

IN THE SUPREME COURT)
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 Action No. 23-002)
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 Tanner Jacob Edwards)
 PLAINTIFF)
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 Versus)
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 Board of Elections)
 Sophie van Duin,)
 Acting Chair of the Board of Elections)
 DEFENDANTS)
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DEFENDANTS' ANSWER

ANSWER

1. DEFENDANTS the Board of Elections and Acting Chair of the Board of Elections Sophie van Duin by and through counsel, hereby Answer PLAINTIFF's Complaint.

INTRODUCTION

- 2. On January 19th, 2023, PLAINTIFF filed its Complaint asserting that PLAINTIFF was qualified to run and hold the office of Student Body President and the office of President of the Graduate and Professional Student Government and that this Court ought to overrule DEFENDANTS' determination that they are ineligible to run for the office of Student Body President and the office of President of the Graduate and Professional Student Government.
- 3. On January 21st, 2023, PLAINTIFF filed a Motion for a Temporary Restraining Order to stop the Board of Elections from beginning the statutorily mandated elections process. DEFENDANTS have responded to this Motion in a separate filing.
- 4. For the purposes of organization, the DEFENDANTS have adopted the headings set forth in PLAINTIFF's Complaint. The adoption of such headings, however, does not constitute an admission of any kind. Each and every allegation of the Complaint that relates or is directed to the DEFENDANTS is denied unless expressly admitted in this Answer.
- 5. DEFENDANTS respond to the numbered allegations in the Complaint as follows:

I. INTRODUCTION

6. **ANSWER TO PARAGRAPH 1:** The allegations in Paragraph 1 contain PLAINTIFF's

characterization of their actions, to which no response is required. To the extent necessary, DEFENDANTS deny the allegations in Paragraph 1.

7. **ANSWER TO PARAGRAPH 2:** The allegations in Paragraph 2 contain PLAINTIFF's characterization of their actions, to which no response is required. DEFENDANTS will not address whether the Joint Governance Council is the appropriate venue for PLAINTIFF to adjudicate this matter; however, DEFENDANT reserves the right to make separate filings regarding actions of the Joint Governance Council should it act outside the scope of its authority. To the extent necessary, DEFENDANTS deny the allegations in Paragraph 2.

II. PARTIES

8. **ANSWER TO PARAGRAPH 3:** DEFENDANTS lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 3 and, therefore, deny those allegations. However, the Court should note that PLAINTIFF here concedes that they are a "duly enrolled, fee-paying *Undergraduate Student*" [emphasis added].
9. PLAINTIFF does not provide information concerning DEFENDANTS in this manner. DEFENDANTS will, therefore, do so. DEFENDANTS are the Board of Elections and Acting Chair Sophie van Duin. The Board of Elections is established in Student Const. ch. I art. VI¹. The Board of Elections is charged with administering elections law and organizing elections for offices established under the Student Constitution. DEFENDANTS requests that Sophie van Duin be added as a DEFENDANT in their official capacity as Acting Chair of the Board of Elections. PLAINTIFF's extensive communications with Acting Chair van Duin are central to this case, and as such, including Acting Chair van Duin as a DEFENDANT will help clarify the many issues at play within this case.

III. JURISDICTION AND STANDING

10. The jurisdiction of the Student Supreme Court of the Student Body (hereinafter "Supreme Court") is established in Student Const. ch. I art. IV, §5, which grants the 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."
11. The jurisdiction of the Supreme Court is further elaborated upon in III J.C.S.G. §510. III J.C.S.G.² §510(A) establishes the general jurisdiction of the Supreme Court. III J.C.S.G. §510(A)(1) is met because DEFENDANTS have formally notified PLAINTIFF of the intent to take an action. See PLAINTIFF's exhibit B. III J.C.S.G. §510(A)(2), which states that the Jurisdiction of the Student Supreme Court shall

¹ For this and for all following citations to the Student Constitution, DEFENDANT is citing to the February 2023 version, unless otherwise indicated.

² For this and for all following citations to the Joint Code of the Student Government of the University of North Carolina at Chapel Hill, DEFENDANT is citing to the July 5, 2023 version, unless otherwise indicated.

“[e]xtend to questions of law arising under the Student Body Constitution, the laws enacted under its authority, [and] the Board of Elections” is met because DEFENDANTS are the Board of Elections and Acting Chair van Duin. III J.C.S.G. §510(A)(3) is met because of substantive disagreement concerning the meaning of several provisions of the Student Constitution (hereinafter “Constitution”), Joint Code of the Student Government of the University of North Carolina at Chapel Hill (hereinafter “Joint Code”), Code of the Graduate and Professional Student Government (hereinafter “GPSG Code”)³, and The Code of the Permanent Laws of the Undergraduate Student Government of the University of North Carolina at Chapel Hill (hereinafter “USG Code”)⁴.

12. R.13⁵ holds that “The jurisdiction of the Court shall extend to: (1) Cases and controversies concerning Student Government actions; ... (2) Questions of law arising under: (i) the Student Body Constitution and laws enacted under its authority; ... (viii) actions of the Board of Elections; ... (3) shall be based in a controversy in law.” Here, the Supreme Court has jurisdiction because this case concerns student government actions, contains questions of law arising under the Constitution and actions of the Board of Elections, and is based in a controversy of law.
13. DEFENDANTS assert that the Supreme Court is explicitly established as the Court of original jurisdiction and is 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); *Gary v. Board of Elections*, 1 S.S.C. ____ (2023).
14. **ANSWER TO PARAGRAPH 4:** PLAINTIFF asserts that the Supreme Court has jurisdiction under R.21. R.21 is not relevant to this question as it concerns standing to bring an action based on an act of the Board of Elections. PLAINTIFF asserts that the Supreme Court has jurisdiction because “they are under the Student Body Constitution.” DEFENDANTS interpret this to mean that DEFENDANTS is subject to the Constitution and laws enacted under its authority and that there is no provision granting DEFENDANTS immunity from the laws or

³ For this and for all following citations to the GPSG Code, DEFENDANT is citing to the 2022.A version, unless otherwise indicated.

⁴ For this and for all following citations to the USG Code, DEFENDANT is citing to the December 10, 2023 version, unless otherwise indicated.

⁵ For this and for all following citations to the Bylaws of the Student Supreme Court, DEFENDANT is citing to the August 23, 2023 version, unless otherwise indicated.

the Constitution, which DEFENDANTS does not contest. PLAINTIFF continues by citing to “Jurisdiction and Standing J.C.S.G. §510”. DEFENDANTS has already addressed claims related to III J.C.S.G. §510(A)(2) in Paragraph 2 of DEFENDANT’s Answer.

15. As established in III J.C.S.G. §513 and R.16, “The consent of the parties to submit themselves to the jurisdiction of the Supreme Court ... shall be effective to give the Supreme Court jurisdiction in any action in which it otherwise lacks jurisdiction.” Here, PLAINTIFF consented to the Supreme Court’s jurisdiction by filing this case with the Supreme Court even though PLAINTIFF does not clearly state in their filing that the Supreme Court has jurisdiction in this matter. As argued above, it is clear that the Supreme Court has jurisdiction, and so DEFENDANTS will consent to the Supreme Court’s jurisdiction in this case.

16. **ANSWER TO PARAGRAPH 5:** PLAINTIFF alleges that they have standing under III J.C.S.G. §540(B), which states “A student directly and adversely affected by a regulation, ruling, or determination of the Board of Elections.” DEFENDANTS do not contest that PLAINTIFF was affected by a determination of the Board of Elections. *See* PLAINTIFF’s Exhibit B. However, PLAINTIFF overlooks the requirements of III J.C.S.G. §540, which states “Standing to bring an action before the Supreme Court for an election error or fraud in the acts, decisions and rulings of the Board of Elections extends to Plaintiffs who must have their powers, rights, privileges, benefits or immunities adversely affected, restricted impaired or diminished *and the Plaintiff must be...*” [emphasis added]. Here, III J.C.S.G. §540 is clearly not disjunctive; an individual must qualify under both descriptions in order to attain standing. R.21 further clarifies this requirement by separating the statements: “Standing to bring an action before the Court for election error or fraud in the acts and decisions of the Board of Elections extends to Plaintiffs who must have their powers, rights, privileges, benefits, or immunities adversely affected, restricted, impaired, or diminished. The Plaintiff must be” [emphasis added]. PLAINTIFF lacks standing under III J.C.S.G. §540 and R.21 because PLAINTIFF does not establish how their “powers, rights, privileges, benefits or immunities (were) adversely affected, restricted impaired or diminished.” DEFENDANTS presume that PLAINTIFF intended to assert that they have a right or privilege to seek the office of Student Body President, as evidenced by their requested relief: “Eligibility for all future Students with Senior Status who are returning to the University for the duration of their prospective term to become candidates for, and sworn into, positions within the Graduate and Professional School Government within the timeline described in the GPSG Code.” This Court should not establish that there exists a material right or privilege to seek the office of Student Body President or any office of profit, honor, or trust of the Student Body of the University of North Carolina at Chapel Hill. DEFENDANTS will discuss this point in relation to PLAINTIFF’s claim; however, if the Court finds that no right or privilege does exist, then this case should be dismissed for lack of standing.

IV. FACTS RELEVANT TO ALL CLAIMS

17. **ANSWER TO PARAGRAPH 6:** DEFENDANTS admit the allegations in Paragraph 6.

18. **ANSWER TO PARAGRAPH 7:** DEFENDANTS admit the allegations in Paragraph 7.
19. **ANSWER TO PARAGRAPH 8:** DEFENDANTS admit the allegations in Paragraph 8, except to the extent that they contain conclusions of law, to which no response is required.
20. **ANSWER TO PARAGRAPH 9:** The allegations in Paragraph 9 contain PLAINTIFF's characterization of their actions and the actions of Brian Lackman, Associate Director, Student Life and Leadership, to which no response is required.
21. **ANSWER TO PARAGRAPH 10:** DEFENDANTS admit the allegations in Paragraph 10, except to the extent that they contain conclusions of law, to which no response is required.
22. **ANSWER TO PARAGRAPH 11:** DEFENDANTS rejects PLAINTIFF's characterization of II J.C.S.G. §601(A)(3). PLAINTIFF asserts that II J.C.S.G. §601(A)(3) defines a candidate's constituency; it does not. II J.C.S.G. §601(A) establishes that candidates for offices established under Chapter One (1) of the Constitution must meet the requirements described within this section. It should be noted that this Title is qualified by the legislative intent put forward in II J.C.S.G. §201(B): "Regulations in this Title shall be used for elections or ballot measures concerning only the whole student body." Therefore, this qualification only applies to offices established under Chapter One (1), here meaning the office of the Student Body President, not the President of any constituency. II J.C.S.G. §601(A)(1) establishes that the candidate must be a duly-enrolled, fee-paying student in good standing. II J.C.S.G. §601(A)(2) includes that the candidate must not have filed for graduation. II J.C.S.G. §601(A)(3) provides that a candidate must be a constituent for the office that they are a candidate for by the first day of the fall semester following the spring general election. II J.C.S.G. §601(A)(5) establishes that the Board of Elections, with the support of the Division of Student Affairs, has an affirmative duty to determine if candidates are qualified to run for office.
23. **ANSWER TO PARAGRAPH 12:** PLAINTIFF asserts in Paragraph 12 that "Student Const. ch. 1 art. 2, §1 'Terms and Qualifications [for the Student Body President]' states, 'The Student Body President shall be enrolled as a fee-paying student at the University of North Carolina at Chapel Hill,' as the sole qualification for the office of Student Body President". While Student Const. ch. 1 art. II, §2, does state this qualification, this is not the sole qualification for the office of the Student Body President, as examined previously.
24. **ANSWER TO PARAGRAPH 13:** The allegations in Paragraph 13 contain PLAINTIFF'S characterization of legal conclusions to which no response is required.
25. **ANSWER TO PARAGRAPH 14:** It is unclear if PLAINTIFF will be "continuously" enrolled as a fee-paying student at the University of North Carolina at Chapel Hill over the summer between the 2023-2024 and 2024-2025 academic years. DEFENDANTS requests discovery on this point to determine when PLAINTIFF will matriculate into the Masters of Public Policy Program, as PLAINTIFF will be graduating as an undergraduate in May of 2024.
26. **ANSWER TO PARAGRAPH 15:** DEFENDANTS lack knowledge or information

sufficient to form a belief about the truth or falsity of the allegations in Paragraph 15.

V. SHORT AND PLAIN STATEMENT OF CLAIM

A. AGAINST: BOARD OF ELECTIONS

27. ANSWER TO PARAGRAPH 16: PLAINTIFF asserts in Paragraph 16 that “Duly enrolled, fee paying students at the University of North Carolina at Chapel Hill who will be continuing their education throughout their potential term should be allowed to run for the student offices associated with the constituency they will be in on the first day of the fall semester following the Spring Election as defined in Qualifications for Office J.C.S.G. §601.” As argued in Paragraph 25 of DEFENDANTS’ Answer, there are serious questions as to whether PLAINTIFF will be duly enrolled for the entirety of the term of office for Student Body President. Given that it is unclear whether PLAINTIFF will be enrolled over the summer, it is unclear whether they will be a fee-paying student at that time. It is further unclear whether PLAINTIFF will be continuing their education throughout their potential term, as again, they may or may not be enrolled over the summer. PLAINTIFF’s claim that duly enrolled fee-paying students “should be allowed to run for student office” is without merit. To revisit Paragraph 9 of DEFENDANTS’ Answer, there is no material right or privilege to run for any office of honor, profit, or trust of the student body because there exist qualifications for office. The existence of qualifications for office implies that no individual has a material right or privilege to run because qualifications inherently mean that not everyone can run. Further, as outlined in Paragraph 22 of DEFENDANTS’ Answer, there are several qualifications for office; PLAINTIFF does not meet all these requisite qualifications. As discussed in Paragraph 25 of DEFENDANTS’ Answer and this Paragraph, it is unclear if PLAINTIFF will be a duly enrolled and fee-paying student for the entirety of the term of office of the Student Body President as required by II J.C.S.G. §601(A)(1). Additionally, II J.C.S.G. §601(A)(2) requires that a candidate must not have filed for graduation; DEFENDANTS request further discovery on this point.

28. ANSWER TO PARAGRAPH 17: PLAINTIFF asserts in Paragraph 17 that “It is not the intention of the language between the USG, GPSG, Constitution, and Joint Student Codes to exclude duly enrolled, fee-paying students from serving as Student Body President per Student Const. ch. 1 art. 2, §1.” DEFENDANTS take issue with this assertion for several reasons. First, there is a clear distinction between running for office and holding that office. Evidence for this distinction can be found in II J.C.S.G. §601(A), which states “A candidate for office must meet the following requirements or else be determined ineligible to *hold and/or run* for the office” [emphasis added]. As seen in 601(A), this statute is clearly disjunctive, meaning that there are two distinct requirements that must be met: being qualified to hold an office and being qualified to run for that office. The two distinct requirements are relevant to consider in this case because they establish that an individual must be both qualified to run and to hold an office. The Court has previously held in *Whittemore v. Ruffin*, 1 S.S.C. 2 (1970) 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.” Though this case deals with a Constitution that has since been superseded, the Court’s reasoning still holds true. Chapter 1 Article I of the Constitution, which establishes the office of Student Body President, maintains this

principle: “The Student Body President shall *represent* all students...” [emphasis added]. Regardless of whether PLAINTIFF’s failure to meet the qualifications results in an inability to hold or run for the office of Student Body President, it remains that they do not have the *right* to represent the student body, as no individual has this as a right unless they meet the criteria, which PLAINTIFF does not. Second, PLAINTIFF appeals to the original intent of the Constitution. Student Const. ch. 1 art. II, §2 has existed in some form in the Constitution for over a decade. *See* Student Const. art. II, §2 (Feb. 12 2013); Student Const. art. II, §2 (Mar. 29 2016); A RESOLUTION TO SCHEDULE A STUDENT BODY REFERENDUM ON THE STUDENT CONSTITUTION OF THE STUDENT BODY, SCR-97-302, 97th Student Cong. (2016) (As reported by the Rules and Judiciary Committee on January 26th, 2016); A RESOLUTION TO ADOPT A CONSTITUTION OF THE STUDENT BODY, USR-105-136, 105th Senate of the Undergraduate Student Body (2024) (As passed by the Senate of the Undergraduate Student Body on January 16th, 2024). PLAINTIFF claims that the original intent of these statutes is not to exclude students from serving as Student Body President. However, this assertion is misguided at best; as previously established in Paragraph 27 of DEFENDANT’s Answer, qualifications *per se* exclude people from seeking or holding office. For example, in Student Const. ch. 1 art. VI, §4, candidates must obtain one thousand (1,000) signatures, of which two hundred and fifty (250) must be from the opposite constituency of the candidate in order to be placed on the ballot. This qualification alone has prevented several individuals from seeking or holding the office of Student Body President. Third, PLAINTIFF appeals to the original intent of the USG, GPSG, and Joint Codes. When evaluating this claim, the USG and GPSG Codes are not relevant as they do not govern the ability of individuals to seek or hold the office of Student Body President; however, the Joint Code contains several provisions that all explicitly limit the ability of individuals to seek or hold the office of Student Body President, and many of these provisions have existed in some form for over a decade. *See* I S.G.C. §105-106, VI S.G.C. 401, 404, (2013); I S.G.C. §105-106, VI S.G.C. 401, 404, (2016); I J.C.S.G. §150, 152 (2020); II J.C.S.G. §510, 512 (2020); I J.C.S.G. §150, 152 (2023); II J.C.S.G. §601, 603 (2023). These qualifications are purposeful and are intended to act as a barrier to entry to this office. DEFENDANTS will explore the purpose of relevant qualifications later in their Answer. However, it is not necessary to explain the purpose of each qualification for office in this Paragraph; simply the fact that they exist should be enough to determine that the Constitution and Codes do not intend for every student to have a right to run or hold office.

29. ANSWER TO PARAGRAPH 18: DEFENDANTS recognize Paragraph 18.

30. ANSWER TO PARAGRAPH 19: DEFENDANTS admit the allegations in Paragraph 19.

31. ANSWER TO PARAGRAPH 20: DEFENDANTS requests clarification on Paragraph 20. PLAINTIFF asserts that their “constituency identification” has been violated by DEFENDANT’s action. II J.C.S.G. §601 does not contain any language referencing “constituency identification”; however, DEFENDANTS interpret Paragraph 20 to be asserting that there exists a statutory provision allowing individuals to self-identity of which constituency they are a member. DEFENDANTS take issue with the principle of “constituency identification.” First, it is important to clarify the dual meaning of the word “constituency” in the corpus of law. “Constituency” refers to both the individuals who elect a given elective officer and the two (2) constituencies of the Student Government. The difference between these definitions is that one is used in

the context of the election of individuals to office, and the other is used in the context of the system of joint governance established by the 2017 Referendum, which divided the Student Government into the undergraduate constituency and graduate and professional constituency. Celia McRae & Molly Looman, *Referendum to split student government passes*, DAILY TARHEEL, Mar. 3, 2017 (3:41 a.m.), <https://www.dailytarheel.com/article/2017/03/referendum-to-split-student-government-passes>. DEFENDANTS assume that PLAINTIFF is using “constituency” in the context of two (2) constituencies of the Student Government given their requested relief: “Eligibility for the Plaintiff to register as a candidate for the Graduate and Professional School Government President and Student Body President concurrently with other future Student Body President candidates.” Student Const. ch. 1 art. I, §4-5 establishes the constituency governments and therefore the constituencies themselves. While the term “constituency” is not used in this way in the Constitution, within the Joint Code it is used extensively. *See* I J.C.S.G. §121(E), I J.C.S.G. §150(B), I J.C.S.G. §152(B), I J.C.S.G. §152(C), I J.C.S.G. §153(A)(1), I J.C.S.G. §300(A), I J.C.S.G. §300(C), I J.C.S.G. §303(B), I J.C.S.G. §303(F), I J.C.S.G. §305(A), I J.C.S.G. §311(B)(3), I J.C.S.G. §311(B)(3)(a), I J.C.S.G. §311(B)(3)(b), I J.C.S.G. §420(D), I J.C.S.G. §430(B), I J.C.S.G. §530(2), I J.C.S.G. §532(A)(2), I J.C.S.G. §544(A)(1)(a), I J.C.S.G. §544(B)(1)(a), I J.C.S.G. §545(A)(3)(a), I J.C.S.G. §545(A)(5)(a), I J.C.S.G. §546(A)(7)(a), I J.C.S.G. §630(A)(2), I J.C.S.G. §652(A)(3), I J.C.S.G. §721(6), II J.C.S.G. §112(C)(1), II J.C.S.G. §120(B)(2), II J.C.S.G. §200(L), II J.C.S.G. §302(B), II J.C.S.G. §310(D), II J.C.S.G. §310(D)(2), II J.C.S.G. §312(H)(4), II J.C.S.G. §713(C)(1), II J.C.S.G. §713(D)(2), II J.C.S.G. §905(A), III J.C.S.G. §330, III J.C.S.G. §332(A), III J.C.S.G. §332(B), III J.C.S.G. §621. Additionally, the legislation that created the current system by which joint legislation is considered specifically uses the term “constituency” to refer to the two separate bodies within Student Government, and during its consideration, it was plainly evident that constituency meant the two (2) groupings of undergraduate and graduate and professional students. *See* A Bill to Improve the Administration of Legislation by Prescribing Fair Administrative Procedure and for Other Purposes, JGC-06-018, 6th Joint Governance Council (2022) (As passed by the Joint Governance Council on November 9th, 2022). The original intent of this system was that students would be assigned to one constituency or the other based on their enrollment status. During the multi-year-long debates over the future of student government that occurred between 2014 and 2017, those supporting the “Two for Two” campaign⁶ understood that undergraduates and graduate and professional students would be represented by separate governing institutions based on their status as either undergraduate or graduate and professional students⁷. There was never any

⁶ The Two for Two campaign was the name given to the referendum proposed by those in favor of fully dividing the then-unified student government into separate Undergraduate and Graduate and Professional Student Governments. The Two for Two campaign began in earnest in approximately 2015 and culminated with a referendum in 2016. This campaign was largely supported and advocated for by graduate and professional students with the principle goal of creating a governance system that gave graduate and professional students independence from undergraduate students in terms of financial and policy affairs.

⁷ We recognize that the Two for Two referendum was not adopted by the student body in 2016 and that that referendum was the subject of extensive litigation at the time. *See Russel v. Berger*, 1 S.S.C. 255 (2016). However, we wish to point out that the Two for Two referendum did receive approximately sixty-four percent (64%) of votes in that referendum. *See* Brief for Petitioner at page 3, *Russel v. Berger*, 1 S.S.C. 255 (2016) (No. 16-001). In addition, the Two for Two referendum’s proposed Constitution was used as the model for the Constitution adopted in the 2017 Referendum. *See* Memorandum from Winston B. Crisp, Vice Chancellor of Student Affairs, to Bradley Opere, Student Body President, Cole Simons, Speaker of Congress, Dylan Russell, Graduate & Professional Student Federation

consideration as to the definition of who would be in these constituencies because it was plainly self-evident. This can be seen in the memorandum that outlined the governance system we are currently under today: “I am hereby authorizing and directing [individuals], to oversee compliance with the following mandates and to require elements to be changed in the student constitution as necessary to effectuate these changes: (1) Separate student government into two independent governing bodies for undergraduate and graduate/professional students”. Memorandum from Winston B. Crisp, Vice Chancellor of Student Affairs, to Bradley Opere, Student Body President, Cole Simons, Speaker of Congress, Dylan Russell, Graduate & Professional Student Federation President, Crystal King, Carolina Union Director, Bobby Kunstman, Student Government Advisor & Carolina Union Sr. Associate Director, Christi Hurt, Assistant Vice Chancellor & Chief of Staff, Student Affairs (Jan. 6, 2017) (on file with author). Following this reasoning, this court should not entertain the concept of “constituency self-identification.” Since PLAINTIFF is a fee-paying undergraduate student and has admitted as such, they cannot self-identify as part of the graduate and professional student constituency.

32. **ANSWER TO PARAGRAPH 21:** PLAINTIFF asserts that R.21 entitles them to relief; it does not, as it only concerns standing to bring a case. DEFENDANTS do not dispute the allegation that through their actions, PLAINTIFF will be unable to seek office.
33. **ANSWER TO WHEREFORE:** The requests for relief contained in the Wherefore clauses following Paragraph 21 contain legal conclusions to which no response is required by DEFENDANTS. To the extent any response is required, DEFENDANTS deny the requests for relief in the Wherefore clauses.

AFFIRMATIVE DEFENSES

34. DEFENDANTS assert the following affirmative defenses on the basis of their current knowledge and information, reserving their right to assert additional affirmative defenses on the basis of additional information becoming available.
1. Here, DEFENDANTS will expand upon their arguments from Paragraph 24 of DEFENDANT’s Answer regarding qualifications for office.
 - a. It is first important to remember that the office of Student Body President, the office of President of the Undergraduate Student Body, and the office of the President of the Graduate and Professional Student Government are all separate offices established by Chapters One, Two, and Three of the Constitution. See Student Const. ch. 1 art. I, §1, Student Const. ch. 1 art. II, §1, Student Const. ch. 2 art. 3, §1, Student Const. ch. 3 art. I, §1.1. Given that all three offices are established by three different chapters of the Constitution, it is clear that they are distinct positions within the student government. Further as addressed elsewhere in this Answer, it is clear that this Constitution was drafted with the intention of separating these three offices.
 - b. In Paragraph 13 of PLAINTIFF’s Complaint, PLAINTIFF

President, Crystal King, Carolina Union Director, Bobby Kunstman, Student Government Advisor & Carolina Union Sr. Associate Director, Christi Hurt, Assistant Vice Chancellor & Chief of Staff, Student Affairs (Jan. 6, 2017) (on file with author).

summarizes the supremacy clause. While they do not later set out this argument, DEFENDANTS wish to respond to the potential argument that this clause means that the qualifications prescribed for the office of Student Body President supersede and override the qualifications for offices of President of the Undergraduate Student Body and President of the Graduate and Professional Student Government. It is clear from both the text and the original intent of the Constitution that this is not the case. To address the dual service implication, the Constitution directly states that the positions are to be served concurrently: “The Student Body President must serve concurrently as the USG President or the GPSG President.” *See* Student Const. ch. 1 art. II, §12. Furthermore, the Constitution also makes it clear that when running for office, an individual is running for both positions simultaneously: “A candidate for Student Body President shall also stand as a candidate for Undergraduate Student Government President or Graduate and Professional Student Government President.” *See* Student Const. ch. 1 art. VI, §3. From the text, it is plainly evident that the qualifications are separate and must be separately met, meaning that in order to serve as or run for the office of Student Body President, an individual must meet both the qualifications for Student Body President and their respective constituency President. To address the original intent, the leaders of the Two for Two campaign stated in a memorandum, “We fundamentally believe that an undergraduate student cannot adequately represent graduate and professional students. This was a pillar of our campaign.” Memorandum from G. Dylan Russell, GPSF, Katie Stember, Chair of the Future of GPSF Committee to Winston B. Crisp, Vice Chancellor (Feb. 1, 2017) (on file with author). Further, it can be seen in the multiple drafts of the Constitution that were considered during this time that the offices were all meant to have separate qualifications. *See* Request 17-172, University of North Carolina at Chapel Hill Public Records Request: p. 8, 41, 90, 121, 144 (on file with author). It is clear from this that the constituencies were always intended to create qualifications for their offices separate from those of the Student Body President. To now address the supremacy argument, the Constitution states that “Any laws passed by one constituency that are *in conflict* with laws found in Chapter 1 of the Student Constitution shall be superseded by Chapter 1 of the Student Constitution” [emphasis added]. Student Const. ch. 1 art. IX, §3. Here, the supremacy clause has no bearing on this question as the provisions are not in conflict. Candidates for office are intended to meet both qualifications for office, and if they cannot meet those qualifications, then it presents an issue for them to run, not a failure of the Constitution.

- c. DEFENDANTS will now consider whether PLAINTIFF meets the qualifications to run or hold the office of Student Body President. As previously addressed in Paragraphs 22, 23, 25, 26, 27, and 28, it is clear that PLAINTIFF is not qualified to run or hold the office of Student Body President. However, to further restate this point, PLAINTIFF has potentially filed for graduation, and it is unclear

whether PLAINTIFF will be a duly-enrolled fee-paying student over the summer between the 2023-2024 and 2024-2025 academic years. *See* Student Const. ch. 1 art. II, §2, I J.C.S.G. §150, and II J.C.S.G. §601.

- d. DEFENDANTS will now consider whether PLAINTIFF meets the qualifications to run or hold the office of President of the Undergraduate Student Body. The qualifications to run or hold the office of President of the Undergraduate Student Body can be found in Student Const. ch. 2 art. III §2, which states that in order to be an Officer, an individual must be a fee-paying student at the University of North Carolina at Chapel Hill; I U.S.G.C. §103, which states that in order to be a member of the Undergraduate Student Government, an individual must be a fee-paying student; and V U.S.G.C. §501. V U.S.G.C. §501(A) states “A candidate for office must meet the following requirements or else be determined ineligible to hold and/or run for office.” V U.S.G.C. §501(A)(1) establishes that the candidate must be a duly-enrolled, fee-paying student in good standing. V U.S.G.C. §501 (A)(2) includes that the candidate must not have filed for graduation. V U.S.G.C. §501 (A)(3) provides that a candidate must be a constituent for the office that they are a candidate for by the first day of the fall semester following the spring general election. V U.S.G.C. §501 (A)(5) establishes that the Board of Elections, with the support of the Division of Student Affairs, has an affirmative duty to determine if candidates are qualified to run for office. The reasoning why PLAINTIFF cannot run for President of the Undergraduate Student Body is the same as found in Paragraphs 27 and 28 of DEFENDANTS’ Answer. However, in this case, PLAINTIFF is not eligible to run under V U.S.G.C. §501(A)(3) because they will not be a constituent of the office of President of the Undergraduate Student Body on the first day of the Fall 2024 semester. While V U.S.G.C. §501(A)(1) does not specifically state that a candidate must be an undergraduate student, it is clear from V U.S.G.C. §101(B) that the regulations within this Title are only meant to apply to undergraduate students, and it can therefore be assumed that V U.S.G.C. §501(A) is meant to augment the inherent requirement that only undergraduate students can seek this office. Further, Student Const. ch. 2 art. I §1 provides that “Chapter Two (2) of this Constitution, and the laws made in pursuance thereof, shall be the supreme law of the Undergraduate Student Body in so far as it does not conflict with Chapter One (1) of this Constitution, and all undergraduate students shall be bound thereby”, meaning that the provisions of Chapter Two (2) and all laws enacted under that authority only apply to the Undergraduate Student Body. Therefore, based on the above reasoning, PLAINTIFF is not qualified to run or hold the office of President of the Undergraduate Student Body because they will not be an undergraduate student for the entirety of the term of office.
- e. DEFENDANTS will now consider whether PLAINTIFF meets the qualifications to run or hold the office of President of the Graduate and Professional Student Government. Student Const. ch. 3 art. I,

§1.1 states that an individual must “be enrolled as a fee-paying graduate or professional student at the University of North Carolina at Chapel Hill” in order to serve as President of the Graduate and Professional Student Government. VII GPSG Code §4.001 provides that “all fee-paying graduate and professional students are eligible to hold a position within the GPSG,” with several exceptions, none of which are relevant here. VII GPSG Code §4.002 further requires that “All candidates must be a constituent of the office for which they desire to run, such that: A. Candidates for the office of President must be a graduate or professional student.” This requirement provides that a candidate for the office of President of the Graduate and Professional Student Government must already be a graduate or professional student at the time when they declare their candidacy for the office. Here, PLAINTIFF is not a fee-paying graduate or professional student and is thus not qualified for this office.

- f. DEFENDANT will now turn to the question of whether or not these qualifications are reasonable for these offices. Here, it is perfectly reasonable to expect that a candidate for an office will be part of the constituency for which they seek to represent for the entirety of their campaign and term. As the Court previously held in *Whittemore v. Ruffin*, 1 S.S.C. 2 (1970): “Only if the Legislature has been wholly arbitrary and capricious in setting minimum qualifications for officeholders should this Court strike those qualifications down.” These qualifications are not at all arbitrary and thus should be upheld. It is reasonable to expect that individuals elected to office are from the constituency which they represent. Further, the issue in that case was the minimum GPA requirement for candidates. The Court upheld that requirement, noting that “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.” *Id.* Here, the structure and organization of the student government that was created by the 2017 Referendum was not wholly the creation of the Legislature or student body; University Administration had a non-insignificant role in creating these requirements. *See* Memorandum from Winston B. Crisp, Vice Chancellor of Student Affairs, to Bradley Opere, Student Body President, Cole Simons, Speaker of Congress, Dylan Russell, Graduate & Professional Student Federation President, Crystal King, Carolina Union Director, Bobby Kunstman, Student Government Advisor & Carolina Union Sr. Associate Director, Christi Hurt, Assistant Vice Chancellor & Chief of Staff, Student Affairs (Jan. 6, 2017) (on file with author). The Court has previously acknowledged this in *Russel v. Berger*, 1 S.S.C. 255 (2016) when they acknowledged that University Administration should have the final say on qualifications for office: “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.”

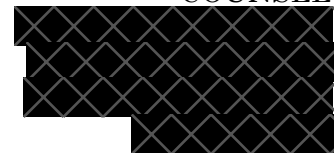
g. V U.S.G.C. §501 (A) and II J.C.S.G. §601(A) set up a clear intent that a candidate for office should only be able to run if they are also qualified to hold that office. The Court should consider carefully whether it is in the best interest of the student body to allow individuals to run who, upon being elected, would not be eligible to serve. A situation like this would result in either extensive litigation asking the Supreme Court to essentially disqualify someone after a democratic vote or would require the legislature to immediately impeach someone. Neither of these options serves the interests of the student body. While disqualifying an individual from running for office may not be the most democratic of procedures, it is the only way to ensure that the electoral system is fair and equal. It would also prevent far more destabilizing anti-democratic action that would have to be taken by the Supreme Court or legislature if an ineligible candidate is elected.

2. PLAINTIFF has failed to state a claim upon which relief can be granted.
3. PLAINTIFF lacks standing under R.21 and III J.C.S.G. §540.
4. PLAINTIFF has failed to allege irreparable harm or any other basis upon which to receive any form of injunctive relief.
5. All decisions and actions undertaken by DEFENDANTS, including but not limited to those regarding the determination of PLAINTIFF’s qualification to run for office, were based upon legitimate reasons.

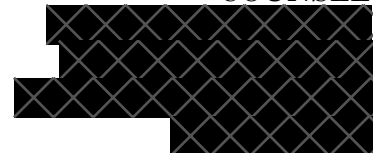
WHEREFORE, DEFENDANTS respectfully request that the Court enter judgment in favor of DEFENDANTS and other relief the Court deems just and proper.

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

/s/ Andrew H. Gary
COUNSEL



/s/ Callie E. Stevens
CONSULTING
COUNSEL



Please note that I am not a licensed attorney and am in no way seeking to represent myself as such.

/s/ Sophie van Duin

DEFENDANT

[REDACTED]

/s/ Board of Elections

DEFENDANT

[REDACTED]

boe@unc.edu.

Filed this the 24th day of January, 2024, at 2:15 P.M.