

IN THE SUPREME COURT	)	
	)	
Action No. _____	)	
	)	
Andrew H. Gary	)	
PLAINTIFF	)	
	)	COMPLAINT
Versus	)	
	)	
Board of Elections	)	
DEFENDANT	)	
	)	
	)	

JURISDICTION

1. The Student Supreme Court holds jurisdiction as authorized under III J.C.S.G. §510(A)(2) which states that the Jurisdiction of the Student Supreme Court shall “[e]xtend to questions of law arising under the Student Body Constitution, the laws enacted under its authority, [and] the Board of Elections”, and as authorized under Student Const. ch. I art. IV, §5 which grants the Student Supreme Court “[o]riginal jurisdiction in controversies concerning executive and legislative action raising questions of law arising under this Constitution and laws enacted under its authority shall reside with the Student Supreme Court of the Student Body”.
2. R.11 holds that, “The jurisdiction of the Court shall extend to: [...] Questions of law arising under: (i) the Student Body Constitution and laws enacted under its authority; [...] and shall be based in a controversy in law.” R. 13 further holds that “The Court shall always presume jurisdiction over an action. A party seeking to show that the Court lacks jurisdiction must make an affirmative showing that the Court does not possess jurisdiction over the matter.”
3. R.21(b) holds that standing extends to plaintiff that have been adversely affected by, “a member of a constituency adversely affected by a regulation or determination of the Board of Elections;” and R.21(c) holds that “a student alleging election error in relation to a constitutional referendum, a constitutional initiative, a special referendum, an initiative election, or a review election.”
4. The Plaintiff asserts that DEFENDANT Board of Elections, is improperly allowing graduate and professional students to vote on a referendum affecting only undergraduate students.

## STANDING

5. PLAINTIFF Andrew H. Gary is a duly enrolled fee-paying undergraduate student.
6. PLAINTIFF asserts that the Student Supreme Court is explicitly established as the Court of original jurisdiction, and thus implied to be the trier of fact for cases and controversy arising from actions taken by the Board of Elections or controversy concerning the administration of elections. *See Whittemore v. Ruffin*, 1 S.S.C. 2 (1970); *Levy v. Ruffin*, 1 S.S.C. 5 (1971); *Dorrol v. Oliver*, unreported, cited in *Dunn v. King*; *Dunn v. King*, S.S.C. 18 (1972); *Callahan v. Gordon*, Ref. no. 72-002 1972; *Crawley v. Gordon*, 1 S.S.C. 25; *Srebro v. Gordon*, 1 S.S.C. 69 (1973); *Mask v. Gordon*, 1 S.S.C. 72 (1973); *Gaskill v. Wrenn*, 1 S.S.C. 90 (1974); *Gaskill v. Wrenn II*, 1 S.S.C. 100 (1974); *Pritchard v. James*, 1 S.S.C. 110 (1974); *Gaskill v. Wrenn III*, 1 S.S.C. 121 (1974); *Gaskill v. Granville Residence College*, 1 S.S.C. 126 (1975); *Dugan v. Bryant*, 1 S.S.C. 130 (1975); *Hancock v. U.N.C. Elections Board*, 1 S.S.C. 151 (1989); *Mcnerney v. Shuart*, 1 S.S.C. 159 (1996); *Rubush v. Dicks*, 1 S.S.C. 169 (1997); *Kennedy v. Nelson*, 1 S.S.C. 173 (1997); *Reeves v. Coleman*, 1 S.S.C. 180 (1999); *Wohlford v. Morgan*, 1 S.S.C. 201 (2008); *Klein v. Morgan*, 1 S.S.C. 212 (2008); *Bilbao v. Morgan*, 1 S.S.C. 234 (2009); *Holgate v. Gillooly*, 1 S.S.C. 246 (2010); *Russel v. Berger*, 1 S.S.C. 255 (2016).
7. No standard of harm is established in the Student Constitution for complaints arising under Student Const. ch. 1 art. VI §5, under R21(b), or R21(c).
8. Even if this Court were to find that standing in this case required proof of harm, the Court ruled in *Gaskill v. Wren III*, 1 S.S.C. 121 (1974) that, “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.” The Court in *Gaskill* was evaluating a situation where an election was conducted without specific rules and it was alleged that candidates campaigned within 50 feet of a polling location and where candidate themselves served on the Election Board. The Court’s finding that, “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.” creates a standard whereby a sufficiently grave violation of law is *per se* harmful.

## CLAIM

9. PLAINTIFF alleges that DEFENDANT violated Student Const. ch. 1 art. VIII §1 which states that “Each Senate shall have the ability to propose amendments affecting only their constituency...” and those “amendment[s to the Constitution] shall be subject to a simple majority (fifty percent plus one (50%+ 1)) vote of those voting, provided that at least two-and-a-half (2.5) percent of the *respective constituency* votes on the amendment” (emphasis added) by allowing graduate and professional students to vote on a referendum concerning only undergraduate students. (Exhibit A)
10. On October 24<sup>th</sup>, the Undergraduate Senate adopted by unanimous consent USR 105-122 entitled “A Resolution to Clarify Previous Resolutions”. This resolution directed in Section 2 that amendment to Chapter 2 of the Student Constitution be “submitted to the student body at the Fall General Election”. Furthermore, in Section 3, the resolution directed that “Be it further resolved that on the official ballot to be used at the election, there shall be printed a proposition, upon which the *Undergraduate Student Body* shall be permitted to vote YES or NO, to amend the Constitution of the Student Body” (emphasis added).
11. The Court has routinely employed an evidentiary standard of preponderance of evidence. In *Peace v. RHA Executive Board* 2 S.S.C. \_\_\_\_ (2022), the Court “informed the parties to presume a preponderance standard absent any common law authority contradicting such a standard”. Further the Court held in *Nicholas v. Raynor* 1 S.S.C. 232 (2009) that the presumption of a valid election must be rebutted by a “by a preponderance of the evidence.”
12. DEFENDANT in an official email communication to the Senior Vice of the Graduate and Professional Student Government, Speaker of the Undergraduate Senate, and others on or about October 30<sup>th</sup> stated that “Any duly-registered, fee-paying student may vote in this election period in support/against the referendum to amend the Student Constitution.” (Exhibit B)
13. On the official ballot created by DEFENDANT the following instructions were included, “Any duly-registered, fee-paying student may vote in this election period in support/against the referendum to amend the Student Constitution.” (Exhibit C)

RELIEF

14. PLAINTIFF requests declaratory judgment that DEFENDANT violated Student Const. ch. 1 art. VIII §1.
  
15. PLAINTIFF further requests that the Board of Elections be directed to disqualify any and all graduate and professional student votes on the referendum. PLAINTIFF requests that this narrow relief be granted so as to prevent the need for rerunning the referendum.

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

/s/ Andrew H. Gary



Filed this the 31<sup>st</sup> day of October, 2023, at 1:20 A.M.

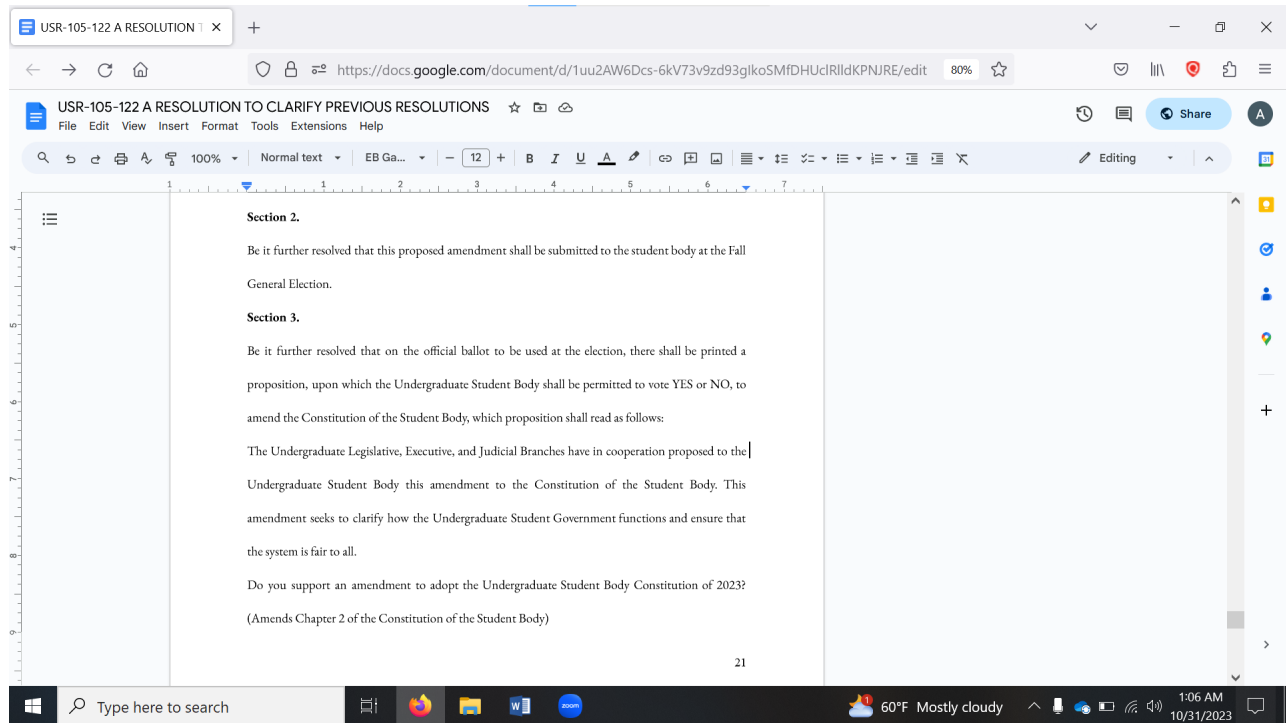
Gary v. Board of Elections

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Complaint Appendix

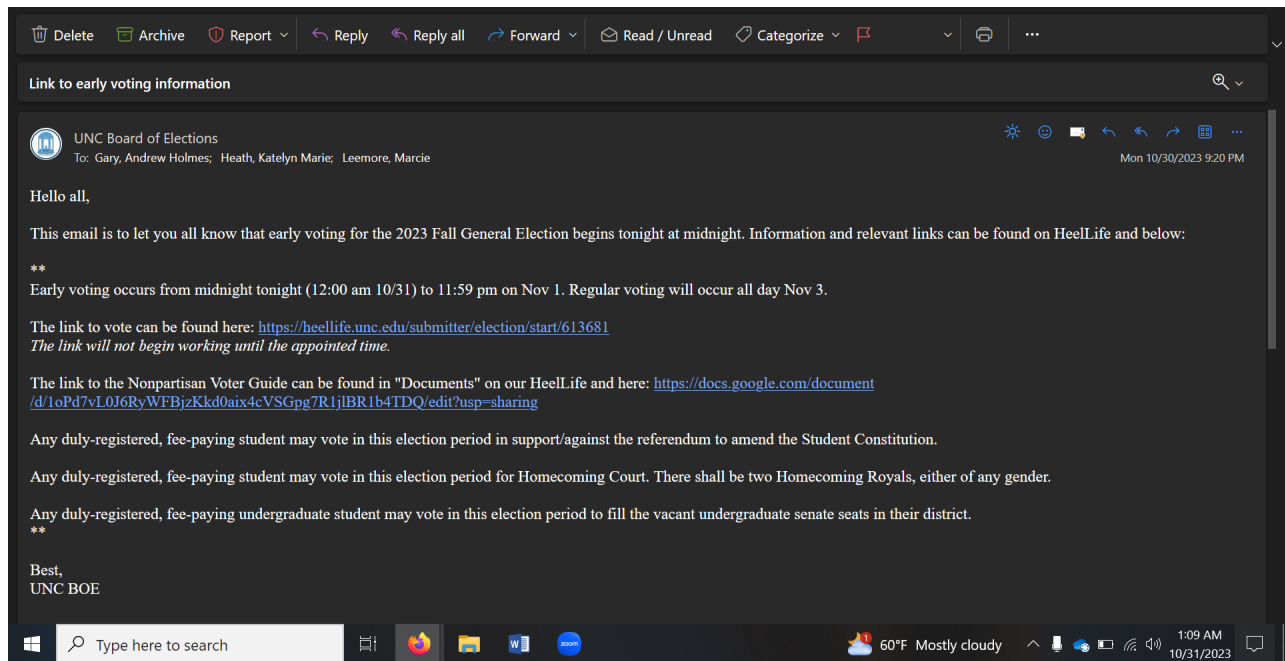
# Exhibit A: Public Version of USR-105-122

Link to document: <https://docs.google.com/document/d/1uu2AW6Dcs-6kV73v9zd93gIkoSMfDHUclRlIdKPNJRE/edit?usp=sharing>



## Exhibit B: Copy of email sent to Senior Vice of the Graduate and Professional Student Government, Speaker of the Undergraduate Senate, and others

Link to document: [https://drive.google.com/file/d/1xw7hDcKpONSMwwOF93flkn-f6b-2o2Gs/view?usp=drive link](https://drive.google.com/file/d/1xw7hDcKpONSMwwOF93flkn-f6b-2o2Gs/view?usp=drive_link)



## Exhibit C: Screenshot of Official Ballot Instructions

Link to document:

[https://drive.google.com/file/d/1brZeoYfWj2OGYDcj3mgUCItJl4GoQT6s/view?usp=drive\\_link](https://drive.google.com/file/d/1brZeoYfWj2OGYDcj3mgUCItJl4GoQT6s/view?usp=drive_link)

