SUPREME COURT OF THE STUDENT BODY

No. 23–001

ANDREW GARY *v.* BOARD OF ELECTIONS

ORIGINAL

[November 14, 2023]

PER CURIAM.

The Board of Elections opened voting for the 2023 Fall General Election at the stroke of midnight on 31st of October. Not an hour and a half later, the plaintiff submitted the Complaint. It accused the Board of committing one principal violation of Student Law; by giving graduate and professional students the option to vote on a referendum on amendments supposedly affecting only undergraduates, the right of each Senate to initiate votes on changes affecting their own constituencies under Student Const. ch. 1 art. VIII §1 was said to have been violated. The plaintiff almost immediately followed the Complaint with a motion for expedited review and a motion for a temporary restraining order. Almost immediately after the defendant submitted the Answer, the plaintiff filed a motion for summary of judgment. We grant this latest motion now, and in doing so render the previous two moot.

The facts are not in contest. The plaintiff here is Andrew Gary, the incumbent Speaker of the Undergraduate Senate and self-proclaimed "principal author" of the amendments in question.[1] *Fall 2023 General Election Nonpartisan Voter Guide*, at 15. These amendments, which are a series of substantively moderate alteration to Chapter Two of the Student Constitution, were

[1] Acting Chief Justice Shue also sat on the committee which developed these amendments, but did not endorse or oppose the referendum in accordance with the Court's ethics regulations.

passed by the Undergraduate Senate and approved by the Joint Governance Council in line with Student Const. ch. 1 art. VIII §1. Upon the commencement of early voting, the Board of Elections allowed all students the option of voting on the amendments. Gary claims, and the Board of Elections agrees, that this was a violation of Student Const. ch. 1 art. VIII §1.

The Board of Elections does not defend its actions as constitutional. If it so desired, the Board of Elections could have pointed to the ambiguity in the last sentence in Student Const. ch. 1 art. VIII §1, "[t]he amendment 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." It could have claimed that this required only a turnout threshold be met for the corresponding constituency, but left up to the Board of Election's discretion whether to allow members of the other constituency to cast a ballot. We think its decision not to is well advised and speaks volumes. It indicates the clause's clear implication, all but written explicitly, that only a constituency ought to be allowed to vote on measures that exclusively affect its members.

In the Answer, the Board of Elections contests a small part of the Complaint, claiming that the legal definition of "joint" poses a "novel question of law." See *id.*, ¶ 9. Although true that the Court has not attempted to provide such a definition, it has also not had need to do so. At least for the purposes of ch. 1 art. VIII §1, the text of that section clearly delegates the power for delineating which amendments are "joint" to the Joint Governance Council. This leaves the Board of Election's contestation moderately lacking in pertinence.

The Court does question the need for litigation at all in this instance. As the plaintiff and defendant evidently agree on all relevant matters of fact and law, the parties easily may have been able to find a mutually agreeable settlement without judicial intervention. Nevertheless, there is no evidence of coordination between the parties, suggesting that a genuine conflict did exist, at least initially. We therefore issue this judgment with slight reluctance, recognizing that there is certainly merit to the

defendant's argument regarding exhausting "other potential legal and administrative remedies." See Defendant's Answer ¶ 6.

Further, we do not deny the plaintiff's standing, despite the lack of established harm. See Plaintiff's Complaint ¶ 5-8. However, we note that Gary may have been better served by filing suit in his official capacity as Speaker of the Undergraduate Senate. The Senate has an undeniable legislative interest in seeing the referendums it originates considered by the student body in a manner consistent with the Constitution. The Senate could also have opted to litigate as an entity, much as it did in *USG Senate v. Grodsky*, 2 S.S.C. ___ (2022), in which Gary served as counsel for the plaintiff. The plaintiff is entitled to sue in a personal capacity, but structuring the case as an official action would have, if nothing else, made the plaintiff's arguments for standing somewhat more straightforward and transparent for the student body.

On November 5th, the Board of Elections certified the results of the election, including the referendum with all graduate students' votes excluded. *Results of the Fall 2023 General Election*. As no genuine conflict remains, we grant the plaintiff's request for declaratory judgment that defendant violated ch. 1 art. VIII §1. The Court also recognizes the legitimacy of the constitutional amendments, retroactive to the Board of Election's certification.

It is so ordered.