districts with multiple officers, accordant to §2(B). *Id.*

The interpretation of "office" however, must be qualified. The Student Constitution also states that it is illegal to run for more than one office at the same time. *Id.* § 3(E). This would cause problems for congressional candidates in multi-seat districts. Each candidate is conceivably running for the chance to win one of two, or three offices. However, this clause was created at a time when only single-seat districts existed, and therefore did not cause this problem. It was not altered when multi-seat districting

was instituted, yet has never been challenged. The intent of this clause was not to prohibit simultaneously running for more than one office in the same district, but rather to prevent people from running for both Student Body President and Senior Class President for example, or even Student Congress in two different districts. Therefore, the Court recommends that this clause be altered to fit the current circumstances.

* * *

Accordingly, the Court grants relief to the plaintiff. The petition he submitted did not violate VI S.G.C. art. IV, § 2(B), and nowhere in the Student Constitution does it necessitate the petition's invalidation. Thus, the plaintiff's name shall be placed on the ballot for the 1997 Spring Elections.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1997

BRYAN L.W. KENNEDY, PLAINTIFF ET AL. *v.* AARON NELSON, PRESIDENT OF THE STUDENT BODY, ET AL.

ORIGINAL

No. 97–003. Orig. Argued February 23, 1997–Decided March 6, 1997*

After the Elections Board of the University of North Carolina at Chapel Hill followed an executive order issued by Student Body President Aaron Nelson, which called for not certifying the results in Student Congress districts, "[i]f General Election Law violations are found to have occurred and are found to have 'changed the outcome of an election' (Title VI, Article III, Section E.3)." The plaintiffs filed a complaint pursuant to III S.G.C. a. 2, § 5(R) (1997). The defendants filed answers pursuant to III S.G.C. p. 2, § 11, upon request of the CHIEF JUSTICE. Pursuant to III S.G.C. p. 1, a. 1, §§ 76–77, the Supreme Court convened for trial in the case on February 23, 1997 in the Kenan Court Room in Van Hecke-Wettach Hall.

Held: Plaintiffs granted relief, and the Elections Board must certify the results.

The Elections Board's refusal to certify results was appropriate because, pursuant to VI S.G.C. art. II, § 5(F)(3), there were sufficient grounds to believe that there were General Election Law violations or other election irregularities which could have changed the outcome of the election. The Board was also appropriate in calling for a re-election based on § 5. *Id.* art. VIII. The Supreme Court, charge the Elections Board to certify the February 11, 1997 General Election results for Districts 4, 8, and 9. It does not detect that there were Election Law violations or other irregularities which changed the outcome of the election.

Plaintiffs granted relief.

LASTELIC, J. delivered the opinion for a unanimous Court.

Lee Connor and Brad Morrison argued the cause for the Plaintiffs.

Aaron Nelson and Angela Dicks, *pro se*.

JUSTICE LASTELIC delivered the opinion of the Court.

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* Together with No. 97–005. Orig. *Herol* v. *Nelson*, argued on the same date.

I

On February 11, 1997, a general election was held for Student Congress seats. Bryan L. Kennedy ran in District 4, Dara Whalen ran in District 8, Stephen Oljeski ran in District 9, and Michael Doherty ran in District 9. Christopher Herold apparently ran in District 7, but no evidence of his case was presented before the Court.

In District 4, Mr. Kennedy was unopposed and was the sole candidate in that district to turn in a financial statement within the time period demanded by VI S.G.C. art. VI, § 4(A) (1997).

In District 8, Ms. Whalen was one of three candidates to tum in financial statements within the time period demanded by § 4(A).

In District 9, Mr. Oljeski was one of two candidates to turn in financial statements within the time period demanded by § 4(A).

In District 9, Mr. Doherty was one of two candidates to turn in financial statements within the time period demanded by § 4(A).

During the hours that polls were open, Elections Board members discovered that the computers, that were used to verify the Student Congress District of each voter, were incorrectly programmed for Graduate Student *Districts*. The poll *sites* that were affected by this disorder were the Student Union, Chase Hall, Granville Towers, Carroll Hall, and Hanes Art Center. Poll sites at the Law School and the Grapevine Cafeteria were not affected because printed lists of students and their districts were used to verify voters' Districts.

To resolve this problem, in the afternoon, the Elections Board relied on the Honor Code of the University and orally asked voters which districts they were in and their Graduate Departments to verify the correct districts.

Voters are required to sign a polling book, pursuant to VI S.G.C. art. V, § 3(D). Voter pledged that they would not give false information at the polling booth.[1] At the closing of the polls,

[1] The actions taken by the Elections Board "are probably sufficient enough to eliminate the problem of students voting in incorrect districts. However, because loose sheets of paper were used as the polling book, we cannot know how many votes were cast before and after the Elections Board's change in procedures. The Court strongly recommends that in future elections, the Elections Board use a *Polling Book* at each poll site as VI S.G.C. art. V, § 3(D) (1997) requires. The book will show the order in which students voted. The Court recommends that the time of polling be placed either by each voter's name or on top of each page, as a new page is used. These steps would allow the Board to identify votes cast before and after the procedural changes. [originally n. 2 in slip op., at 2].

votes were counted by the Elections Board. There were many write-in votes for Student Congress.[2]

In District 4, Mr. Kennedy was reported to have received 8 votes at the Student Union poll site and 1 at Chase. No other candidates received votes in District 4.

In District 8, Ms. Whalen received 4 votes at the Student Union, 1 at Chase, and 8 at the Grapevine Cafeteria, for a total of 13 votes. Candidate Shrea Lalitha Degala received .5 votes at the Grapevine Cafeteria. Candidate Timothy Bell received 5 votes at the Grapevine Cafeteria. Two candidates each received 1 vote, both at the Grapevine Cafeteria. District 8 is a two-seat district.

In District 9, Mr. Oljeski received 4 votes at the Grapevine Cafeteria, and Mr. Doherty received 5 votes at the Grapevine Cafeteria. Other candidates received votes, but they did not turn in financial statements.

On February 18, 1997, Student Body President Aaron Nelson issued an executive order which demanded that the Elections Board certify results no later than 8:30 p.m. of the same day. He also ordered that "[i]f General Election Law violations are found to have occurred and are found to have 'changed the outcome of an election' (Title VI, Article III, Section 1, Part E.3) then the election results for those affected congressional races may not be certified and a re-election shall be conducted." E.O. (February 18, 1997).

On February 18, 1997, the Elections Board executed the order, certified results, and called for re-elections in District 2, District 3, District 4, District 5, District 6, District 7, District 8, and District 9. Re-elections were lo be held February 25, 1997.

II

The Defendants argue that there could be no certification because the "appropriate ballots" were not given to students. VI S.G.C. art. V, § 3(C). The Court will rule that there could be no certification due to irregularities that could have changed the outcome of the election.

VI S.G.C. art. II, § 5(F) orders the Elections Board to certify all election results within 96 hours of the closing of the polls or postpone certification for no more than 72 hours.[3] The Code

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[2] Two candidates received votes from voters in districts in which the candidates did not reside. The Court finds fault in the Elections Board's decision to add the votes together and place them for the candidates in their proper districts. These dangerous actions allowed any student to vote for any candidate, whether or not they were constituents of that Student Congress seat. The votes for candidates, from voters not in the candidates' districts, should have been voided by the Elections Board. [originally n. 3 in slip op., at 2].

[3] The Elections Board did not do either of these. In future elections, the Court recommends that the Elections Board select to follow the certification process (within

continues to state the certification procedure. The Elections Board chose not to certify the results in Districts 2 through 9. The Supreme Court stands by the Board's decision because of § 5(F), which requires that the Board be able to affirm "that no Election Law violations, or other election irregularities have been detected which could change the outcome of the election."

The Court believes that the Elections Board could not certify the results of these districts because of the high possibility that violations and irregularities did occur, due to the faulty computer program, which stated the incorrect districts of graduate student voters. The Board did make appropriate changes to deal with the computer program, but for the purposes of certification, it could not be certain that no votes in the questionable districts were cast before the adjustments were implemented.

After not certifying the elections, the Elections Board called for a re-election. The Court finds that the Board acted correctly.[4] Section 5 states that "[t]he Elections Board may call for a re-election if they feel that a campaign violation could have affected the outcome of the election." *Ibid.*

Section 5 continues to state that "[i]f the Elections Board feels that a re-election is necessary, they must allow all affected parties the opportunity to present information concerning the decision to hold a re-election." The Court believes that the Board acted correctly in calling for a re-election, but it notices that the Board did not allow affected parties to present information concerning the decision.[5]

III

Plaintiff Kennedy requests that the Court grant relief in the form of an order for certification of results from District 4. He argues that he was the only candidate on the ballot, that there were no write-in candidates, and that he was the only candidate in that district to turn in a financial statement before the deadline. He states that there have been no violations alleged or

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96 hours) or postpone certification (for no more than 72 hours), immediately after votes are counted. [originally n. 6 slip op., at 6].

[4] As noted below, re-election can be called if a violation "could have altered the outcome of the election." The Court recommends that Student Congress edit VI S.G.C. art. III, § 1(E)(3) to reflect § 5 of Article VIII of that same title, so that the former allows more leeway in calling for reelections. Currently, the former requires a definite change in the outcome of an election, to call for a re-election. [originally n. 7 slip op., at 6].

[5] For the sake of the affected parties, the Elections Board should have had a hearing to decipher the facts of the case. Also, the Court feels that it would act more appropriately in an appellate fashion if this hearing had taken place. Without the hearing, Action Number 97–003 needed a period of proof of facts. This period was time consuming for the Court, and delayed its decision. [originally n. 8 slip op., at 6].

legitimized in District 4, and that even if there were lo be alleged violations, the outcome of the Election would not change.

Mr. Kennedy received 9 votes, 8 from the Student Union and 1 from Chase Hall. These poll sites were affected by computer error; however, Mr. Kennedy testified under oath that when he voted, the computer produced his correct district and that he proceeded to vote for himself.

The Court agrees with Mr. Kennedy's argument. Mr. Kennedy was the only declared candidate for the office and the only one to turn in a financial statement. Even if there were violations in District 4, with some students being allowed to vote in that district, and these voles were declared void, Mr. Kennedy would still be the winner, based on testimony that he voted for himself and on the fact that because he was the only candidate to turn in a financial statement, he was the only candidate qualified to be declared the winner. *See* VI S.G.C. art. VI, § 4(C) (the Court believes that a candidate who does not turn in a financial statement on time should be disqualified as a candidate. This law should hold true for candidates on the ballot as well as, for write-in candidates. However, this presents a problem, when results are not posted early enough after an election to give students who have received write-in votes enough lime to turn in a financial statement. The Court recommends that for fair notification, the Elections Board post the list of all students receiving voles in all elections, by 9:00 a.m. the day following the election. This provision gives students enough time to turn in financial statements, to remain qualified, before the 5:00 p.m. deadline. The Court advises all candidates who received votes, whether or not they received the highest amount of votes, to turn in financial statement on the chance that they may be declared the official winner if other candidates are disqualified for any reason. Turning in financial statements, also helps to ensure fair elections.) [originally n. 9 slip op. at 7].

IV

Accordingly, Mr. Kennedy, as plaintiff, is granted relief. The Court charges the Elections Board to certify the results of District 4, from the February 11m 1997 General Election.

V

Plaintiff Whalen requests that the Court grant relief in the form of an order for certification of results from District 8. She argues that in this two-seat district, the winner must receive a plurality of the votes. Three candidates turned in financial statements, in this district. Ms. Whalen received 13 votes. Two other candidates received 5 votes each. Two other candidates each received 1 vote, but did not turn in financial statements. All votes in this district, except 5 for Ms. Whalen, were cast at the

Grapevine Cafeteria, a poll site proven to be free from computer error in determining districts of voters. No violations were alleged or legitimized in District 8. Ms. Whalen continues by stating that even if the 5 votes she received in the Student Union and Chase were voided due to a violation, she would have received 8 votes, all from the Grapevine Cafeteria. The 8 votes are still enough to hold a plurality.

The Court agrees with Ms. Whalen's argument. It believes that it is unlikely that constituents from another district were able to know Ms. Whalen's name and therefore write-in her name on the ballot. But even if it is true that violations occurred in the

Union and Chase polling sites, Ms. Whalen is still the winner, due to the turning in of her financial statement and the fact that with 8 certified votes at the Grapevine Cafeteria, she holds a plurality.

VI

Accordingly, Ms. Whalen, as plaintiff, is granted relief. The Court charges the Elections Board to certify the results of District 8, from the February 11, 1997 General Election. There shall be a run-off election between the remaining two candidates, on the date of the scheduled run-off elections, to determine the winner of the second Congressional scat of District 8.

VII

Plaintiff Oljeski and Doherty request that the Court grant relief in the form of an order for certification of election results in Districts 2 through 9, so that re-elections will not occur. They also request that candidates who do not turn in financial statements by the deadline be disqualified. They argue chat "[t]he Elections Board may only call for a re-election if it finds 'that violations of the General Election Laws have changed the outcome of an election' (Title VI, Article III, Section E1)." Compl. The Plaintiffs state that the Board called for re-elections based on an "irregularity in the way in which the poll sites were inputted into the computers." Elections Board Memo (February 19, 1997). The plaintiffs believe that the Elections Board's ambiguous reference to the possibility of computer malfunctions is not enough to call for a re-election. The Board cannot prove that the possible error changed the outcomes of the elections in the plaintiffs' districts.

The Court disagrees with the interpretation of the Code by the Plaintiffs and with the reasoning of the Plaintiffs' complaints. The Court's decision relies on the following facts. District 9 is a two-seat district. Mr. Oljeski and Mr. Doherty were the only candidates to receive votes and turn in financial statements. All of the votes the Plaintiffs received were cast at the Grapevine Cafeteria. Because the Plaintiffs received verified votes and were the

only candidates to tum in financial statements, and thus be eligible for victory, the Court finds that there were no violations of the General Election Laws or irregularities that could have altered the outcome of the election.

VIII

Accordingly, Mr. Oljeski and Mr. Doherty, as plaintiffs, are granted partial relief.[6] The Court charges the Elections Board to certify the results of District 9, from the February 11, 1997 General Election.

It is so ordered.

[6] The Court chooses to charge the Elections Board to certify only the district specifically states, not all districts, 2 through 9 as Oljeski, Doheny, and Herold requested. Those districts not argued before the Court will not be certified, re-elections will be held. Included in these re-elections shall be District 7, from which Plaintiff Herold brought suit. At trial, no facts were presented by the plaintiff about the case. There were no records submitted by the Plaintiffs or Defense that indicated that Herold received any votes. The Court will not rule on this case.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 1999

JERMAIN REEVES, PLAINTIFF *v.* MURRAY COLEMAN, RESIDENCE HALL ASSOCIATION PRESIDENT, ET AL.

ORIGINAL

No. 99–002. Orig. Argued March 17, 1999–Decided March 19, 1999

After the Elections Board of The University of North Carolina at Chapel Hill disregarded 107 graduate student votes of the February 9, 1999 General Election and certified Defendant Murray Coleman as the winner of the Residence Hall Association Presidency, the plaintiffs filed a complaint with the Chief Justice within the statutory period pursuant to III S.G.C. art. II, § 203 (1998). Plaintiff served his written complaint upon the Chief Justice February 21, 1999. Upon receiving the complaint, the defendants filed a joint answer on February 25, 1999, at which time a pre-trial hearing was held. Motions to Dismiss were submitted by defendants. The first motion to dismiss was denied. Trial was set for February 27, 1999. Upon convening, the Court denied the second motion to dismiss. Plaintiffs filed a motion for continuance, motion for exclusion of affidavits, and motion to subpoena witnesses. The Court granted the motion to subpoena with respect to a portion of the witness list. The Court denied the motion to exclude affidavits and granted the motion for continuance. The Supreme Court reconvened for trial in the case sub judice on March 17, 1999 in the courtroom in Van Hecke-Wettach Hall.

Held: Plaintiffs granted relief.

The Elections Board's certification of the RHA election after discarding 107 graduate student votes of unknown validity is void. A re-election shall be held March 30, 1999 for Residence Hall Association President which shall include votes of all qualified graduate students.

Election voided and re-election ordered.

PAGE, J. delivered the opinion of the Court, in which CUNNINGHAM III, C.J., and BARNES, JEREMY, and BERKELEY-TUCHMAYER, JJ. joined.

Laura Killinger and George Battle for the Plaintiff.
Shawn Fraley and Melinda Manning for the Defendants.

JUSTICE PAGE Delivered the Opinion of the Court

I

Plaintiff Jermain Reeves ran for RHA President, appearing as the sole name on the ballot. After a close race against write-in candidate Defendant Murray Coleman, Plaintiff Reeves was notified by Elections Board Chair Defendant Heather Faulk that he was the winner. Subsequently, confusion arose regarding the validity of 107 graduate student votes. After consulting with several people, including Speaker of the Student Congress Morayo Orija and Graduate and Professional Student Federation President Bryan Kennedy, Defendant Faulk discarded the 107 graduate student votes, retallied the totals and declared Defendant Coleman the winner. She also later certified that result. Plaintiff Reeves brought suit with this Court seeking to have a re-election wherein qualified graduate student votes would be counted. Plaintiff Reeves also sought to have Defendant Coleman disqualified on the basis of certain alleged campaign violations.

We find for the plaintiff.

II

All members of the Residence Hall Association (hereinafter also "RHA") are entitled to vote for the RHA President. *See* VI S.G.C. art. III, § 123(B)(3). Furthermore, Graduate students living on campus in any of the undergraduate residence halls who pay the RHA fee (currently set at $9.25) are members of the RHA if not prohibited from membership by employment or other disqualification.

The Constitution states, "There shall be a Residence Hall Association (RHA) whose duty it shall be to handle all matters concerning student life in university-owned and approved undergraduate residence halls. . ." Student Const. art. I, § 7. Furthermore, the Code states, "Only those students living in residence halls that are members of the Residence Hall Association may vote in the elections for the Residence Hall Association President or on policies and issues affecting the Residence Hall Association." VI S.G.C. art. III, § 123(B)(3). Our analysis turns on our interpretation of these two sections.

Defendants argue that the fact that the phrase "undergraduate residence halls," Student Const. art. I, § 7, is used in defining the RHA in the Constitution means that only undergraduates in residence halls can be members of RHA. We find this argument unpersuasive. The reasonable conclusion, and the one which we draw, is that the phrase merely distinguishes the residence halls in which undergraduates live from Odum Village. Even Craige Residence Hall, the residence hall with the largest population of graduate students, has a population in which undergraduates are

in the majority.[1] It is quite possible, given that the Constitution has remained largely unchanged for several generations of students, that at one point all residence halls other than Odum Village were reserved for undergraduates. The phrase would then merely reflect the state of affairs at the adoption of the Constitution. Whether this was in fact the case is, however, irrelevant to our analysis. Either Craige Residence Hall is an "undergraduate residence hall," Student Const. art. I, § 7, within the meaning of the Constitution and all of its residents who pay the RHA fee are members of RHA, or it is not an "undergraduate residence hall," *id.*, and no one living in Craige can be a member of RHA. Finding the latter an untenable decision, the Court finds that Craige Residence Hall is an undergraduate residence hall within the meaning of the Constitution, and that all students living therein are eligible members of RHA.

Defendant also argues that the phrase from Title VI of the code stating that "[o]nly those students living in residence halls that are members of the Residence Hall Association may vote in the elections for the Residence Hall Association President. . ." art. III, § 123(B)(3), means that there are some students living in the residence halls who are not members of the RHA. We agree. However, Defendant also asserts that the students mentioned that live in the residence halls and are not members of RHA are graduate students. It is here that our opinions diverge. The Department of University Housing (hereinafter also "DUH") employs graduate students as Assistant Area Directors for every Area on campus. It is our understanding from statements made at trial, and from our own conversations with DUH officials and with the Payroll Department, that Assistant Area Directors are not members of RHA, due to the fact that part of their remuneration is free housing and that they pay neither rent nor the RHA fee.[2] We imagine that this may also have to do with problems of undue influence and conflicts of interest. RHA was set up to voice student concerns to the DUH and having DUH employees as members of RHA may defeat or compromise that purpose. Whatever the reasons, we interpret this phrase to refer to these employees, and not, as the Defendants allege, to the possibility that graduate students are not or can not be members of RHA. As we

[1] It is the Court's understanding that the makeup of Craige's population is approximately as follows: 1/3 Graduate Students, 1/3 Undergraduate Students, 1/3 International Students. [originally n. 6, slip op., at 5].

[2] Resident Assistants, on the other hand, are members of RHA because they receive only reduced room rent as remuneration and do pay the RHA fee. In addition, the Resident Assistant is less likely to make actual decisions over punishment, etc. of students in their area than an Assistant Area Director is. Thus, conflict of interest is less of a problem. [originally n. 10, slip op. at 5].

have already stated, graduate students are eligible to be, and are, members of RHA.[3]

Given these statements by the Constitution and Title VI, and our interpretation of them, it is absolutely indefensible that the graduate students from whom a $9.25 fee is collected for the RHA should be denied the right to vote for the head of the organization for whom that money is not only taken, but earmarked.

III

We turn now to the plaintiff's allegations of Elections Law violations by the Plaintiff against the Defendants.

Defendant Coleman.

At the close of the Plaintiff's case, we granted Defendant Coleman's Motion for Judgment as a Matter of Law. With all evidence presented at that time taken in the light most favorable to the Plaintiff, there was insufficient showing that Defendant Coleman had foreknowledge of either violation alleged[4], which would have been necessary to require Coleman's disqualification. Since disqualification would not have been required, and there is no showing of abuse of discretion by the Elections Board Chair in merely issuing a warning, the outcome would not have been changed by these violations.

Ambiguous Code Sections.

However, some uncertainty arose during argument as to the meaning of "mass use of voice mail" as it is used in VI S.G.C. art. VII, § 171(C)(1). Our discussion led us to the conclusion that "mass" was somewhere between the entire student body of the University and two or three friends. Randomness may be the determining factor, *i.e.*, the entire Black Student Movement (hereinafter "BSM") is not mass, but all of the Bs in the phone book would be. At trial, Defendant Faulk, the proponent of the legislation and the Elections Board Chair testified that mass was meant to address automated or technologically duplicated voice

[3] RHA President Jernigan testified at trial that graduate students who qualify (duly registered student, pay the RHA fee. . .) are eligible to run for RHA Area Governor, Floor Senator, etc. [originally n. 11, slip op., at 5].

[4] Plaintiff alleged that Coleman had foreknowledge of a BSM voicemail endorsing him the night before the election. Plaintiff further alleged that Coleman was present and aware of certain poster violations. All evidence points either to the fact that Coleman never knew of the violations ahead of time or that at the time they occurred, he had no knowledge of their illegal nature because of his reliance on advice by Defendant Faulk to the contrary. Without foreknowledge, the sanctions on Coleman were under the discretion of the Elections Board Chair, and we do not find that there is any showing of an abuse of that sanctioning discretion in this instance. [originally n. 12, slip op., at 5].

mails by candidates. We strongly urge the 81st Student Congress to address this issue and clarify the meaning of "mass use of voice mail."

Furthermore, some confusion arose as to the intent of § 151(C), *id.*, the definition of "Campaign Worker." As it currently reads, the section would seem to include the *Daily Tar Heels*' (hereinafter also "DTH") endorsement of candidates, or at least that if it does not, the only reason is because the DTH doesn't inform the candidate of its endorsement ahead of time. For example, if the DTH tells Coleman they are endorsing him tomorrow, they become a campaign worker, but if the BSM doesn't tell him, but prints an endorsement anyway, they are not a campaign worker. It seems a pointless distinction to draw when defining a Campaign Worker. We urge the Student Congress to clarify its intent, perhaps by providing an example in the Code or by at least addressing the DTH issue.

In addition, we suggest that the 81st Congress codify the status of graduate students. We hold that graduate students who reside in residence halls and pay the RHA fee are members of the RHA and may vote according to VI S.G.C. art. III, § 123(C). We suggest clarifying Part B of that Section to reflect that graduate students are not only residents of their "School, Department, Curriculum," etc., but may be a resident of a residence hall and a member of RHA.

Defendant Faulk[5]

Defendant Faulk incorrectly advised Murray Coleman that, as a write-in candidate, he did not have to follow the same rules as the other candidates, in direct contradiction of VI S.G.C. art. IV, § 134(A).

As a result, Murray Coleman and/or his staff unknowingly violated campaign laws. When the error and subsequent violations were discovered, they were quickly remedied. Nevertheless, during the night and following day that the illegally placed campaign flyers were posted, Murray Coleman may have gained an unfair advantage over Jermain Reeves. By itself, however, this violation(s) is not enough to require us to overturn the discretionary decision of the Elections Board Chair and order a re-election.

[5] We preface our remarks on Defendant Faulk's actions by recognizing that Elections Board Chair is one of the most thankless jobs in UNC-CH Student Government. It is a difficult and demanding job that is nearly impossible to perform flawlessly. [originally n. 14, slip op., at 5].

Conversely, the exclusion of 107 graduate student votes had a profound effect on the outcome of the election.[6] Given the available alternatives, their exclusion was an abuse of discretion by the Elections Board Chair. The exclusion of valid votes should always be the last resort of the Elections Board Chair. Defendant Faulk had at least two available alternatives before her when she discovered that some of the graduate student votes might be invalid: throw them out and declare a winner; or, recognizing that she did not know how many, if any or all, of the graduate student votes were valid, hold a re-election. There was, in fact, a run-off election held the following week for the Student Body President. The addition of an RHA re-election to the already campus wide ballot would have saved a lot of trouble.[7] In addition, a week should have been sufficient time for the Elections Board to compose a system which would more reliably collect valid graduate student votes.[8] By choosing to invalidate an unknown number of valid graduate student votes, Defendant Faulk violated the rights of both Plaintiff Reeves and those graduate student members of RHA who voted. Defendant's decision fell outside the bounds of acceptable mistake or discretion.

* * *

Therefore, we find the certified results of the February 9, 1999 election of the Residence Hall Association President void. We hereby order a re-election to take place on March 30, 1999. Pursuant to VI S.G.C. art. III, § 121(E)(2) ("The re-election shall be open to all qualified candidates of the initial election, except those disqualified by the Elections Board or the Student Supreme Court."); *id.*, art. IV, §§ 133(G) ("It shall be the duty of the Elections Board Chair to determine the standing of all candidates qualified for election by petition or write-in."), 134(A) ("Any students who meet the qualifications for office may be elected to that office as a write-in candidate. The candidate and his/her supporters shall be subject to the limitations and regulations governing

[6] It was stipulated by the parties that the exclusion of the 107 votes dropped Reeves from 810 to 703 votes, whereas Murray Coleman's vote total remained unchanged at 743. [originally n. 15, slip op., at 5].

[7] We recognize that there is latitude for the Elections Board Chair to make mistakes, even if they may affect the outcome of an election, this mistake not only violated the rights of the Plaintiff, but of an unknown number of graduate student members of RHA, and as such, crossed the line from harmless error to abuse of discretion. [originally n. 16, slip op., at 5].

[8] For example, before computer use was widespread, we voted on slips of paper, showing our IDs. The Elections Board could have relied on the Honor Code to discourage unqualified voters from voting or use a voter list to be checked off at each poll station. [originally n. 17, slip op., at 5].

all candidates, except that he/she shall not be required to submit a petition nor attend the compulsory Candidates Meeting."), the Plaintiff's name shall appear on the ballot, and Defendant Coleman must run again as a write-in candidate. This is consistent both with the Code and with the inherent nature of a re-election and returns the parties to their positions in the original election. This election shall be conducted by the Elections Board Chair[9], or in the event she is unable to perform her duties, by the Vice-Chair of the Elections Board, pursuant to VI S.G.C. art. II, §§ 117(B–C) ("B. The Elections Board Vice-Chair shall serve as Acting Chair in case of the absence of the Elections Board Chair. C. The Elections Board Vice-Chair shall succeed to the office of the Elections Board Chair in case that office becomes vacant."), 113(A) ("The Chair and the Vice-Chair of the Elections Board shall serve one (1) year or until their successors are appointed and confirmed. . .").

It is so ordered.

[9] We stress that the Court has in no way required Elections Board Chair Faulk to resign or to abstain from conducting this re-election. If she feels she would be biased, we would encourage her to recuse herself, but this Court and the Code will not require such action. [originally n. 21, slip op., at 5].

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2000

SANDRA CHAPMAN, PLAINTIFF, ET AL. *v.* MARK KLEINSCHMIDT, SPEAKER OF THE STUDENT CONGRESS, ET AL.

ORIGINAL

No. 00–001. Orig. Argued and Decided February 2, 2000

On December 7, 1999 the Student Congress of the University of North Carolina at Chapel Hill enacted SCR–81–130 by a vote of 12–10, which later became 81–SR–057. On 20 January 2000 Student Body Treasurer Ryan Schlitt and other members of the Executive Branch noticed said Resolution was in contradiction of II S.G.C IV, § 166 (1999). After notifying Speaker Kleinschmidt of the possible violation, Kleinschmidt requested some time to review his options. On January 21, 2000 Speaker Kleinschmidt directed the Chair of the Elections Board to remove the referendum from the ballot. Plaintiffs subsequently filed a complaint against Defendant Kleinschmidt with the CHIEF JUSTICE within the statutory period pursuant to III S.G.C. IV, § 513. *Id.* (Supp. 1999). Upon receiving the complaint, Defendant filed an answer on January 22, 2000 at which time Plaintiffs moved for a Temporary Restraining Order (T.R.O.) seeking to estop Defendants' action. On January 23, 2000 this Court denied Plaintiffs' motion for a T.R.O., and a trial date was set. On January 28, 2000 Plaintiffs, Defendants, and *Amici* filed briefs with this Court. The Supreme Court convened for trial in the case *sub judice* on February 2, 2000 in the courtroom in Van Hecke-Wettach Hall.

Held: Plaintiffs are denied relief.

II S.G.C IV, § 166 is hereby constitutional and is not in contradiction with I S.G.C. VI, § 1. *Id.* (1999). 81–SR–057 failed to receive the requisite number of votes as prescribed by law. *See* II S.G.C. IV, § 166. As such, Defendants' action causing the removal of 81–SR–057 from the general election ballot was proper and consistent with his duties as Speaker of Student Congress.

Denied and dismissed.

PAGE, C.J. delivered the opinion for a unanimous Court.

David Neal argued the cause for the Plaintiffs.
Drew Haywood and Mark Kleinschmidt argued the cause for Defendants.

Office of the Student Body President and Executive Branch as *Amici Curiae*.

CHIEF JUSTICE PAGE delivered the opinion of the Court.

I

On Tuesday, December 7, 1999, Student Congress passed 81–SR–057, a *Resolution to Include a Referendum Regarding the United States Student Association on the Elections Ballot*. This Resolution passed by a roll call vote of 12–10. The Speaker of Student Congress, Defendant Mark Kleinschmidt, signed the Resolution, which was then to be placed on the February 2000 election ballot by the Elections Board.

On January 20, 2000, Executive Branch officers made Defendant Kleinschmidt aware of an apparent Code violation regarding the passage of 81–SR–057 (heretofore referred to as the USSA referendum). The controversy regarded the possible incongruity between the language in I S.G.C. VI, § 1:

> **Amendments**. Amendments to this Constitution shall become valid when passed by a *simple majority*, provided that at least 2.5% of the Student Body votes on the amendment, of those voting in campus elections conducted by the Elections Board *at the direction of the Student Congress*, or, they shall become valid when, upon petition in writing signed by ten percent (10%) of the duly enrolled students in the University of North Carolina, the President of the Student Body shall direct the Elections Board to conduct an election in which a favorable vote of two-thirds of those voting shall be necessary to ratify the amendment. . .

I S.G.C. VI, § 1 (1999) (emphasis added), and the language contained in II S.G.C. IV, § 166:

> Election Super majorities. . . . No resolution calling a referendum to amend the Constitution of the Student Body shall be passed at any time without a two-thirds vote of the Congress.

(emphasis added). After consulting other congressional representatives. Speaker Kleinschmidt directed the Elections Board Chairperson, Catherine Yates, to remove the USSA referendum from the February 2000 general election ballot.

After relying on the placement of the USSA referendum on the February 2000 ballot, the Plaintiffs, University of North Carolina students Sandra Chapman, David Seymour, Christine Williams, and Corye Barbour, brought this suit against the

Defendants, Speaker Kleinschmidt, and, later in their amended Complaint, Elections Board Chairperson Yates. The Plaintiffs brought two contentions before this Court: (1) a two-thirds congressional majority requirement before constitutional amendments can be added to the ballot is unconstitutional, and (2) since the Plaintiffs relied on the results of the simple majority vote and the public understanding of it to their detriment, the Defendants should be estopped from removing the USSA referendum from the ballot. We disagree with both arguments and find for the Defendants.

II

Before the start of the trial, the Defense moved to have Defendant Yates dismissed as an unnecessary party to the action, and the Plaintiffs agreed to this motion. Although III S.G.C. V, § 510(B)(3), as a general rule, requires the joinder of the Elections Board Chairperson in any suit based on an election action, the present controversy falls outside of the scope of this rule because this Court finds that the aforementioned act did not constitute a formal election action by the Elections Board Chairperson. *See* III S.G.C. IV, § 510(B)(3) (Supp. 1999).

The powers of the Elections Board are clearly defined in Title VI of the Student Code. Under Title VI, the Elections Board Chair is given the power to determine the composition of the elections ballot and other administrative duties, but no power is given to the Elections Board Chair to decide the composition of the ballot with regard to referenda. In fact, I S.G.C. VI, § 1 specifically gives the power to amend the Constitution to the students, while Congress and the President are directed to give the possible amendments, as referenda, to the Elections Board for inclusion. There is no room for discretion by the Elections Board. Once the Elections Board has included or excluded a referendum from the ballot, an actionable Title III violation may have occurred. *Id.* However, until the Elections Board has formally acted in placing or not placing a referendum on the ballot, no formal election action has occurred within the meaning of Title III. *Id.* Thus, this Court found that the Elections Board Chair need not be a party for this suit to proceed, and Chairperson Yates was duly dismissed without objection from either the Plaintiffs or the Defendants.

III

I S.G.C. VI, § 1 provides the only two ways in which the Constitution may be amended. This Court believes that the students are the driving factor behind Student Government. Furthermore, this Court believes that the students are issued the primary power to amend the Constitution. The majority of I S.G.C. VI,

§ 1 provides the process by which the Constitution may be amended by a student-initiated petition drive. When ten-percent of the student body signs a petition for a constitutional amendment, the Constitution spells out, in no uncertain terms, that the Student Body President shall direct the Elections Chair to place the referendum on the ballot. Once the requisite number of signatures has been acquired, the Student Body President has no ability to withhold the referendum from being placed on the general election ballot. This process is solely student controlled.

The second and final way in which a constitutional referendum may be placed on the general election ballot, however, is through legislative means. This power is separate from the powers given to the student body to petition for a Constitutional referendum. This Court interprets the phrase "*at the direction of Student Congress*," I S.G.C. VI, § 1 (emphasis added), to suggest an allotment of power to Congress to facilitate the amendment process, not a definition of that process. This phrase allows Congress to set a procedure by which the Constitution may be amended. II S.G.C. IV, § 166. It must be understood, however, that "at the direction of Student Congress" implies that *at minimum*, more than one-half of a quorum of Student Congress must vote in affirmation of the Resolution. Furthermore, *all* business of Congress must pass with at least a majority affirmation as spelled out in I S.G.C. I, § 4(K)[1] and by the general theory of democracy. Beyond this requirement, the Constitution does not clarify the number of votes needed in order to pass a referendum in the congressional process for amendments. Therefore, the supermajority expressed in II SGC IV, §166 does not conflict with the amendment process outlined in the Constitution, specifically I S.G.C. VI, § 1.

This Court found that, in this case, the issue of disrupting the system of checks and balances by upholding II S.G.C. IV, § 166 unconvincing. Neither the Defendant nor the Plaintiffs were able to articulate the ways in which the system of checks and balances would be negatively affected by upholding II S.G.C. IV, § 166. First, it is important that, although the Executive Branch provided an *amicus curiae* brief, the Executive Branch in no way has power over any part of the amendment process. In the amicus brief, however, the lack of discussion concerning the possible disruption of the system of checks and balances clearly shows that the *amici* did not feel that their powers were being restricted by II S.G.C. IV, § 166. Secondly, the Judicial Branch has no

[1] "**Powers of Congress. K.** Annually establish procedures for the execution of its business, provided the Congress by majority vote may call any measure from committee after the meeting at which the measure is introduced." [originally n. 12 in slip op., at 7].

initiative power over the amendment process, and therefore, does not feel restricted by II S.G.C. IV, § 166. The student body through petition, and the Student Congress through legislative means, are the only aspects of our system of government that have initiative control over the amendment process, according to the Constitution. Since said provision does not affect the student body petition process, upholding the Title II Code provision does not provide a more strenuous check on the student body as an institution. Therefore, II S.G.C. IV, § 166 only provides a check on the Student Congress, but does not elevate the Executive or Judicial Branches' power since each had, and continues to have, no initiative power in the matter.

II S.G.C. IV, § 166 does place a restriction on Student Congress' power to place a referendum to amend the Constitution on the election ballot. This self-restriction on congressional power is properly placed in the procedural section of Title II because this section clearly defines the procedure required to adopt amendment referenda. Since this is a special circumstance that does involve changing the supreme law of the student body by Congress, it is acceptable to increase the number of votes required for legislative passage. This allows only widely supported congressional resolutions to be brought before the students, while still providing the popular means by which students petition for such amendments.

Ignorance of the Code seems to be used as a justification for both Defendant Kleinschmidt's action, as well as Plaintiffs' reliance on Kleinschmidt to put the constitutional referendum on the general election ballot. It is the responsibility of every member of Congress to be aware of the relevant sections of the Student Code when conducting its legislative business. Knowledge of the Code is particularly crucial for the Speaker of Student Congress, whose responsibilities include ensuring "*that all duties of the Congress and its officers are properly executed.*" II S.G.C. II, § 123(J) (emphasis added). Knowledge of the Code is tantamount for the sponsor of a Bill or Resolution, in this case Representative Josh White, since it is in every sponsor's interest to have the Bill or Resolution adequately pass the Congress.

In summary, this Court finds that II S.G.C. IV, § 166 is consistent with the Constitution. The Constitution merely provides the allocation of power to Congress for the amendment process, but it does not discuss internal procedures for this process. Furthermore, this Court finds that there is no disruption of the balance of power by finding II S.G.C. IV, § 166 constitutional. Therefore, this Court finds II S.G.C. IV, § 166 constitutional and denies Plaintiffs relief under this claim.

IV

We now turn to the Plaintiffs' estoppel argument. Before ruling on whether the Defendant should be equitably estopped from acting because the Plaintiffs relied on the Defendant's action to their detriment, this Court finds itself in a quandary. One of the most important bases of this Court's authority has been challenged—the ability to address equitable issues. This must first be addressed.

Equitable Issues

The Defendant hastily took the unnecessary action of challenging this Court's ability to hear and settle equitable claims. Defendant Kleinschmidt argued that III S.G.C. I, § 103(B) only allowed the Student Supreme Court to hear questions of law and no other claims. *See* III S.G.C. I, § 103(B) (Supp. 1999). He also argued that the supreme combination of courts of law and equity, which occurred in this nation over two hundred years ago, should not be applied to this case or this Court. We find that the Student Supreme Court has the power to hear equitable, as well as legal, claims so long as the equitable remedies do not violate the Constitution.

Under Title III, the Student Supreme Court has been given the power to hear,

> . . .controversies concerning actions of the executive branch, legislative branch, elections board or other organizations and committees organized under the authority of this Code of Permanent Laws. . .extended to *questions of law arising under this Constitution*. . . *Ibid.* (emphasis added).

A plain meaning of this section reveals that the Student Supreme Court has been given the authority to hear questions of law *and controversies concerning the other branches and organizations* at the University of North Carolina at Chapel Hill. Furthermore, under III S.G.C. IV, § 410(A), this Court has been given "legal power, as to both questions of law and fact. . ." III S.G.C. IV, § 401(A) (Supp. 1999). Yet nowhere does the Code specifically define what these other controversies must be, or whether these are solely legal claims. Thus, this Court was forced to delve into the background of both legal and equitable claims.

Both legal claims and equitable claims are inextricably tied to their respective remedies, which historically were kept separate until the courts were united. Legal claims led to legal remedies, and equitable claims lead to equitable remedies. Never in the courts of this University, have the final arbiters of justice been authorized to hear legal claims and only some equitable claims while being denied the right to hear equity. III S.G.C. IV, §§ 410,

522 specifically authorize the Court's use of temporary restraining orders and simple injunctive relief, obvious equitable remedies. *Id.* (Supp. 1999).

Speaker Kleinschmidt argued that the specificity with which these equitable remedies were enunciated speak to the exclusion of all others under the principle of *expressio unius est exclusion alterius* ("[t]he expression of the one is the exclusion of the other"), yet this Court also finds this idea unpersuasive. The Code specifically gives the Student Supreme Court the authority to decide issues involving the Constitution of the Student Body of the University of North Carolina at Chapel Hill without reference to equitable or legal claims. Since elements of both legal and equitable claims are present in Title III, this Court has concluded that this body has the authority to hear issues of both law and equity.

Yet the Student Supreme Court has been given the supreme task of upholding the Constitution and the Code. *See* III S.G.C. I, § 103(B) (Supp. 1999). Under this directive, this Court finds that although the Student Supreme Court may hear equitable claims, equitable claims may not be held above the Constitution. Since the Plaintiffs seem to seek the elevation of their equitable estoppel claim above the Constitution, we must further rule against the Plaintiffs under the theory of estoppel.

Equitable Estoppel

As a final matter, the Plaintiffs made an estoppel argument that in the event this Court did not rule in their favor on the Constitutional point, this Court should reserve the equitable remedy of placing the USSA referendum on the ballot. Although this Court heard valid witnesses and arguments in favor of an equitable remedy, placing the USSA referendum on the ballot would be unconstitutional, and therefore, is outside of the scope of equitable remedies that this Court may use to place the Plaintiffs in pre-injury standing.

The Plaintiffs apparently only pursued one course of action in this matter—the congressional referendum. Although multiple witnesses testified to the importance of educating the students in what they feel is a "student issue," and educating these fellow students early because of the complexity of USSA, the Plaintiffs seem to have taken little or no action in following through with this course. Resolution 81–SR–057 was passed on December 7, 1999, the last day of classes and the final congressional meeting of the year. Not only did the Plaintiffs wait until the final Student Congress session of the Fall Semester to pass this referendum, they also apparently took no action during the semester to educate masses of students, encourage a petition drive, or involve the entire student body in a discussion on the merits of USSA. The

Plaintiffs relied solely on the congressional referendum, the legislative manner by which referenda are placed on the ballot, instead of the popular method of educating students and securing a ten-percent student body petition to place the referendum on the ballot; therefore, this was their downfall.

As it stood, the Plaintiffs planned to educate the campus about USSA in the brief span of less than a month before the planned February 8, 2000 elections. The Plaintiffs worked out these details with USSA and spent the Winter Break planning the education campaign, but not actually acting on it. Thus, although the time and money spent seem to be lost on the February 2000 elections, this Court does not see how all of the USSA education campaign work is lost forever.

Furthermore, while Plaintiffs' counsel argued the substandard nature of a special election, this argument is unconvincing. In the face of an obvious constitutional violation, the fact of logistical difficulties does not justify support of the Plaintiffs' inequity. In fact, the Framers of our Constitution purposefully wrought the difficulties of which Plaintiffs' complain. When asked outright if the Plaintiffs could think of any other equitable remedy that would repair their situation, they were unable; consequently, this Court is also unable. Without any other equitable remedy this Court is left to the task of denying all of the Plaintiffs' claims with the hope that this opinion will encourage them to begin with the students on their next campaign, because the students are the basis upon which our Constitution was founded.

* * *

Therefore, we find the action of removing the USSA referendum from the general election ballot, taken by Speaker Kleinschmidt on January 21, 2000, valid and constitutional. Furthermore, unless or until a Congressional Referendum Resolution passes with the requisite two-thirds supermajority of Congress, or a petition with at least ten percent of the student body is presented to the Student Body President, the USSA referendum may not be added to the February 2000 ballot.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2006

CAROLINA ATHLETIC ASSOCIATION, PLAINTIFF *v.* STUDENT CONGRESS, DEFENDANT

ORIGINAL

No. 06–003. Orig. Decided February 15, 2007

The 88th Student Congress passed SL–085 which both interpreted Title VII to require information of the Carolina Athletic Association (CAA) and forbidding Student Government Officials from accepting tickets outside of the Student Lottery. Members of the CAA—who previously had been exempt from the lottery—challenged the validity of 88–SL–085 arguing that the Congress is unable to dictate the policy of the CAA and that the Congress lacked the authority to prevent Student Government officials from accepting such tickets.

Held: while Congress possesses the power to legislate over Student Government, it does not have the authority to delegate the distribution of tickets. Additionally, the scope of 88–SL–085 was unconstitutionally broad and overly-vague, rendering the action unconstitutional.

Student Congress may legislate the policies of Student Government, but since the delegation of tickets is not conducted under the authority of student self-governance, Congress may not reasonably extend it authority to directly legislate over the CAA's ticket lottery. Since CAA also does not have the power to fulfill the requirements of the legislation, the act is further unconstitutional under the Preamble of the Constitution by deliberately setting up an agency to fail. Nor may Student Congress legislate over the capacity of Student Government members to accept non-lottery tickets. Such authority is not explicitly conveyed by the Constitution. Finally, the act is overly vague since it applies to *all* student government officials.

88–SL–085 unconstitutional and all officers of Student Government are enjoined from its enforcement.

Liles, C.J. delivered the opinion for a unanimous Court.

CHIEF JUSTICE LILES delivered the opinion of the Court.

The 88th Student Congress passed SL 085, the effect of which is to reorganize parts of Title VII to require information from the Carolina Athletic Association (CAA) as well as to forbid student government officials from accepting tickets outside of the student lottery. The members of the CAA Cabinet receive from the

Athletic Department tickets for each game, in return for service on the Ticket Review Board, these students are also exempted from the ticket lottery. The Carolina Athletic Association challenges the validity of 88 SL 085 as a legislative action. The CAA has standing to bring this action under Title III § 407(a) as a "student organization whose powers, rights, privileges, benefits or immunities are adversely affected, restricted, impaired or diminished by the legislative act in question," and this Court exercises our jurisdiction to decide the matter under its general jurisdiction over interpretation of the Student Code conferred in Title III § 401(a).

I

This matter yields two questions for decision by this Court to ultimately deal with the question of the Act's constitutionality: 1) Does Congress have the power to enumerate the policy of the CAA through codification, and 2) Can Student Congress prevent student government officials from accepting non-lottery tickets?

II

On the first question, the Court finds in the affirmative that Student Congress may legislate the policies of the student government but only within their power under the Code and the power of student government itself. In deciding this issue the Court deals with not only the limits of Congressional power, but also the limits of our own power and the very derivation of student government itself.

A

Under Article I § 1(a) of the Constitution the Student Congress is the supreme legislative body and as such may legislate changes to all parts of the Student Code except the Constitution (The Constitution can only be changed by student referendum, further establishing the power of Student Congress as directly connected with the power of students in general [originally n. 1, slip op., at 2]). However, this power is not unlimited, but dependent at least somewhat on the bounds of the power of students to self-govern. The power under the Code comes first and foremost from the students as indicated specifically when the Preamble to the Constitution refers to student "self-governance." Additionally, the specific power of the Student Congress to administer the Student Activity Fee was delegated to Student Government by the Chancellor. So, within the bounds of these powers the Student Congress may legislate the operation of Student Government. The power over tickets and athletics was similarly been delegated by the Chancellor and Board of Trustees to Athletic Department.

Student Congress does not have the power to control the Administration and therefore any attempt to do so is not just futile and moot, but it is also unconstitutional as a Congressional action *ultra vires*, or outside of their power.

B

Student Congress cannot charge a subordinate organ under the Code with action outside of Student Congress' own power. Furthermore, Student Government is meant to work, and neither Student Congress nor any other branch of government can set up an organ of student government to fail by charging them with action they do not have the actual power to deliver. To specifically arrange for the failure of another branch of student government is specifically against the Preamble's charge of "responsible self-government" and "preserving order."

C

Applied to 88 SL 085, Part C on line 35 where Congress charges the CAA to "execute any manual ticket distributions," is thus blatantly unconstitutional as it is not the Student Congress' power to delegate. Ticket distributions are conducted by the Athletics Department, and any policies concerning them are purely the business of that Department and University Administration. So, any instance where Student Congress charges another organ of student government to dictate ticket policy Student Congress is acting outside of its power. Any actions by Congress dictating ticket policy are thus unconstitutional.

So far in Part A of Section 311 of the legislation that Student Congress charges the Ticket Review Board (as it means the officers of the CAA) to distribute tickets it is operating outside of its power and thus that section is unconstitutional. Furthermore, in Part B of the same Section where the legislation refers to the "Ticket Review Board," as it means the advisory body within the Athletic Department, Student Congress is acting outside its power. Inasmuch as the section refers to a corresponding body within student government Student Congress is acting constitutionally. The same analysis applies to Section 312(a), where Congress cannot dictate policy to the Ticket Review Board, as an arm of the Athletic Department, but to the extent that such an entity exists within student government and under the Code, Student Congress is allowed to legislate such policies.

Sections 313(a) and 313(c) are additional actions by Student Congress outside of their power as much as they attempt to dictate the ticket distribution policy – a power previously noted that Student Congress does not have.

III

In regards to the second question this Court finds that Student Congress cannot prevent student government officials from accepting non-lottery tickets. Section 313(b) of 88 SL 085 which attempt so achieve these ends is overtly broad and thus void for its vagueness, and additionally there is no prevailing authority which allows Student Congress to deprive a student government official of this right.

A

Nowhere in the Student Code is Congress given the power to deny student government officials of tickets in any way the Athletic Department chooses to disburse them. There is no 'student bill of rights,' but the right to be eligible to receive tickets to athletic, specifically basketball games, is as undeniable a right as you can find in student politics (This ruling does not deal with non-revenue generating sports. There was a point of information given by the CAA that no part of the student athletic fee goes to pay for basketball tickets. This makes revenue-generating sports that much different from non-revenue generating sports and even more distant from the power of Student Congress [originally n. 2, slip op., at 5]). Since Student Congress in no way has the power to determine the right, in now way can they deny this right—and for us to enforce this right would be outside out the power of this Court.

B

Section 313(b) is also overtly vague in its application to all student government officials. The measure was obviously enacted to stem corruption of any student government official in the making of ticket distribution policy or implementation of the process. Seeing that Student Congress was outside of its powers in thinking members of student government had such direct power over ticket policy the point is likely moot. However, even if they did have such a power, the measure is over inclusive to achieving its anti-corruption ends. This measure indicates that "any student government official" cannot accept non-lottery tickets. The expansive nature of this measure adversely affects the unknowing member of student government that has no influence on ticket policy, but somehow attains non-lottery tickets at the behest of the Athletic Department.

C

Section 313(b) also denies student officials the due process of impeachment inherent in the constitutional clause which allows Congress to impeach officials. This measure makes the acceptance of tickets a conclusive violation of their duties and thus an impeachable defense, even before there is a chance for

explanation or opportunity for process. Though the Court notes the language of "may" within the measure, it is still far more conclusive an indictment of the official's behavior to specifically breach the Student Code, thus allowing them to be charged with malfeasance. No matter the validity of an explanation the breach of the Code will thus remain. The Court thinks that such mandates of impeachment of non-Congress officials, before the fact, are outside Congress' constitutional powers given in Title I, Article I, Section 4(K).

Congress has the power to lay down ethical standards *ad nausem* for its own membership, with certain respects to process, because it is the final arbiter of its own membership. *See* II S.G.C. art. I, § 114. *See generally also* II S.G.C. art. X. Though it can impeach student government officials, it would be remiss to think that Congress can simply rewrite all laws to dictate the actions of the other branches of government under threat of removal. No rational Court could read the Student Code to allow a policy where Student Congress effectively legislates to the Student Body President his or her platform, enforced by threat of impeachment. Student Congress can naturally bring up articles of impeachment on any student official under the Constitution, and conduct a proper trial, however it is completely outside the bounds of Student Congress' power to make determinations of what is impeachable before the fact – and inasmuch as Section 313(b) does this it is stricken as unconstitutional.

IV

In deciding the issues before it the Court had to grapple with the problems of the current configuration of student government. At trial, the recent integration of the CAA into the Student Code were noted. The ultimate constituency of student government is the students from whom we derive our consent to govern. Continuously throughout the trial it was noted that the CAA derives the vast majority of its power from their capacity within the Athletic Department. After close examination, I am of the opinion that CAA, in its current form, serve sometimes contradictory constituencies, and as such has no place in the Student Code. Within the action and interpretation of Student Code, the students are supreme, and this is obviously not the case when discussing policies of the CAA. I believe there is a place for the CAA to fulfill its constitutional charge and represent student opinion on athletic issues, but this is completely separate from its functions as the Ticket Review Board, administration of Fever, and somewhat the conduct of homecoming. So the parts of the current CAA which are beholden to the Athletic Department have a place as a completely separate entity, not at all associated with student government. The remaining CAA, is charged under Article I,

Section 7 of the Constitution as an advocate for students on athletic issues.

* * *

To the extent that Student Congress attempts to legislate outside the scope of power delegated from students under Sections 311 and 312 of 88 SL 085, we adjudge and declare those actions unconstitutional. Additionally, for the previously mentioned reasons, Section 313 is stricken in its entirety as an overly broad exercise of a power we are not sure Student Congress actually possesses. The Court orders the implementation of this decision to the fullest extent possible by all entities subject to the jurisdiction of this Court.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2008

MATT WOHLFORD, PETITIONER *v.* RYAN MORGAN, CHAIRMAN OF THE BOARD OF ELECTIONS AND THE BOARD OF ELECTIONS

ON WRIT OF CERTIORARI TO THE BOARD OF ELECTIONS

No. 08-002. Argued January 22, 2009–Decided January 25, 2009

Matt Wohlford was a prospective candidate for UNC's Student Body President. In August of 2008, Mr. Wohlford held an event at the Campus Y during which time he gave an interview to the Daily Tar Heel. An anonymous student re-ported both the meeting and the interview to the Chairman of the Board of Elections ("B.O.E."), Ryan Morgan, alleging a violation of UNC's Election Law. Chairman Morgan held a meeting with Mr. Wohlford in relation to the report. On October 5, 2008, the BOE held a closed meeting, issuing 08-BE-12, a punitive decision based on evidence from the meeting between Wohlford and Morgan and other reports. The BOE found that Wohlford's interview with the Daily Tar Heel violated VI S.G.C. §402(A)(1), and levied a $40 on Wohlford pending certification as a candidate. Wohlford appealed on October 22, 2008 al-leging that the BOE failed to comply with the investigative and hearing proce-dures outlined under VI S.G.C. §403(D) and that the BOE erred in its judge-ment that the interview constituted a violation of §402(A)(1).

Held: The BOE did not follow all of its procedural requirements under §403(D).

(a) At the time reports were filed with the BOE, Morgan was the sole member of the BOE and undertook an investigation of the events in question as the sole factfinder. During their personal meeting, Morgan did not inform Wohlford that the meeting was a part of Morgan's ongoing investigation into potential violations of Elections Law. Additionally, Wohlford admitted to attending the event and granting an interview, but did not admit to Morgan that this was a violation of Elections Law. Morgan would later lead the punitive meeting on October 5, and present evidence obtained from his meeting with Wohlford. Wohlford was not given an opportunity to appear at the October 5th meeting, but the evidence provided by Morgan was instrumental in the Board's findings in 08-BE-12.

(b) While Title VI does not define a notice of investigation, Morgan did sufficiently provide Wohlford notice of an investigation. However, Wohlford was not allowed a proper opportunity to respond to the investigative report pursuant to §403(D) since he was not permitted to attend the October 5th meeting.

(c) The BOE's argument that §403(D) entitles them to conduct closed meeting, thereby foreclosing the possibility of the appearance of the accused lacks merit.

(d) Chairman Morgan's investigation was presented at the October 5th meeting in violation of §403(D)'s requirement that the investigation be presented and led by the Vice Chair.

08-BE-12 vacated and remanded.

HODSON, C.J. delivered the opinion for a unanimous Court.

Andrew Pham argued the cause for the Petitioner.
Val Tenyotkin argued the cause for the Respondent.

CHIEF JUSTICE HODSON delivered the opinion of the Court.

Plaintiff Matt Wohlford, a candidate for Student Body President, challenges 08–BE–012, a punitive decision fining his campaign forty dollars. Because VI S.G.C. § 403(D) (2008) requires the Board of Elections to follow certain procedures in investigating "possible violations of campus elections laws," and because the Board of Elections did not follow all of these procedural requirements in its investigation of Wohlford's alleged violations of campus elections law, we hold that 08-BE-012 is void and remand the matter to the Board for an investigation consistent with this opinion.

I

Plaintiff Matt Wohlford, a prospective candidate for Student Body President, held an organizational meeting at the Campus Y and also gave an interview to *The Daily Tar Heel* in early August 2008. A student, whose name has not been disclosed by the BOE, brought the meeting and interview to the attention of Ryan Morgan, Chairman of the Board of Elections, as potential violations of election law. Following the report from this student, Chairman Morgan held a meeting with Wohlford to discuss the allegations.

On October 5, 2008, the Board of Elections held a closed meeting and issued 08–BE–12, a punitive decision supported by evidence that Chairman Morgan had obtained from his earlier meeting with Wohlford and from other sources. In this decision, the Board found that the organizational meeting and media interview violated VI S.G.C. § 402(A)(1), and levied a $40 fine on Wohlford, contingent upon later certification as a candidate.

Following verbal commencement on 8 October 2008, Wohlford filed the complaint in this action on 22 October 2008. Following a pre-trial hearing, Wohlford was granted leave to file an amended complaint, which was filed with this Court on 10 November 2008. Upon this complaint, Wohlford asserts the Board failed to failed to comply with the investigative and hearing procedures required by VI S.G.C. § 403(D) and the Board erred in finding his media interview to be a violation of VI S.G.C. § 402(A)(1).

A parallel case, *Klein* v. *Morgan*, No. 08–003 S.S.C. (2009), was filed concurrently with this case, and heard and decided

earlier this term. In *Klein*, Plaintiff Ashley Klein, also a prospective Student Body President candidate challenged the Board's Punitive Decision 08–BE–011 as well as an Administrative Decision, no. 08–BE–010. The conduct giving rise to 08–BE–011, concerning Klein, is similar to 08–BE–012, concerning Wohlford, Administrative Decision 08–BE–010 published regulations concerning early campaigning, including conduct involved in the two punitive decisions.

As *Klein* voided Administrative Decision 08–BE–010 in part and vacated Punitive Decision 08–BE–011, we issued order for the parties in the present case to file briefs, so that they might inform this Court how *Klein* would factor into their arguments. Wohlford's use of *Klein* in his brief was largely meaningless, and at argument, his counsel focused almost entirely on the core § 403(D) claim in his complaint. We read the brief as a more detailed version of the complaint.

II

III S.G.C. § 401 (2008) specifies that this Court has jurisdiction over "both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority of actions of the . . . elections board." Because Wohlford challenges the validity of the Board's punitive decision, 08–BE–12, on the grounds that the investigation resulting in this decision violated procedural provisions of the code in VI S.G.C. § 403(D), and that portions of the decision were substantively inconsistent with the code in VI S.G.C. § 402(A)(1), this Court has jurisdiction.

Because Wohlford's complaint challenges the validity of the Board's investigation, standing in this matter is governed by III S.G.C. § 409 (2008). Under § 409,

> 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.

Since the forty-dollar fine issued by the Board in 08–BE–12 will prevent Wohlford from spending ten percent of the full amount allocated to Student Body President candidates for campaign expenses, the ruling directly and adversely affects his ability to run for Student Body President. Thus, he has standing to

challenge the investigative acts of the Board that resulted in 08–BE–12.

III

At trial, the parties presented evidence about the procedures used to conduct the investigation of Wohlford's campaign organization meeting and *The Daily Tar Heel* interview through the testimony of two witnesses: Ryan Morgan, Chairman of the Board of Elections, and Wohlford. Based on the testimony of these witnesses, this Court makes the following findings of fact:

(1) In early September, a student, whose identity is known to the Board but not by this Court, brought two potential violations of elections laws—(1) holding an organization meeting in the Campus Y and (2) an interview with *The Daily Tar Heel*—by Wohlford and another potential Student Body President Candidate, Ashley Klein, to Chairman Morgan's attention;

(2) At the time that the potential violations were brought to Chairman Morgan's attention, the Board of Elections consisted only of Chairman Morgan;

(3) After learning of the potential violations but before the Student Body President nominated the rest of the Board, Chairman Morgan decided to investigate the allegations brought against Wohlford;

(4) Chairman Morgan contacted Wohlford via a Facebook message and asked him to come in for a meeting;

(5) At the meeting between Wohlford and Morgan, Morgan asked Wohlford to confirm that he had held a meeting and had spoken to *The Daily Tar Heel*. Wohlford confirmed that he had done both but did not admit they violated election law;

(6) Chairman Morgan did not tell Wohlford that their meeting was part of his investigation into Wohlford's alleged violations. However, he did indicate to Wohlford that while unlikely, the Board might take punitive action against Wohlford for the alleged violations;

(7) Chairman Morgan presented the evidence gathered from his meeting with Wohlford and other sources to the Board of Elections at a closed meeting held on October 5, 2008. In addition to presenting evidence, Chairman Morgan led this meeting;

(8) Based on the evidence presented by Chairman Morgan, the Board of Elections issued 08–BE–12, a punitive

decision fining Wohlford forty dollars should he become a certified candidate;

(9) Wohlford was not given the opportunity to appear at the October 5 hearing. He was also not informed of the hearing until after the fact, when the Board issued 08–BE–12.

IV

As stated in III S.G.C. § 608 (2008), this Court presumes that any act of the Board is valid unless it is proven invalid. A plaintiff has the burden of proving to the satisfaction of this Court that there was an error on the part of the Board as "a matter of law and [that] there is reasonable probability that the error caused the injury." III SGC § 609 (2008).

Here, plaintiff's primary argument is that the Board of Elections did not comply with the investigative procedures required by VI S.G.C. § 403(D), coupled with a secondary argument that Punitive Decision 08–BE–012 is substantively in error. The parties dispute the exact events of the § 403(D) investigation, and the only evidence presented at trial concerned the Board's investigation of Wohlford's alleged violations of campus elections laws.

V

A

VI S.G.C. § 403(D) (2008) gives the Board of Elections Chair authority to "investigate matters that have come to his/her attention through direct or indirect means about possible violations of campus election laws," and specifies the procedure by which an investigation is to be conducted. Specifically, § 403(D) requires that the Chair provide written and oral notice to the accused of the investigation "within twenty-four hours after commencement of the investigation." After the investigation, the Chair must report his or her findings from the investigation to the Board of Elections. VI S.G.C. § 403(D)(1). "At all meetings concerning the matter under investigation," the Vice Chair is to be in charge of the Board. VI S.G.C. §4 03(D)(1). Additionally, § 403(D) requires that the accused be given "proper opportunity" to respond to the Chair's findings and that "no administrative decision . . . be issued until defendant has been given an opportunity to respond." *Id.*

These specific procedures ensure that the Board acts fairly and that the accused is give the opportunity to gather and present evidence and arguments in his or her own defense. Failure to comply with these procedures will result in depriving the accused of statutory safeguards enacted by Congress and will directly result in injury to the accused.

Because Wohlford contends that he was not given notice of the investigation or an opportunity to respond, we must clarify what constitutes (1) adequate notice of an investigation and (2) a "proper opportunity" to respond to the Chair's investigative findings. We must also consider the Board's arguments that (1) there is no need for the accused to respond to an investigative report if the accused has admitted that he or she participated in certain activities and (2) alternatively that it has no duty to provide an opportunity to respond to the Chairman's investigative findings when it has closed a special meeting concerning the enforcement of elections laws under VI S.G.C. § 403(A).

Turning to what constitutes adequate notice of an investigation, we note that Title VI does not define notice. However, based on a general understanding of the term, we believe that the purpose of giving the accused notice of an investigation into a possible violation of elections law is to enable the accused gather evidence and prepare a defense against the accusations brought against him or her. While the best oral and/or written notice of an investigation of a possible elections violation would provide a formal statement that the Board is giving notice to a person of an investigation into the alleged violation, we believe that the Board could satisfy its duty to apprise a person of an alleged election's law violation by providing enough information to the party to apprise them of the investigation.

In deciding whether notice is adequate or not, we are less concerned about the means used to provide notice than the actual contents of the notice. Email and other electronic media used to reliably convey text messages, such as a Facebook message to an active Facebook user, are just as adequate a means of providing written notice to the accused as a paper letter. Additionally, an in-person meeting between the Chairman and the accused, a phone or Skype conversation between the Chairman and the accused, or a voicemail message to the accused from the Chairman are sufficient means of providing oral notice to the accused.

Next, we consider what constitutes a proper opportunity to respond to the Chair's investigative findings. Congress most likely afforded the accused a "proper opportunity" to respond to the Chair's investigative findings because it wanted the accused to have the chance to present additional evidence for Board members to consider, but the Code provides little guidance on what a "proper opportunity" to respond might entail. An opportunity to respond also reduces the need for re-hearings, appeals, and litigation, by ensuring the Board has a complete picture of the allegation prior to rendering a decision.

In considering what the Board must provide to give the accused a "proper opportunity" to respond, we note the accused will not be able to make a meaningful response to the Chair's

investigative findings without knowing what the findings are, the Board must allow the accused to have access to the findings. Therefore, we find that a proper opportunity to respond must include an opportunity for the accused to present evidence in response to these findings.

While the Board must give the accused access to the Chair's investigative findings and allow the accused to respond to these findings to meet its procedural duty of giving the accused a "proper opportunity" to respond, the Board may comply with these requirements by a variety of means. For example, the Board could accomplish its duty of providing access to the Chair's investigative findings by providing a copy of the findings to the accused in advance of the punitive decision meeting or by allowing the accused to be present at the meeting where the findings are presented to the Board by the Chair. The Board could also afford the accused an opportunity to respond to its findings by allowing the accused to present oral or written evidence to the Board before it renders its punitive decision. Oral response, by testimony to the Board after the Chair's report, but prior to deliberations, is preferred. This practice avoids the possibility of error caused by the Chair presenting different investigative reports to the Board and to the accused for response.

Turning to the Board's arguments that (1) there is no need for the accused to respond to an investigative report if the accused has admitted that he or she participated in certain activities and (2) alternatively that it has no duty to provide an opportunity to respond to the Chairman's investigative findings when it has closed a special meeting concerning the enforcement of elections laws under VI S.G.C. § 403(A), we find that both can be easily rejected based on our analysis of what constitutes a "proper opportunity" to respond.

With respect to the argument that there is no need for the accused to respond to an investigative report where the accused has admitted that he or she engaged in certain conduct, we note that an admission is not a response to the Chair's entire set of investigative findings. It is possible that the admitted conduct may be only a small part of the Chair's investigative findings or that the Chair's investigative report presents the conduct in a manner that is prejudicial to the accused. Furthermore, a factual admission does not mean the candidate has to admit the conduct violates campaign laws, and a response to an investigation can contain both factual and legal defenses. Therefore, whether or not the accused has admitted that he or she engaged in certain conduct, he or she must still have an adequate opportunity to respond to the Chair's investigative report.

The Board's second argument is slightly more complicated. While VI S.G.C. § 403(A) gives the Board the power to close a

meeting for the enforcement of elections laws, VI S.G.C. § 403(D) requires that the Board allow a candidate to respond to the Chairman's investigative findings at a meeting. Based on the text of these provisions, the Board seems to believe that it is unable to comply with its duty to allow the accused respond to the Chair's investigative findings when it exercises the option to close a meeting because the accused cannot attend the closed meeting. This argument is entirely without merit.

While Title VI authorizes the Board to enter closed session, it does not define what closed session entails. Parliamentary authority can fill in the details here, as per VI S.G.C. § 204(B) (2008), all meetings of the Board of Elections are conducted pursuant to the most recent edition of Robert's Rules of Order. Under such rules, which accord with the general practice of deliberative bodies, the organization is permitted to allow invitees of its choosing into closed executive sessions. RONR (10th ed.), § 9, p. 92–93. Accordingly, it is within the Board's discretion to invite the accused into an otherwise closed meeting to respond to the investigation. Such an interpretation that closed meetings are not absolutely closed, but closed except to invited attendees, removes any conflict between the provisions of Title VI, and thus is a favored interpretation under our rules of construction in III S.G.C. § 703(B) (2008).

We would also note that the Board could also reconcile this apparent conflict by returning to its historic practice of closing only the portion of the meeting where it determines whether punishment for violation of campus elections laws is warranted or not. At these partially open meetings, the accused has been given an opportunity to appear, hear the Chair's investigative report, and to respond with his or her own evidence. Allowing the accused to appear at a punitive decision meeting and to respond to the Chair's evidentiary findings with his or her own evidence is a means by which the Board can provide a proper opportunity for the accused to respond to the accused in a partially open meeting.

B

Turning now to the facts of this case, we look to see whether the Board complied with the investigative procedures specified in § 403(D). As stated in Section IV of this opinion, Wohlford must prove to the satisfaction of this Court that there was an error on the part of the Board as "a matter of law and [that] there is reasonable probability that the error caused the injury." III S.G.C. § 609 (2008). Because we have found that failure to comply with the procedures outlined in § 403(D) will directly result in injury to the accused, we look to see whether Wohlford has established that the Board failed to comply with § 403.

As set forth above, adequate oral and written notice of an investigation is notice that informs the accused of the investigation so that he or she may gather evidence in his or her own defense. Though Wohlford alleged that he was not given notice of an investigation by Chairman Morgan, this Court finds that Wohlford has not met his evidentiary burden of proving that the Facebook message from Chairman Morgan and the meeting where Chairman Morgan and Wohlford discussed Wohlford's campaign organization meeting and interview with the DTH were invalid means of providing notice of the investigation. Because the contents of the Facebook message from Chairman Morgan were not discussed by either witness, we assume that this message contained sufficient information to make Wohlford aware that he was under investigation by the Board for holding an organization meeting at the Campus Y and for speaking to *The Daily Tar Heel* and that he needed to prepare to defend against these accusations. Therefore, we find that the Chair provided written notice to Wohlford of the investigation.

From the testimony of the witnesses, it seems clear that Wohlford was aware that Chairman Morgan was inquiring into his actions, even though Chairman Morgan indicated that the Board was unlike to pursue punitive action in the future. Although any given meeting with Chairman Morgan may be insufficient to make a person aware that he or she is under investigation for an alleged elections violation, here, Wohlford was aware from the meeting that his actions could result in punitive action and that Chairman Morgan was gathering information about his campaign organization meeting at the Campus Y and interview with *The Daily Tar Heel*. This was enough to make Wohlford aware that Chairman Morgan was investigating Wohlford and that Wohlford needed to gather evidence in his own defense. Accordingly, we find that the meeting with Chairman Morgan was sufficient to give Wohlford oral notice of the investigation.

Having established that the oral and written notice was adequate, we must determine whether the notice was given within twenty-four hours after the commencement of the investigation. Because Wohlford's counsel did not present any evidence about the amount of time between the Facebook message and meeting, we must conclude that Chairman Morgan's actions were valid and that the message and written notice were given within twenty-four hours after the commencement of the investigation.

Next, we consider whether the meeting at which Chairman Morgan's investigation was presented was led by the Vice Chair as required by VI S.G.C. § 403(D). By his own admission, Chairman Morgan stated that he was in charge of this meeting of the Board. Thus, we find that Chairman Morgan failed to comply with this requirement of § 403(D).

Finally, we consider whether Wohlford was given a "proper opportunity" to respond to the Chair's investigative findings by first presenting him with the findings and then allowing him to make some form of response to them. It appears from the testimony that Chairman Morgan based most of his evidentiary findings on a *Daily Tar Heel* article and his meeting with Wohlford where he discussed the campaign meeting and Wohlford's interview with *The Daily Tar Heel*. Based on this evidence, Chairman Morgan made his investigative findings. However, he did not later share these findings with Wohlford. The Board never afforded Wohlford an opportunity to present evidence in his own defense, and whatever opportunity it could have given would not have met the requirement of a "proper opportunity to respond" as defined in this opinion because Wohlford never had a chance to review Chairman Morgan's evidentiary findings. Therefore, we find that the Board also failed to comply with the "proper opportunity" to respond requirement of VI S.G.C. § 403(D).

Because the Board did not give Wohlford an adequate opportunity to respond to the Chair's investigative findings before it issued 08–BE–12, we find that the Board also failed to comply with the requirement in §403(D) that it not issue punitive decision against Wohlford's campaign until he had an opportunity to respond.

VI

In his complaint, Wohlford asserted that Punitive Decision 08–BE–012, insofar as it concerned the interview with *The Daily Tar Heel*, was contrary to election law. Wohlford did not plead error with the decision as it related to the interest meeting. The facts underlying these two campaign activities were barely discussed by parties, and little argument was provided to this Court on how the facts of this case compare to those in *Klein*. Because we have found Punitive Decision 08–BE–012 procedurally invalid, evaluating the substance of the decisions is unnecessary, and we decline to do so.

* * *

Because we have found that the Board of Elections did not comply with the requirements of VI S.G.C. § 403(D) because it did not give Wohlford a "proper opportunity" to respond to the results of Chairman Morgan's investigation and that the Vice Chairman did not chair the meeting, we hold that its investigation of Wohlford's alleged campaign violations is invalid. Punitive Decision 08–BE–012 is vacated and the case is remanded to the Board to conduct an investigation in compliance with this opinion, and to issue any punitive decision that it deems necessary, consistent with the Student Code and *Klein* v. *Morgan*.

It is so ordered.

Syllabus

ASHLEY KLEIN, PETITIONER v. RYAN MORGAN, CHAIRMAN OF THE BOARD OF ELECTIONS and THE BOARD OF ELECTIONS

ON WRIT OF CERTIORARI TO THE BOARD OF ELECTIONS

No. 08–003 Argued November 12, 2008–Decided January 14, 2009

Ashley Klein was a prospective candidate for Student Body President. During the early organization of their campaign, they held an organizational meeting for prospective campaign staff in the Campus Y. *The Daily Tar Heel* reported on this meeting in its August 27, 2008 issue. In the article about the meeting, Klein is quoted as stating that "[c]andidates 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." After these actions came to the attention of the Board of Elections (BOE), Klein met with Chairman Morgan. During the investigation into Klein's conduct, the BOE began amending regulations on early campaigning. The BOE issued Administrative Decision 08–BE–001 on September 28, 2008 set forth standards for "[o]ral declaration of candidacy for office," "[c]ampaigning," "[p]rivate [c]ampaigning," and "[p]ublic [c]ampaigning," and set out examples (See Para. 3(A–D)). On October 5, 2008, the BOE issued Administrative Decision 08–BE–010 which replaced 08–BE–001 and expanded the locations where campaigning occurs. After its investigation, on October 5, 2008, the BOE issued Punitive Decision 08–BE–11 which found that they had violated VI S.G.C. § 402(A)(1) (2008), and levied a $40 fine pending their certification as a candidate. Klein appealed on October 8, 2008 challenging the BOE's authority to promulgate regulations and asserted error in the BOE's decision that the interview and interest meeting violated Student Law.

Held: The BOE erred in determining an interest meeting to be a violation of Student Law, did not err in determining the interview with *The Daily Tar Heel* to be a violation of Student Law. The interview with *The Daily Tar Heel* does not rise to a level which supports the imposed penalties. Additionally, 08–BE–010 contains regulations contrary to Student Law.

(a) The BOE does have the authority to promulgate regulatory interpretations under Student Law. However, the regulations must be proper and consistent with Student Law. 08–BE–010's interpretations in §§ C, D are overly broad and impermissible. The BOE is enjoined from enforcing these regulations. Additionally, ¶ 3 §§ i, vii of the decision are similarly enjoined due to explicit contradiction with Student Law. Other procedural defects are mitigated by the large advance provided to Candidates.

(b) Since use of the Campus Y is not limited to university or governmental purposes, and therefore the Board erred in its determination that the meeting violated § 402(A)(1) by furthering campaign interests. However, Klein's open speech to *The Daily Tar Heel* for publication, however, did constitute furtherance campaign interest, and therefore did violate § 402(A)(1). However, the BOE abused its discretion in levying a $40 fine for a minor offence.

08–BE–11 reversed in part and remanded. Injunction issued.

FABRICIUS, J. delivered the opinion of the Court in which HODSON, C.J., HARRELL, and ALLEN, JJ. joined. KELLY, J. did not participate in the consideration or decision of this case.

Ashley Klein, *pro se*.

Val Tenyotkin argued the cause for the Appellee.

FABRICIUS, J. delivered the opinion of the Court.

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

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.

[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.

3(A) "[o]ral declaration of candidacy for office," *id.*, 3(B), "[c]ampaigning," *id.*, 3(C), "[p]rivate [c]ampaigning," and in 3(D) "[p]ublic [c]ampaigning." *Id.* The decision also set out several examples 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

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.

The key question for standing is the directness of the regulation or ruling's harmful effect 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. 08–001, (2008) (Order Granting Mot. to Dismiss). Such harm can include the preclusion of activities a student would otherwise complete, but for the existence of the ruling or regulation. *Ibid.*

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

A

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.[3]

Title VI of the Student Code is largely silent on the concept of regulations. 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

[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.

to be rigorously governed. It seems 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.

B

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.
>
> (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 pre-empt 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)(1–2)].

(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) (cleaned up). 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. §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 ¶ 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 [u]niversity . . . 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 ¶ 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.

VI

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).

A

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 Const. 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).

B

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.

* * *

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 depublished 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.

It is so ordered.

Syllabus

TIM NICHOLS, PLAINTIFF *v.* J.J. RAYNOR, STUDENT BODY PRESIDENT, ET AL.

ORIGINAL

No. 08–004. Orig. Argued February 23, 2009–Decided February 24, 2009

On February 16, 2009, Plaintiff, Tim Nichols, asked the Court to enjoin the Board of Elections (BOE) from placing the Child Services Fee referendum on the ballot for the Special Election on February 17, 2009, arguing that the Executive Branch had violated VI S.G.C. §§ 402(L)(2), 405 (2008). CHIEF JUSTICE HODSON granted the request, ordering the BOE not to release the final results of the vote. Nichols then filed a complaint against Student Body President (SBP) J.J. Raynor and BOE Chair Ryan Morgan asking the Court to invalidate the results and order a new vote. Defendants filed a motion to dismiss alleging that the plaintiff lacks standing.

Held: Plaintiff has standing under III S.G.C. § 409(C) (2008). The Court finds in favor of the Defendants and lifts the injunction.

(a) The Court has already previously determined that Nichols has standing in a materially similar matter, and therefore also has standing in this case since the Student Body President is a necessary defendant;

(b) The Plaintiff does not present sufficient evidence to demonstrate that SBP Raynor influenced the referendum in a manner adverse to its opponents, nor was there evidence that SBP Raynor's actions were fraudulent or made in bad faith.

Plaintiffs denied relief. Injunction reversed.

KELLY, J. delivered the opinion of a unanimous Court.

Tim Nichols, *pro se*.

Kris Gould, Student Solicitor General, argued the cause for the Defendants.

KELLY, J. delivered the opinion of the Court.

I

On February 16, 2009, the plaintiff, Tim Nichols, asked this Court to temporarily enjoin the Board of Elections from placing the Childcare Services Fee referendum on the ballot for the February 17 Special Election on the grounds that the Executive Branch of Student Government had violated VI S.G.C. §§ 402(L)(2) and 405 (2008). The CHIEF JUSTICE granted the request to stop the election on the referendum, ordering the Board of Elections to halt the release of the final results of the vote on this matter.

Subsequently, Nichols filed a complaint against Student Body President J.J. Raynor as well as Board of Elections Chair Ryan Morgan, asking the Supreme Court to invalidate the results of the referendum and order that a new vote be held on a later date.[8]

[8] In a later brief filed, plaintiff also demanded relief in form of an injunction against the Student Government baring further violations of §§ 402(L)(2). However, such demand is not properly before this court, as an advisory brief is not a substitute for

The defendants, in turn, filed a motion to dismiss, arguing that the plaintiff, having failed to file a complaint with the Elections Board before filing his complaint with the Supreme Court, lacked proper standing to bring his action. After considering the provisions in the Student Code addressing standing to bring an election action, this Court found that plaintiff had standing under III S.G.C. § 409(C) (2008) and denied defendants' motion to dismiss. This Court also denied Nichols' motion to amend his complaint to allege standing under III S.G.C § 408 (2008) on the grounds that it did not give him standing to sue the Board of Elections and because Nichols already had standing under III S.G.C. § 409 (2008).

II

This Court has jurisdiction over "both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority of actions of the executive branch, legislative branch, elections board . . ." III S.G.C. § 401 (2008). Here, Nichols alleges that the Board violated Title VI by failing to act and that Raynor violated Title VI for her actions related to publicizing the referendum. Because this Court can order action by the Board or can enjoin Raynor from continuing to advocate for the referendum, Nichols has raised a live controversy. Because the violations Nichols has alleged arise under conflicting interpretations of the Student Code by Nichols and the defendants, this Court has jurisdiction to hear the case.

Plaintiff claims standing under III S.G.C. § 409 (2008). This section 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: . . . (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.

Id. Here, Nichols alleges an error relating to the Childcare Services Fee Referendum. As we concluded in our February 20, 2009 order, Plaintiff has standing to bring an action before this Court. Because Nichols has standing to bring this action, he need not

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proper amending of a complaint. As the defendant had no notice and opportunity to respond, we will not reform the brief into an amendment.

allege separate standing against Raynor, who is a necessary defendant in this matter, unless the Court were to dismiss the Board as a defendant.

III

At the hearing, the parties presented documentary evidence about the conduct of President Raynor and other executive branch members related to the fee referendum. Based on this evidence, we make the following findings of fact:

(1) At 9:49 pm on February 16, 2009, students received an email from Raynor with the subject line "Reminder: Vote Today (2.17.09) on Student Fee Referendum" over the Formal Notice email system. This email reminded students of that they could vote in the Childcare Services Fee Referendum on Tuesday, February 17, 2009 from 7 a.m. to 10 p.m. The email also provided a link the Executive Branch's website.

(2) At 9:49 p.m., the Student Government Website, in the portion concerning the Fee, contained a single link to a ".PDF" file of a presentation developed by Corrie Piontak, GPSF Childcare Advocate. The file contains testimonials of students who have received childcare assistance scholarships, statistics about the current program, and alternatives for students who are unable to enroll in the program and unable to pay for childcare services.

(3) The website was updated at 11:40 p.m. on February 16 to include links to pro and con letters to the editor regarding the Childcare Services Fee referendum.

(4) Although students were originally unable to send messages over the Formal Notice email system, Raynor recently negotiated a policy for providing student access to this email list due to problems with the informational email system. Under the student access policy, students will ask Raynor for clearance to send an email over the system. Based on a decision tree developed by Raynor and the University's Chief Information Officer, Raynor will determine whether the event warrants attention by the entire campus. If Raynor's approval is granted, students will then send their message to a Vice Chancellor to receive final clearance before being sent over the Formal Notice email system.

(5) Emily Joy Rothchild, a member of Student Congress, created a Facebook Group, "Embrace Inclusivity: Support the Childcare Services Fee Increase." Leah Josephson, a member of the Student Government Public Service and Advocacy Committee created "Vote YES on the Child Care Services Fee referendum!" Facebook Group. Raynor joined both of these groups but declined an invitation to join a vote no group.

(6) Raynor invited her approximately 1,700 Facebook friends to join the "Vote YES on the Child Care Services Fee referendum!" and approximately thirty friends to join the Embrace Inclusivity: Support the Childcare Services Fee Increase" group. These invitations went directly to the friends' email accounts. Raynor did not include any additional message in these requests to join the group. The subject line for the email to the friends said "J.J. Raynor invited you to join Vote YES on the Child Care Services Fee referendum!" or J.J. Raynor invited you to join Embrace Inclusivity: Support the Childcare Services Fee Increase!"

(7) Both Leah Josephson and Emily Joy Rothchild sent messages to members of their Facebook groups in support of the referendum. Students who are sent a message over Facebook are notified of the message and may read its contents through their email accounts.

(8) Materials in support of the referendum were stored in the common area of Union Suite 2501, "The Office of Student Activities and Organizations." This room is commonly known as the "Student Government Suite."

(9) The Board of Elections has not decided whether these activities are violations of the elections code.

IV

A

Both parties submitted arguments before the Court with regard to the appropriateness of President Raynor's use of the university's email notification system and Facebook groups in support of the Child Care Services Fee Referendum. Nichols argues that the prohibition of Student Government emails "to advance the candidacy of any individual or support the passage or failure of a referendum" in VI S.G.C. § 402(L)(2) (2008) precludes the use of both the email notification system—a system whose access to students is controlled by the Student Body President (SBP)—and Facebook group invitations to endorse a candidate or referendum. Kris Gould, counsel for defendants, argues in the alternative that there is no prohibition on electronic representation by the SBP in the Code, reasoning that VI S.G.C. § 402(L)(2) (2008) applies to internal email lists utilized only by members of Student Government, executive appointees, and the like. Therefore, defendant contends that the provision does not bar President Raynor's use of the email notification system nor Facebook group invitations.

In regulating elections, the Code does not provide that any action violating its provisions has a tangible effect on the election; it provides only that such an action is wrong. A wrong action

alone, without tangible effect does not warrant the annulment of an entire election. Therefore, we do not need to examine the validity of each of President Raynor's actions under the Code, only their ultimate effect. Nullification of results is not a punishment for wrongdoing. This Court need not resolve the presence or absence of elections code violations on the part of President Raynor. The dispositive question in this case is whether the alleged violations are of a nature that voiding the election would be an appropriate remedy, in the event violations are found. As we hold the nature of the alleged violations do not rise to the level that voiding the results is an appropriate remedy, we decline to reach the question of the presence of those violations.

B

Plaintiff Nichols argues that the actions of President Raynor tainted the election process to such a degree as to warrant invalidation of the results of the referendum. Nichols argues that the purpose underlying VI S.G.C. §§ 402(L) and 405(A) (2008) of the Code is to prevent Executive and Student Government members from exerting undue influence on the process and the outcome of elections and referendums. Further, Nichols proposes a test for the invalidation of an election based upon VI S.G.C. § 403(H) (2008), which provides that the "Board of Elections may call for a re-election if a violation occurred and it could have affected the outcome or compromised the integrity of the election. "His proposed test would require this Court to consider three key factors in determining whether the integrity of an election is compromised: the time of the violation, the number of people affected by the violation, and the reversibility of the effects of the violation. In effect, Nichols' test would focus on the fairness in the process of the election, rather than upon the effect of the alleged violations upon the results of the election itself.

Counsel for the defendants argues, in the alternative, that the analysis should be results-focused; elections should be overturned only when it is clear that the outcome was impacted by the violation. In response to Nichols' argument regarding the integrity of the election, defendant argues that this ground for invalidation should only be used when a violation so egregious has occurred that the entire election should be nullified, regardless of the results of the vote. Such a violation would occur only in instances of bad faith. We are more inclined to agree with this argument.

The Board of Elections (BOE) has the power to invalidate an election under VI S.G.C. § 403(H) (2008). This provision lays out the standard required for invalidation by the Board which, as referenced above, requires the outcome of the election to be affected or the integrity of the election to be compromised. The Student

Supreme Court, on the other hand, is given the authority to "issue permanent. . .injunctions to. . .execute the effect of its judicial determinations" under III S.G.C. § 410(C) (2008), and as such we are not constrained to VI S.G.C. § 403(H) in analyzing the validity of elections. Nevertheless, short of some clearly erroneous polling result that demands equitable relief, we look to the same general harms that the Board would assess, namely an error or violation that adversely impacted the outcome or the integrity of the process.

For purposes of discussion, these harms generally fit into following categories: (1) technical errors, where some misconfiguration or defect in the polling apparatus deprives students of their ability to vote in a meaningful manner[9]; (2) fraud or tampering, where a party directly manipulates the polling results by inserting false or ineligible votes in bad faith; or (3) violations of the elections code substantial enough to impact the outcome such that code complying opponents of the violator were deprived of a fair poll. Here, the allegations fall squarely into the third category. Due to its nebulous nature, a claim under this category is necessarily the most difficult to advance, and this Court will not grant relief under its equitable injunctive powers absent stark wrongdoing.

It is impossible for us to assume that every violation of the Student Code rises to the level of demanding a revote. We must presume that the voter is a mature adult engaged in our "tradition of responsible student self-government"; the fact that one is presented with one-sided information does not mean that the mature voter cannot make an unimpaired and legally valid decision. This Court lacks access to evidence of voter mentality which is necessary to determine if outcomes are affected by Code violations. We do not and will not know if a violation has either created more votes in favor of a candidate or referendum, or whether it has created hostility-driven anti-votes to the contrary. Additionally, we cannot presume that all violations of the Student Code will be caught. When debating whether violations impacted the outcome of an election, the unknown violations may impede a meaningful determination. These cases are highly fact-specific, and without a sophisticated model of voter behavior it is speculative to judge outcome based on impacts, even in the narrowest of cases. To avoid the flood of litigation that would likely ensue if candidates and/or concerned parties were to constantly question the BOE's decision-making on these fact standards, we hold that

[9] This would encompass the situation this Court dealt with in *Tenyotkin* v. *Capriglione*, No. 07–___ S.S.C. (2007) (order granting summary judgment), where a referendum was presented in an invalid form on the ballot. While consistent with our decision here, this order by its own terms, carries no precedential effect.

to warrant invalidation, there must be reason to believe that either the results were clearly affected, that students' ability to make a decision was impaired (*e.g.*, through fraud or coercion,) or that the decision was lost (*e.g.*, through technical error).

In analyzing any demand to void an election, we first begin with the presumption that the election results were valid, a procedural and democratic presumption laid out in III S.G.C. § 609 (2008). Such a presumption is core to ability of a student government to remain representative of its constituents. It is up to the plaintiff to rebut this presumption by a preponderance of the evidence, a burden which the plaintiff in this case just did not meet. A speculative conclusion as to impacts of asserted violations is insufficient as a matter of law. The proponent of an order to void an election must prove not just illegal conduct, but that conduct had an adverse impact on voters. Even if they are available, one cannot use the results of the election to draw an inference of adverse impact. Such inference presupposes an impact, and runs afoul of the presumption of able-minded voters. Rather, exogenous evidence must prove that the ability of voters to vote freely was impaired.[10] Furthermore, to avoid an inequitable result, the evidence must foreclose the possibility that there was off-setting conduct by the plaintiff or associated parties. The burden to prove such conduct necessarily must fall to the defendant. Finally, there must be evidence that remedy of re-voting will address the harm proven. If the harm is such that it will continue onto subsequent re-votes, then the remedy is inadequate. Given the inherent damage in disregarding a vote of the Student Body, the remedy of a re-vote must be ordered only when it will succeed in addressing harm.

There is no evidence here that the acts of President Raynor affected how students voted on the Child Care Services Fee Referendum in a manner adverse to the opponents of the referendum. Further, there is no evidence that President Raynor's acts were fraudulent or made in bad faith. As the Student Body President, Ms. Raynor believed her role to be one of an advocate. She had authority to organize a widely-publicized petition drive to place the same referendum on the ballot. Her emails were sent in good faith and were not created to mislead the student body in a fraudulent way. To the extent that the emails advanced approval of the referendum, no evidence was presented that such attributes impaired the ability of the voter to think critically on whether to actually vote yes. As such, the election was not tainted by violations so as to rise to the level of demanding a re-election.

[10] Such impairment could result from being misled to the effect of their vote, coerced to vote for one side or the other, prevented from recording their vote in-fact, or other doings. One-sided information alone does not impair a voter.

Finally, there is no evidence of any technical problems or tampering which would affect the character or results of the election. Therefore, we decline to invalidate the election or to order for a revote.

* * *

For the foregoing reasons: (1) We find in favor of the defendants. (2) We lift the temporary injunction on the Board of Elections enjoining them from releasing the results of the referendum. We stress again that this injunction did not preclude them from carrying out their investigation of this matter but prevented them only from officially certifying and releasing the results of the contested election.

It is so ordered.

Syllabus

RONALD F. BILBAO, PETITIONER *v.* RYAN MORGAN, CHAIR OF THE BOARD OF ELECTIONS

ON WRIT OF CERTIORARI TO THE BOARD OF ELECTIONS

No. 08–006. Argued March 23, 2009—Decided March 25, 2009

Ronald F. Bilbao was a certified candidate for Student Body President (SBP). The election for that position occurred on February 10, 2009. On Election Day, Bilbao's campaign mounted campaign signs on stakes and posted them in the Quad in front of Wilson Library with the approval of Nancy Graves, Administrative Assistant for the Office of the Associate Vice Chancellor for Campus Services. Shortly thereafter, Chairman Morgan contacted Bilbao's campaign informing them that the signs were a violation of Election Law. Disagreeing with this determination, Bilbao's Campaign refused to remove the signs and consulted with the Val Tenyotkin, the BOE's Vice Chairman, on potential sanctions. On the evening of February 10, the BOE tabulated the results and Mr. Bilbao was in third-place, and thereby eliminated from the subsequent runoff. Thereafter, the Board issued formal sanctions in Punitive Decisions 08–BE–30 and 08–BE–31, both dated February 12, 2009. 08–BE–30 found that Bilbao's Campaign had violated VI S.G.C. § 402(G) (2008) and fined his campaign $40. 08–BE–31 found that the violation committed by the campaign in 08–BE–30 was knowing and willful, and therefore subject to automatic disqualification under VI S.G.C. § 403(I)(1)(e) (2008). Bilbao initially appealed challenging only the disqualification in 08–BE–31. The appeal was dismissed as moot. Bilbao filed a subsequent appeal arguing that his campaign did not violate VI S.G.C. § 402(G) (2008), and that the BOE had erred in issuing the sanctions.

Held: Bilbao made insufficient showing to demonstrate error by the BOE, and the BOE's sanctions were appropriate. However, the Court makes no findings on the propriety of the BOE's procedural propriety in issuing 08–BE–30 and 08–BE–31.

(a) Bilbao's actions were in violation of § 402(G) since Bilbao failed to adequately demonstrate the BOE erred in its determination that the signs did not damage plant life, and that the ground into which they were driven was barren.

(b) The BOE did not err in administering a $40 penalty under § 402(G) since the university no costs of restoration were assessed by the University.

(c) Taken together, (a) and (b) affirm the BOE's decision in 08–BE–030. As such, the Court does not need to reach the issue of whether or not the sanctions levied by the BOE in 08–BE–31 may stand since Bilbao's line of argument does not survive to that point both due to the violation of § 402(G) but also failure to contend the BOE violated his procedural rights.

08–BE–030 affirmed.

FABRICIUS, J. delivered the opinion of the Court in which HODSON, C.J., HARRELL, and SOUZA, JJ. joined. KELLY, J. took no part in the consideration or decision of this case.

Garret L. Haywood argued the cause for the Petitioner.
Val Tenyotkin argued the cause for the Respondent.

FABRICIUS, J. delivered the opinion of the Court.

Plaintiff Ronald F. Bilbao, a former candidate for Student Body President, challenges the validity of punitive sanctions issued by the Board of Elections for violation of VI S.G.C. § 402(G) (2008), concerning yard signs.

I

The parties appear to be in agreement as to the basic events underlying this case. Ronald F. Bilbao was a certified candidate for Student Body President, with the general election occurring on 10 February 2009. The morning of election day, the Bilbao campaign decided to post stake-mounted campaign signs, in the quad immediately in front of Wilson Library. Prior to placing the signs, the campaign sought and received the approval of the campus grounds department, by way of one Ms. Nancy Graves, Administrative Assistant for the Office of the Associate Vice Chancellor for Campus Services.

Shortly after posting the campaign signs, the campaign was contact by Ryan Morgan, the Chairman of the Board of Elections, who informed them the signs were a campaign violation and ordered their immediate removal. Mr. Bilbao and his campaign disagreed with Mr. Morgan's determination, and refused to remove the signs. The campaign also consulted with the Board's Vice Chairman, Val Tenyotkin, regarding potential sanctions.

On the evening of 10 February 2009, the results were tabulated for the general election and released. Mr. Bilbao came in third, and was eliminated from the subsequent run-off.

Thereafter the Board issued formal written sanctions in this matter, both dated 12 February 2009. The first, Punitive Decision 08–BE–030, deemed the signs to in violation of VI S.G.C. § 402(G) (2008) and fined the campaign $40.00. The second, Punitive Decision 08–BE–031, declared the aforementioned violation to be knowing and willful, and subject to automatic disqualification under VI S.G.C. § 403(I)(1)(e) (2008).

Plaintiff initially filed a complaint challenging only the disqualification, *Bilbao* v. *Morgan*, No. 08–005 S.S.C. (filed Feb. 20, 2009). However, this Court found such a challenge to be moot and dismissed it for lack of jurisdiction. *Bilbao* v. *Morgan*, No. 08–005 S.S.C. (Feb. 26, 2009) (order granting motion to dismiss). In dismissing, we granted leave to Bilbao to file a new complaint based on his initial notice of commencement. *Id.*

Bilbao filed his subsequent complaint, the instant action, on 27 February 2009. Bilbao asserts that his campaign activity did not violate VI S.G.C. § 402(G) (2008), and that therefore the Board erred in issuing the two sanctions.

II

As this matter concerns the validity of actions of the Board of Elections under the Student Code, this Court holds general jurisdiction to hear and decide the complaint. III S.G.C. § 401 (2008). Standing in this matter is governed 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.

The fine against Bilbao levied in 08–BE–030 is a classic case where standing arises in the election's context. The ruling of Board was targeted directly against Bilbao, diminishing his freedoms by requiring a payment of $40.00 out of funding under his control. See VI S.G.C. § 403(E)(3) (2008) (requiring payment of fines out-of-pocket for publicly financed campaigns).

However, standing does not arise to challenge the disqualification as an independent matter. As we noted in our order in the earlier *Bilbao* v. *Morgan*, Bilbao's disqualification after having already lost the election has no "meaningful impact on his rights, privileges, and interests under the Student Code." *Bilbao*, No. 08–005 (order granting motion to dismiss). Presented independently, such a standing defect is jurisdictional, as this Court has power under the Student Constitution only to hear live controversies. Mere bundling a challenge of disqualification alongside other challenges does not change this reality. In the limited case where such disqualification is dependent on a separate punitive sanction properly before this Court, proper injunctive invalidation of that separate sanction may necessitate invalidation of all subsequent and subsidiary acts of the Board.

III

The crux of the plaintiff's argument is that since they sought and gained approval of the campus grounds officials, they cannot, as a matter of law, have violated IV S.G.C. § 402(G) (2008). Bilbao premises this argument on the belief that violations can be issued under this section only with the advice and consent of university officials, so if those officials grant consent in advance, the campaign can be later issued a violation for the conduct. This belief flies in the face of a tradition of student self-governance at this university and is entirely without merit.

In its entirety, § 402(G) provides:

> No campaign materials may be placed on trees, shrubs, or other plants on the University campus. The Board of Elections shall fine such candidate the sum of five dollars ($5.00) plus the estimated cost of restoration for each violation with

> a total fine not to exceed fifty dollars ($50.00) with the advice and consent of the proper University officials.

While Bilbao is correct that advice and consent of university officials is involved in the process of administering this section, such advice and consent does not have the role he would assign it. The plaintiffs would read this section to require approval of any fines. We disagree with this reading. Rather, we find that the purpose of university consultation is to determine the estimated costs of restoration, for which the Board has no independent basis to determine.[1] When multiple ways exist to interpret a statute, we will adopt the interpretation that minimizes administrative involvement in student governance.

As the Board issued a fine of $5.00 per sign, they levied the statutory minimum fine, and assessed no costs of restoration. When no costs of restoration are assessed, the university's opinion is immaterial, and advice and consent unnecessary. Accordingly, we hold that the penalty clause of § 402(G) was not violated by the Board's decision.

Bilbao also disputes that his actions fall within the scope of the conduct clause, which provides that "[n]o campaign materials may be placed on trees, shrubs, or other plants." IV S.G.C. § 402(G). Bilbao's position is that ground in which the stakes were inserted was barren, and that no plants, including grass, were involved. Plaintiff is correct that if the ground was barren, there is no basis for the Board to issue sanctions under this section. However, the burden falls on the plaintiff to prove such an error by the Board. III S.G.C. § 608 (2008). In the instant case, plaintiff has made no showing whatsoever on which this Court could find that the ground as barren and the statute inapplicable.

Thus, we decline to invalidate 08–BE–030. As 08–BE–030 remains in effect, we need not address the issue of whether the disqualification in 08–BE–031 can survive without the violation 08–BE–030.

IV

In course of oral arguments, counsel for the plaintiff delivered a narrative harshly critical of the process the Board of Elections used to review and issue the punitive sanctions. Such criticism is disturbingly familiar, as we have previously vacated actions of this very Board for failure to comply with the procedural

[1] Even under the plaintiff's reading, the statute speaks only to advice and consent at the time of fining. This statute in no way contemplates advance approval, and nothing stops a university official from changing his or her mind when presented with the same situation before and after the fact. An agreement by the official to not give consent in unenforceable in this Court as counter to public policy, if not for outright want of jurisdiction.

standards of Title VI. *Wohlford* v. *Morgan*, No. 08–002 S.S.C. (2009). Nevertheless, Bilbao choose not to raise a procedural challenge to the Board's actions in his initial complaint, nor did he seek amendment to his pleading. A plaintiff has discretion to choose on which grounds to seek relief, and a defendant is entitled to an opportunity to respond.

This is not to say new arguments cannot emerge at trial. However, taken as a whole, Bilbao's procedural remarks do not rise to level of asserting an argument on which relief could be granted. As such, we decline to consider whether procedural laws were followed in the course of issuing the Bilbao punitive decisions.

* * *

We find for the defendant in this matter, and Punitive Decision 08–BE–030 is affirmed. In affirming, we express no opinion as to the propriety of the process used by the Board of Elections in issuing this sanction and decision.

It is so ordered.

Syllabus

PROJECT DINAH, PLAINTIFF *v.* STUDENT CONGRESS, ET AL.

ORIGINAL

No. 08-007 Orig. Argued March 25, 2009–Decided April 7, 2009

Project Dinah is a registered student organization at the University of North Carolina at Chapel Hill. During the 2009 Budget Process, Project Dinah made an application for $6,000 in funds for an annual program called "I Heart Female Orgasm." In an original draft of the Congress' funding bill, SCB 90-086 they were allocated $1,000. However, the Congress later struck this allocation. Alyson Culin filed suit on behalf of Project Dinah, claiming Congress made procedural errors during its amendment of the Draft Bill. Project Dinah claimed that Congress violated V S.G.C. § 108 (2008) through speculation about Project Dinah's self-funding capabilities and incorrect adherence to an unofficial Booklet entitled "Title V for Dummies." Plaintiffs sought an Order to requiring Congress reconsider the Bill and the Amendment.

Held: There was no violation V S.G.C. § 108 (2008) nor Student Law more broadly, and the Court enters judgement for Defendants.

(a) Plaintiffs have made a requisite showing of standing since procedural errors of Congress to allocate Student Funds to a student organization would impede student organizations' rights. Additionally, the Court dismisses the Defendants' claims that Plaintiffs lack standing to challenge proposed legislation since the rejection of the Bill and its Amendment constitutes a finalized act of Congress even without the signature of the Student Body President.

(b) §108 must be read as aspirational, not imperative. Moreover, the Statute lacks an enforceable metric by which this Court could determine whether or not Congress has failed to uphold its tenets. As such, this Court finds that §108 cannot be enforced in a legal proceeding.

(c) The informal doctrine of the "Title V for Dummies" Booklet is not a student law, but plaintiffs have made insufficient showing to establish that the use of the Booklet by Representatives constitutes adherence to a false law or a violation of student law.

Judgement entered for Defendants.

FABRICIUS, J. delivered the opinion of a unanimous Court.

Alyson Culin argued the cause for the Plaintiff.
Kris Gould, Student Solicitor General, argued the Cause for Defendants.

JUSTICE FABRICIUS delivered the opinion of the Court.

Plaintiff Project Dinah, a registered student organization, through member Alyson Culin, challenges the denial by Student Congress of funds in the 2009–2010 Annual Budget for the organization's "I Heart Female Orgasm" event as contrary to the Student Code's fundraising anti-speculation statute and based on funding doctrines not ground in student law. We hold the anti-speculation statute to be merely aspirational and not enforceable at law and that the use of extra-legal funding doctrines is a permissible part of the political process.

I

Background. Project Dinah, a registered student organization, made application to the Student Congress for funding as part of the 2009–2010 Annual Budget. The organization initially sought approximately $6,000 for their annual program "I Heart Female Orgasm" and was allocated $1,000 in one draft version of the budget bill, SCB 90–086. However, this draft allocation was struck by amendment in full Congress during a meeting held 3 March 2009. The record indicates this amendment was passed by an 11–10 vote, and then the amended bill was itself passed by the Congress. Including the final meeting, the organization appeared twice before full Congress and once before the Finance Committee.

Plaintiff Project Dinah, represented by Alyson Culin, a member and former cochair, filed suit challenging the process by which Congress came to adopt this amendment and the subsequent bill. In its complaint, Project Dinah asserts that members of Congress violated V S.G.C. § 108 (2008) by discussing its ability to fundraise, and that the member improperly relied on an informal rule against repeat funding of speakers. The organization requests we order a reconsideration of the bill and its amendment.

II

Jurisdiction and Standing. This Court has Jurisdiction in this matter, as it concerns a question of law arising out of the actions of the legislative branch of the Student Government. III S.G.C. § 401(A) (2008). The denial of funds constitutes a real and substantial controversy in which we may render judgment.

Standing in this matter is governed by III S.G.C. § 407 (2008), which provides:

> A. Standing to bring an action before the Supreme Court based on the invalidity of a legislative act by the Student Congress shall extend to any student or officially recognized student organization whose powers, rights, privileges, benefits or immunities are adversely affected, restricted, impaired or diminished by the legislative act in question.
>
> B. No standing shall extend to any student or organization arising from a proposed legislative act.

As a further matter, legislative act is defined by III S.G.C. § 104(E) (2008) to mean:

> The phrase "legislative act" or legislative action means any act passed by the Student Congress and signed into law by the Student Body President or enacted over the veto of the Student Body President, any resolution passed by the

Student Congress, or any completed action of a legislative nature.

Procedural errors in consideration of a funding request would impede the rights of a student organization to be considered for funding allocations. Therefore, in this matter, there are essentially two standing issues remaining: the standing of Culin to sue on the behalf of Project Dinah and state of the unsigned budged bill as a legislative act.[1]

A

Standing of Culin. Standing under § 407 includes both students and officially recognized student organizations that are impacted by the act in question. Therefore, standing can arise either in a suit by or on behalf of the organization, or in a suit by a student who is personally impacted. Personal impact from an act that clearly relates to an organization presents causation questions. Arguably, when an organization proposes a public event, every student possibly attending would be impacted by harm to the event. This is too tenuous of a connection for standing, and if Congress had intended such a result, it would have chosen broader language. An active member presents a more difficult factual question, and in this case, insufficient facts have been presented for this Court to determine Alyson Culin has been personally impacted by the legislative act. We will therefore only consider the organizational standing, discussed below, as determinative.

A registered student organization is an artificial entity, incapable of acting on its own. Instead, an organization must act through its officers and agents. Regrettably, the Code is silent on the question of who has the power to act on behalf of a student organization in this Court.[2] As such, we are reluctant to impose harsh rules that serve to practically limit organizations' access to this Court. Instead, we will operate with a rebuttable presumption of agency for any student member who is active in the affairs of the organization. Such presumption may be rebutted by the defendant, or by the intervention of an officer-in-face of the organization. Here, Culin is a past chair who has had considerable involvement in the financing activities at issue in this suit. No

[1] As originally captioned as filed, this matter was *Culin* v. *Nichols*. In light of our foregoing analysis, we have elected to re-caption it the name of the organization.

[2] III S.G.C. § 533 (2008) provides for process to be served on a student organization by means of serving process upon the chief officer of the organization. However, this statute presents no reason why it should be extended to other situations. Process is a specialized case as the service needs to be designed to effectively alert the organization, while also being uniform enough to allow application by plaintiffs without specialized knowledge of that organization's structure.

other party has contested her agency. Accordingly, we find that she has standing to sue on behalf of Project Dinah.

B

Defendants have petitioned this Court on multiple occasions to deny plaintiff standing on grounds that, as of this Court's hearing, the budget act has yet to be signed into law by the Student Body President. In defendants' view, such unsigned legislation remains a proposed legislative act, to which there is no standing to challenge.

It is clear from § 407 and § 104(E) that proposed legislation may not be challenged in this Court. However, those statutes are hardly necessary to reach that result. A mere proposal in the Congress lacks the sort of institutional assent for a controversy under the laws of this student body to exist. Representatives are entitled to make proposals as they see fit to advance their constituents" interests, and these proposals may run afoul of any number of laws–we are only concerned with the end outcome.[3]

In this case, the challenged legislation is not a mere proposal. Instead, it is a finalized action of the collective Congress, sent off to the President, not to in ordinary course, be considered again in the legislature. While the definition of "legislative act" under § 104(E) expressly includes signed bills and adopted resolutions, it also contemplates that something else is included: "any completed action of a legislative nature." We hold that final adoption of a bill is such a completed action, to which standing arises to challenge.

A separate question is whether this Court should, in the interest of judicial economy, defer consideration of a suit challenging a bill until after the Student Body President has acted upon it. Such a question can only be answered on a case-by-case basis. Some bills, there will be no harm waiting to review. Others, quick review is prudent as to expedite reconsideration in event of a reversal. Here, we are presented with a matter close to the end of a legislative session. Therefore, time is short in which the originating Congress could complete a potential re-hearing of the legislation.

Accordingly, it is prudent for us to hear the case prior to the President's signature in order to maximize this time window.

III

Challenges to Non–Appropriation. As a general matter, Congress has exclusive constitutional power to provide for the appropriation of funds. While an appropriation may conceivably violate

[3] Bismark may have summed this up best: "laws are like sausage; it's better not to see them being made."

law and be reversed, non-appropriation is a matter of legislative discretion. Furthermore, the right of a Representative to vote no on a legislative matter is absolute. Available avenues of substantive attack on non-appropriation all are based on an attacking the substance of a related affirmative appropriation. Such a policy underlies the ability to challenge discriminatory funding. *See*, *e.g.*, V S.G.C. § 109 (2009) (concerning viewpoint neutrality).

Here, no discrimination has been alleged. Moreover, Congress concluded the budget with a surplus, so there may in fact be no corresponding affirmative appropriation at all. As such, no substantive remedy is available to the plaintiff. The only remedies possible are procedural. These procedural remedies are grounded in the belief that, but for the procedural violation, Representatives might have acted differently. While a different deliberative outcome need not be proved as a certainty, plaintiff must present a strong credible theory as to why the procedure affected the outcome. Absent such a showing, this Court must find that the error in legislative process was harmless.

IV

Applicability of V S.G.C. § 108 (2008). Project Dinah first challenges the Congress's procedure under V S.G.C. § 108 (2008). This statute provides that "[t]here should be conscientious efforts made by [Student Congress] to reduce speculation in regards to an organization's ability to fund-raise or in regards to what effect partial funding of a program might have." Project Dinah alleges that no efforts were made to reduce speculation, and instead members spent considerable time speculating about other sources of funding available to the organization. Defendants do not substantially dispute the facts of the hearing and deliberation.

We empathize with the plaintiff—the evaluation of the proposal based on speculation and assumption presents a hearing of a sort different than that envisioned by the Code. Nevertheless, the statute in question is plainly aspirational. Terms such as "should" and "efforts," move it from the realm of enforceable provisions to aspirational goals. Furthermore "to reduce" leaves the statute without a quantifiable measure to evaluate performance, and the mandate on the collective Congress to act leaves ambiguous exactly whom has a cognizable duty under its terms.

A statute with such wobbly wording cannot in practice be enforced in a legal proceeding. This is not to say the statute has no purpose; rather, it remains enforceable politically. Representatives ignoring the statute may have to face their constituents' scrutiny, and the statute serves as a tool with which other members can impress a particular manner of conduct on their

colleagues. Such political actors are more suited to judge the section's broad aspirations than is this Court.

Accordingly, we find no violation at law of § 108 exists that would require action by this Court.

V

Informal Rules and "Title V for Dummies." Project Dinah further alleges that Congress improperly relied on an informal rule not to fund speakers who have appeared on campus in the previous four years. This rule or principle is noted in the "Title V for Dummies" booklet published by finance officials. Affidavits from several Representatives acknowledge this principle exists and was persuasive in their decision not to fund Project Dinah's request. The question presented to this Court is whether members of Congress can rely on rules and doctrines not based in the Student Code. With caution, we find that members are entitled to look to any authority they desire.

Parties acknowledge that the organization funding process is highly competitive. As a practical matter, members of Congress must apply tests, standards, and rules to sort out funded and nonfunded requests. The Code provides some guidelines for evaluating funding, but it does not purport to be exhaustive. *See* V S.G.C. § 202 (2008). Indeed, if the Code provided an exhaustive list of criteria, it would reduce the Congress from a representative body to a mere mechanical enterprise of applying formulae to determine objectively correct results.

A fundamental tenant of representative democracy is that each representative brings his or her opinions, together with the views of constituents, to bear upon the decisions to be made as a legislature. In fulfilling this role, a Representative can properly look to any authority he or she views as providing advice that would be consistent with his or her representative objectives. Any source of political doctrine might be involved, be it observations from past leaders, platform promises, the manifesto of eccentric thinkers, or the patterns in one's tea leaves. This is the representative thought process. To attempt to enjoin a Representative from having particular thoughts would expose the very heights of folly.

Here, the repeat funding doctrine noted in "Title V for Dummies" is an extra- statutory political doctrine that is within the rights of a Representative to consider and apply. The defendants note that the doctrine is grounded in fairness concerns. We would view such fairness as political fairness—Representatives know that if they are political fair, they can justify their actions to constituents. Such fairness is of an entirely different sort than the fairness of due process this Court is called upon from time-to-time to enforce.

While the facts of this case do not present a legal issue with the use of "Title V for Dummies" and its embodied repeat funding doctrine, this opinion should not be read to validate this document in general. Congress has enacted laws allowing publication of rule and advisory documents in other contexts. *See*, *e.g.*, II S.G.C. § 178(B) (2009) (providing for a "Guests' Handbook"); II S.G.C. § 230 (authorizing a legislative style manual). Such laws provide clear guidelines and control over documents. Publishing advisory documents without a legal grant presents risks of misinterpretation by students and Representatives. Some misinterpretations, while embarrassing to the Student Government, do not present legal problems. Others may present problems. For example, it is problematic if Representatives feel compelled to follow the publications, not out of political motivations, but out of fear of legal or ethical sanction. While the identical affidavits in this case from Representatives professing loyalty to the repeat funding doctrine raises questions as to how this doctrine is being used within Congress, there has been nowhere near the sort of evidentiary showing necessary to conclude that Representatives have been bamboozled into following false law.

Thus, we find that the use of the repeat funding doctrine in Congressional deliberations does not violate student law.

* * *

For the foregoing reasons, we find for the defendants on all matters. Plaintiff's petition for relief is denied.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2010

TAYLOR HOLGATE, PLAINTIFF *v.* PETER GILLOOLY, CHAIRMAN OF THE BOARD OF ELECTIONS

ORIGINAL

No. 09–008 Orig. Argued March 17, 2010—Decided March, 2010

Plaintiff, Taylor Holgate, submitted a Notice of Intent to File on February 20, 2010 following a Board of Elections (BOE) certification of the District 5 Student Congress Election. Plaintiff was previously a party in similar actions calling for the BOE to hold a re-election which was dismissed due to failure to state a cause of action under VI S.G.C. § 403. Holgate was granted leave to re-file her case pending the BOE's certification of the District 5 results. The results were certified, and Holgate filed this action asking the Court to order a new election on the grounds that the BOE violated VI S.G.C. §§ 501(A) and 602(A), and demonstrated negligence regarding § 302(A). Plaintiff primarily argued that the BOE had not made adequate efforts to publicize the availability of provisional ballots in violation of § 508(C) and failed to obtain a letter from ITS testifying to the security of the election systems. Defendant filed a motion to dismiss again alleging that Holgate had failed to state a cause of action under § 403(H) and failed to cite claims to relief under § 602(K)(1). The motion was rejected at a pre-trial hearing, and the trial was centered on two questions: (1) whether the Court may call for a re-election if the BOE fails to comply with the duties prescribed by § 501(A), (2) whether or not the BOE failed to comply with their duties.

Held: The Court reviewed the BOE's actions de novo and determined that Defendants did not violate the statutory meaning of § 501(A), and while the BOE may have violated § 508(C), Plaintiff failed to demonstrate that the error rose to the level required for the Court to order re-election.

Actions of the BOE are held valid until the Plaintiff or Appellant can demonstrate their invalidity under Student Law.

(a) The BOE shall be held the explicit standards outlined in the Student Code regarding regulation of campaigns. However, these actions are not to be reviewed for abuse of discretion but rather de novo since discretionary review allows potential gaps in this Court's oversight and review of the BOE.

(b) Under the de novo review, the Court concludes that the BOE did not violate the plain text of § 501(A) but did violate § 508(C) by failing to publicize the availability of provisional ballots and § 403(H) by failing to obtain a letter from ITS testifying to the security of their voting system.

Syllabus

(c) The Court may only order a new election when the BOE abuses discretion under VI S.G.C. §§ 403(H), 511 which was not the case here, or in cases where the BOE's failure to comply with Title VI is so egregious that a fair outcome is improbable. Plaintiff fails to satisfy their burden under the latter standard by not providing evidence about the timeline of BOE actions in publicizing provisional ballots therefore foreclosing review of the impact the § 508(C) violation has probably caused. Moreover, Plaintiffs have not demonstrated adequate damage from the BOE's failure to comply with § 403(H).

Accordingly, the Court rules in favor of the Defendant and declines to order a new election.

Judgement entered for Defendant.

PHILLIPS, J. delivered the opinion for a unanimous Court.

Erik Davies argued the cause for the Plaintiff.
Kristopher Gould, Student Solicitor General for the Defendant.

PHILLIPS, J. delivered the opinion of the Court.

Plaintiff Taylor Holgate, Candidate Student Congress District 5, asked this Court to call for a re-election in the District 5 Student Congress election on the grounds that the Board of Elections violated VI S.G.C. § 501(A) by failing to comply with VI S.G.C. §§ 403(H) and 508 for acting negligently. This Court will call for re-election where the Board of Elections either (1) abuses its discretion under VI S.G.C. § 403(H) and 511, or any other provision of the Code that gives the Board the power to call for re-election or (2) where the Board's failure to comply with Title VI of the Student Code is so egregious that is improbable that a fair outcome would result. Because Plaintiff has failed to establish that the Board's conduct rose to a level of egregiousness from which a fair outcome was improbable, we will not call for a re-election for District 5.

I

The present action was commenced on 20 February 2010, when Plaintiff's counsel notified the Court of Plaintiff's intent to file an action following the Board of Election's (hereinafter "the Board") certification of the District 5 Student Congress Election. Prior to filing this case, Plaintiff was a party in No. 09–007.[1] In No. 09–007, Plaintiff argued that the Board should have called for re-election under VI S.G.C. § 403(H) and challenged the Board's decision not to do so. Section 403 is only applicable, to campaign violations and not to the technical errors that the Plaintiff described in her complaint. Because Plaintiff alleged technical errors and did not allege any campaign violations, she failed

[1] Ms. Holgate had originally filed No. 09–005. This case was joined with a similar action brought by Marc Seelinger through an order dated February 13, 2010.

to state a cause of action upon which relief could be granted, and her case was dismissed.

Although Plaintiff's original claim against the Board was dismissed, the Chief Justice granted Plaintiff leave to re-file her case upon certification of the results of the District 5 Student Congress election. Following the Board's certification, Plaintiff again brought an action asking this Court to call for re-election on the grounds that the Board violated VI S.G.C. §§ 501(A), 602(A), and was negligent in regards to VI S.G.C. § 302(A).

In response to Plaintiff's new complaint, Defendant filed an answer with the Court admitting in part and denying in part the allegations in Plaintiff's complaint on 24 February 2010. In addition to filing an answer, Defendant filed a motion to dismiss citing the plaintiff's failure to state proper grounds for relief under VI S.G.C § 602(K)(1). In the motion to dismiss, Defendant argued again that Plaintiff had failed to cite provisions of the Student Code that would entitle her to relief under § 602(K)(1) and that she had again failed to cite a campaign violation that would warrant the Board calling for a re-election under § 403(H).[2]

At a pretrial hearing on 28 February 2010, the Chief Justice denied Defendant's motion to dismiss on the grounds VI S.G.C. § 403(L) instructed the Court to hear the case because Holgate challenged a non-administrative decision of the Board. The CHIEF JUSTICE also framed the issues for the hearing in this matter as follows: (1) whether the Court may call for a re-election if the board of elections fails to comply with its duties under IV S.G.C. § 501(A) and (2) whether or not the board of elections in fact failed to comply with their duties.

II

III S.G.C. § 401 (2009) provides that this Court has jurisdiction over "both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority of actions of the . . . elections board." Because Plaintiff's complaint challenges the validity of the certification of the election citing procedural violations in regards to IV S.G.C. §§ 501(A), 602(A), and negligence in regards to VI S.G.C. § 302(A). The Court has jurisdiction over this matter.

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[2] Interestingly, the Order stated "Though granting Defendant's motion to dismiss will cause Plaintiffs' claims against Defendant to lapse because of the statute of limitations, my order should not be construed to preclude Plaintiffs from bringing an action under VI S.G.C. § 511. . ." In spite of this instruction, Plaintiff and her counsel did not cite § 511 in her amended complaint. Instead, they continued to rely on § 403(H).

Because the plaintiff's complaint challenges the certification of the election, standing in this matter is governed by III S.G.C. § 409. Section 409 provides that a candidate "alleging election error or fraud" has standing if his or her "challenging an action of the Board has standing if his or her "powers, rights, privileges, benefits or immunities [are] adversely affected, restricted impaired or diminished." Here, the Plaintiff argues that the Board's conduct affected the outcome of the District 5 Student Congress election. Had the Board acted differently, Plaintiff reasons that she may have won her election. As such, Plaintiff's "powers, rights, privileges, benefits or immunities [have been] adversely affected, restricted impaired or diminished." Thus, Plaintiff has standing.

III

At the hearing, both parties presented documentary evidence regarding the actions taken by the Board in the days leading up to and on Election Day. No witnesses were called. Based upon the evidence the Court makes the following findings of fact:

(1) Plaintiff was a candidate in the District 5 Student Congress race.

(2) Student Government elections were held on 9 February 2010. Prior to the election the Board carried out two tests of the election system. The first test was on 26 January 2010, and the second was on 2 February 2010.

(3) The evidence presented reported errors in regards to the second test election. In an email related to the 2 February 2010 test election, Rick Kinney, Applications Analyst for Information Technology Services (ITS), wrote, "[t]here was apparently some problem with local addresses fed to SIS the other night. If I understand what was going on, it should have been corrected last night. I will follow up on that to make sure everything is ok." Mr. Kinney further instructed Mr. Gillooly to fill out a form indicating that he had "completed testing [the election software], moved the election to production, and done the proper testing there."

(4) The tests conducted by ITS assessed the election software. ITS did not check to see if students' addresses provided on Student Central matched an address list maintained by the Department of Housing and Residential Education. Comparing these records would have revealed that 296 students' addresses were incorrectly listed on Student Central. If a student's address is not properly listed on Student Central, then he or she will not be able to vote in the correct Student Congress race.

(5) Even if ITS had compared records maintained by the Department of Housing to students' records on Student Central, the Board of Elections could not change the records on Student Central. Individual students must update their housing information.

(6) Mr. Gillooly did not obtain a letter from ITS "confirming that necessary computer systems are acceptably secure." VI S.G.C. § 302(H). However, Mr. Gillooly did have ITS test the election software prior to the election. Mr. Gillooly also published the voting procedure and posted a provisional ballot on the Board of Elections' website sometime before the election. Neither party was able to confirm when the provisional ballots were available on the Board's website.

(7) On 9 February 2010, Election Day, the two students submitted remedy tickets to ITS. One of the tickets dealt with a misclassification of congressional district. The other related to misclassification of the student's class standing.

(8) Also on 9 February 2010, Rick Kinney reported to the Board that there was no feasible remedy to the situation via online voting, as students' residential information would not be updated on Student Central in time so that the students could vote in the election.

(9) Following the receipt of the ITS tickets and additional reports of election errors to the Board, the Board contacted *The Daily Tar Heel* to publicize the availability of paper ballots to those who were having technical difficulties.

(10) Chairman Gillooly also notified those who asked him about incorrect districts that an inability to vote in the correct congressional district was a records misclassification not a problem with the election software. Gillooly directed these students to fill out paper ballots.

(11) Neither the Board, Plaintiff, nor ITS, could determine how many of the 296 students who were misclassified on Student Central actually tried to cast a ballot.

(12) Although neither party could provide the Court with the actual number of the 296 students who attempted to vote, the Court has accepted statistics submitted by Defendant as accurate but does not consider these numbers the precise numbers of students who were affected by incorrect listing on Student Central. Specifically, of the 27,000 students attending UNC-Chapel Hill, 8,093 (30%) cast ballots on election day. Of the 8,093 students who cast

ballots, 402 voted in District 5 (5%). Assuming that all 296 students voted, approximately 15 would not have been able to vote in District 5.

(13) Plaintiff lost the District 5 Student Congress race by 25 votes.

(14) An email was submitted on 13 February 2010 from Jerri Bland, Executive Director for Enterprise Applications, certifying the software and systems ran correctly with two reported errors in district misclassification and one reported in class misclassification.

IV

This Court presumes that any act of the Board is valid unless it is proven invalid. Plaintiff has the burden of proving that there was an error on the part of the Board as "a matter of law and [that] there is reasonable probability that the error caused the injury." III S.G.C. § 608 (2009).

V

A

At the hearing in this matter, Plaintiff argued that the Court should call for re-election if the Board fails to comply with VI S.G.C. § 501. Section 501 states that the Board "shall be responsible for monitoring the online election, verifying the results, and ensuring that the process was not corrupted." Plaintiff argued that the Board failed to meet this standard because it "failed to make students aware of their voting options" and "did [not] correct problems that it knew about beforehand." To support this argument, Plaintiff alleged that the Board failed to obtain a letter from ITS certifying that the voting software was secure as required by VI S.G.C. § 403(H) and that it failed to publicize the availability of provisional ballots seven days prior to the election as required by VI S.G.C. § 508(C). Plaintiff further argued that the Board acted negligently failing to check to see if students' addresses were properly listed on Student Central and for not taking any steps beyond advertising the availability of provisional ballots on the Board's website and on *The Daily Tar Heel* online edition on Election Day.

In response, the Board argued that Section 501 is "an overarching introduction to" the section of Title VI governing how the Board must conduct an election. If there was a violation, the Board reasoned that it would be of one of the specific provisions of Title VI, Article V, falling below § 501(A) and not § 501 independently. Defendant reasoned that the Board should be held accountable to the specific standards in Title VI, Article V in

assessing whether the Board met its duties under § 501(A). Defendant further argued that in deciding to certify an election the Board makes a decision about whether it complied with Title VI, Article V, and if there were irregularities with the voting software. Defendant then reasoned that the Court should review this decision that it complied with Title VI, Article V and that there were no irregularities for abuse of discretion.

We agree with the Defendant that the Board should be held to explicit standards outlined in the Student Code for how the Board must conduct an election, monitor campaigning, sanction candidates, etc. Plaintiff's argument that we should hold the Board to a negligence standard would hold the Board to a higher standard than that outlined in the Code and could lead to great legal uncertainty for future Boards. Nevertheless, we do not accept Defendant's argument that this Court must review the Board's implicit decision that it complied with Title VI in certifying the results of an election for abuse of discretion. The Board has a duty to comply with all provisions of the Code. Adopting an abuse of discretion standard in this area could potentially enable the Board to escape review and sanction by this Court. Instead, we will review alleged violations of the Board *de novo*. Because Plaintiff argues that the Board violated VI S.G.C. § 403(H) by failing to obtain a letter from ITS certifying that the voting software was secure and VI S.G.C. § 508(C) by failing to publicize the availability of provisional ballots seven days in advance of the election we must consider whether the Board complied with the Code and if these violations warrant calling for re-election.

B

Although we could potentially call for re-election for any violation of the Student Code by the Board, our concern is that disgruntled candidates could potentially force re-election for de minimis violations of the Code by the Board. For example, the Board might place a candidate's nickname in quotations after the candidate's surname on a ballot. Although this would be an express violation of VI S.G.C. § 507, which requires the Board to list nicknames enclosed by quotation marks "before the candidate's surname," we do not believe that asking students in the affected district to re-cast ballots would be warranted nor would it be fair to other candidates in the race. Thus, we will only call for re-election in two instances. First, we will deem a re-election necessary where the Board of Elections abuses its discretion under VI S.G.C. §§ 403(H), 511, or any other provision explicitly empowering the Board to call for re-election. Second, we will deem a re-election necessary where the Board's failure to comply with Title VI of the Student Code is so egregious that a fair outcome in an election is improbable.

Although we cannot with certainty state every instance where the Board's failure to comply with Title VI would be so egregious that a fair outcome in an election would be improbable, we can offer a few clarifying examples. One example is a situation where the Board shows bias to a particular candidate by placing the candidate's name at the top of a ballot instead of determining ballot placement based on a random lottery as required by VI S.G.C. § 507. Another example is a situation where the Board disclosed the results of the election to students before the conclusion of the election which is barred by VI S.G.C. § 509(B).

C

Here, Plaintiff argues that argues that the Board violated VI S.G.C. § 403(H) by failing to obtain a letter from ITS certifying that the voting software was secure and VI S.G.C. § 508(C) by failing to publicize the availability of provisional ballots seven days in advance of the election. At trial, Plaintiff clearly established that the Board failed to obtain a certification letter from ITS, but she did not establish when that the Board violated § 508(C). In rejecting Plaintiff's argument that the Board violated § 508(C), we note that there are two components of this section—(1) the Board must publicize the voting procedure and (2) it must do so seven days before the election. Here, publishing the provisional ballots on the Board's website would be publicity for purposes of § 508(C) which states that the Board may publicize voting procedures, including provisional ballots, "by any forms of media it deems appropriate," including its own website. While publicizing the availability of the provisional ballots on election day on the online edition of *The Daily Tar Heel* would clearly not meet the seven days prior requirement of § 508(C), Plaintiff did not establish that the Board failed to publish the provisional ballots on its website seven days before the election. Accordingly, we are unable to conclude that the Board failed to comply with § 508(C).

Before considering whether Plaintiff's argument that the Board's failure to obtain a letter under § 403(H) was so egregious that a fair outcome would be improbable, we are deeply dismayed that the Board, has failed to comply with VI S.G.C. § 403(H). Although Chairman Gillooly ran tests of the ITS software and the § 403(H) letter would merely provide documentation that he had done so, the provisions of Title VI are not optional. The Board must comply with Title VI, and our opinion should not be construed to condone this conduct.

Nevertheless, Plaintiff's allegation that the Board failed to comply with VI S.G.C. § 403(H) does not rise to a level that it was improbable that a fair outcome would result. Indeed, the evidence submitted and agreed on by the court does not

demonstrate a situation in which securing this letter would have changed the outcome of the election process. Although we are concerned that ITS does not currently compare students' actual residences to those on Student Central before an election and we share students' frustration that they were not able to vote online, the Board is not currently required to check residency status nor does it have the capability to do so. We encourage other branches of student government and the Board, specifically, to work with ITS to determine if the test is warranted and if affected students can be adequately notified. If the test is not feasible, we would encourage the Board to take other steps—for example, an informational email reminding students to check their residency status on Student Central before an election to ensure that they can vote online.

* * *

Because the Board's violation of VI S.G.C. § 403(H) was not so egregious that a fair outcome in the District 5 Student was improbable, we *decline* to call for a re-election.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2016

G. DYLAN RUSSELL, PLAINTIFF *v.* BERGER, CHAIR, BOARD OF ELECTIONS, ET AL.

ORIGINAL

No. 16–001. Orig. Argued April 10, 2016—Decided April 20, 2016

During the Spring 2016 Election, students were asked not only to vote on the usual slate of representative candidates and the Student Body President, but also a constitutional referendum. The available options were contradictory: "Two for Two" and "Better Together." "Two for Two" was sponsored by President Russell who alleged that the use of instant-runoff voting by the Board of Elections (BOE) was illegal and beyond the scope of their authority. The Court is asked to decide whether or not the BOE exceeded its authority.

Held: Plaintiff is correct that the BOE committed wrongdoing, but a re-vote is required not only on the Plaintiff's referendum, but the entire election which was impacted.

Re-election ordered.

LEMING, C.J. delivered the opinion for a unanimous Court. CECCOTI, J. did not take part in the consideration or decision of this case.

Travis Crayton argued the cause for the Plaintiff.

Allie Crimmons, *Student Solicitor General*, argued the cause for the Defendants.

CHIEF JUSTICE LEMING delivered the opinion of the Court.

I

On Sunday, April 10th, 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. 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

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.

* * *

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 No. 16–002, 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. 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.

It is so ordered.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE STUDENT BODY

AT

FEBRUARY TERM, 2017

KENNITH ECHEVERRIA, PLAINTIFF *v.* ELIZABETH ADKINS, UNDERGRADUATE STUDENT BODY PRESIDENT, ET AL.

ORIGINAL

No. 17-001. Orig. Decided November 10, 2017

PER CURIAM.

Plaintiff Kennith Echeverria applied to be a member of the Academic Affairs Committee of the Undergraduate Executive Branch of Student Government. Plaintiff also serves as the Speaker Pro Tempore of the Undergraduate Student Senate. Defendants Elizabeth Adkins, Sarah Leck, Emily Blackburn, and Tori Wentz initially extended an offer to Plaintiff to join the committee, but later rescinded the offer.

Plaintiff contends his rights were violated when the offer to join the committee was rescinded. Defendants contend that Plaintiff is ineligible from serving on the committee due to I S.G.C. § 105, which outlines dual-office prohibitions for members of UNC Student Government.

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This case can be reduced to two critical questions: (1) Does I S.G.C. § 105 prohibit Plaintiff from simultaneously serving as Speaker Pro Tempore of the Undergraduate Senate and a member of the Executive Branch's Academic Affairs Committee? (2) If not, does Plaintiff have a right under Student Supreme Law to be a member of the Academic Affairs Committee?

Concerning the first question, the Student Code is clear. I S.G.C. § 105, while a poorly worded section of the Student Code, clearly outlines the positions that are exempt from the dual-office prohibition in I S.G.C. § 105(B). Among these

positions is "Executive Branch positions other than the President, Vice-President, Graduate & Professional Student Federation President, Treasurer, Secretary, Chief of Staff, Senior Advisor, and Director of State and External Relations." Therefore, the Executive Branch position of member of the Academic Affairs Committee is an exempt position under I S.G.C. § 105(A), and even though Plaintiff occupies one non-exempt position (Speaker Pro Tempore), he is allowed under this section to hold additional exempt positions.

Having resolved the matter of the first question, it is now necessary to consider whether Plaintiff has a right to be a member of the Academic Affairs Committee. Undergraduate Executive Branch committees are only lightly regulated under the Student Code. While other offices receive greater attention, with clear processes outlined for membership, the Code is silent on the membership of these committees. As such, these committees—and their membership—fall under the discretion of the Undergraduate Student Body President. There is no basis in law for a member of the Student Body to be entitled to serve on these committees, nor any basis in law for this Court to mandate membership on an Undergraduate Executive Branch committee.

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Accordingly, Plaintiff's request to be reinstated as a member of the Undergraduate Executive Branch's Academic Affairs committee is hereby denied.

It is so ordered.

ORDERS AND PRE–1970 CASES

No. 69–001. *Kelly* v. *Mickel*.
The Court struck down independent expenditures on behalf of Student Body President Candidates as a way to dodge spending limits.

No. 69–002. *Dorrol* v. *Oliver*.
The absence of a specific election law requires application of the General Election Law.

No. 69–003. *Bailey, et al.* v. *Waddell, et al.*
Student fees must go to a student purpose. The Spring 1969 Cafeteria Worker Strike did not qualify and the Court enjoined the Treasurer from providing funds to the Strike.

No. 69–004. *Yates, et al.* v. *Waddell, et al.*
The Court ruled that the YM–YMCA's 1969 Walk Against Hunger did not qualify as a "student purpose."

No. 69–005. *Moore* v. *U.N.C. Student Body*.
Moore was convicted by the Men's Honor Court of participating in a water fight in violation of Resident Hall Statutes. The Court reversed the conviction and instructed the Attorney General to prosecute under the harsher statute for having violated the Student Code.

No. 69–006. *Beskow, et al.* v. *Fletcher*.
Dismissed for lack of jurisdiction. To order a re-election, a party must show that irregularities affected the outcome.

No. 69–007. *Barnes* v. *Albright*, et al. DISMISSED as moot.

ORDERS FOR 1970 TERM

No. 70–001. LOST.

ORDERS FOR 1973 TERM

No. 73–005. *Graduate and Professional Student Federation* v. *Union Board of Directors, et al.*
Case settled out of Court, and dismissed.

ORDERS FOR 1974 TERM

No. 74–005. *Fox* v. *Daughteridge*. DISMISSED.

ORDERS FOR 1975 TERM

No. 75–001. *Jones* v. *Ripley*, et al. DISMISSED.

No. 75–002. *Gaskill* v. *Wrenn*.
Contempt order against Granville Residence College for failing to comply with the Court Order in *Gaskill* v. *Wrenn*, 1 S.S.C. 121 (1974).

No. 75–004. LOST.

No. 75–005. LOST.

ORDERS FOR 1976 TERM

No. 76–002. *Pope* v. *Reid*. DISMISSED.

No. 76–003. *Richardson* v. *O'Neal*. DISMISSED.

No. 76–004. *Jennings*, *et al*. v. *Bates* DISMISSED.

No. 76–006. *Bloom* v. *Pope*. DISMISSED.

ORDERS FOR 1996 TERM

No. 96–001. LOST.

ORDERS FOR 1997 TERM

No. 97–001. LOST.

No. 97–002. LOST.

No. 97–004. LOST.

No. 97–005. *Kennedy*, *et al*. v. *Nelson*, *et al*.
Consolidated into *Kennedy*, *et al*. v. *Nelson*, *et al*. No. 97–003 S.S.C. (1997).

ORDERS FOR 1999 TERM

No. 99–001. *Greene* v. *Faulk*.
No opinion and the request for an advisory opinion is denied.

No. 99–003. *Kennedy* v. *Conner*, *et al*. DISMISSED.

ORDERS FOR 2008 TERM

No. 08–001. *Wohlford* v. *Morgan*. DISMISSED.

No. 08–005. *Bilbao* v. *Morgan*. DISMISSED.

ORDERS FOR 2009 TERM

No. 09–001. *Danforth* v. *Jones*. DISMISSED.

No. 09–002. *Dexter*, *et al*. v. *Levin-Manning*, *et al*. DISMISSED.

No. 09–003. *Levin-Manning* v. *Gillooly*. DISMISSED.

No. 09–004. *Keune* v. *Gillooly*. DISMISSED.

No. 09–005. *Holgate* v. *Gillooly*.
Consolidated with *Seelinger* v. *Gillooly*, No. 09–006 S.S.C. (2009).

No. 09–007. *Holgate*, *et al*. v. *Gillooly*. DISMISSED.

ORDERS FOR 2010 TERM

No. 10–001. *Ingram* v. *Phillips*, et al. DISMISSED.

No. 10–002. *Horowitz* v. *Medlin*, *et al*. DISMISSED.

No. 10–003. *Santoro* v. *Phillips*. DISMISSED.

ORDERS FOR 2012 TERM

No. 12–001. *Brady* v. *Leimensoll*, *et al*. DISMISSED.

No. 12–002. *Anastas-King*, *et al*. v. *Comparto*. DISMISSED.

ORDERS FOR 2016 TERM

No. 16–002. *Nail* v. *Kushner*.
Order granting an injunction entered February 5, 2017. Injunction lifted February 16, 2017.

No. 16–003. *Nail* v. *Kushner*. CERTIORARI DENIED.

No. 16–004. *McKnight* v. *Kushner*, *et al*. CERTIORARI DENIED.

No. 16–005. *McKnight* v. *Kushner*, *et al*. CERTIORARI DENIED.

ORDER FOR 2021 TERM

No. 21–001. *Tweden* v. *Board of Elections*, *et al*. DISMISSED.