

IN THE SUPREME COURT	)	
	)	
Action No. 23-002	)	
	)	
Tanner Jacob Edwards	)	
PLAINTIFF	)	
	)	
Versus	)	RESPONSE IN
	)	OPPOSITION TO MOTION
Board of Elections	)	FOR TEMPORARY
Sophie van Duin,	)	RESTRAINING ORDER
Acting Chair of the Board of Elections	)	
DEFENDANTS	)	
	)	
	)	
	)	
	)	
	)	

DEFENDANTS the Board of Elections and Acting Chair of the Board of Elections Sophie van Duin, by and through counsel, hereby submit this Response in Opposition to PLAINTIFF, Tanner Jacob Edwards, Motion for Temporary Restraining Order<sup>1</sup>.

**STATEMENT OF THE CASE**

PLAINTIFF has submitted to this Court an overly broad and legally baseless Complaint and now seeks to have this Court disrupt an entire election so that they might seek the office of Student Body President and President of the Graduate and Professional Student Government. One would expect PLAINTIFF to explain in detail why such relief is not only based in law but absolutely necessary to preserve the jurisdiction of the Court and protect the rights of PLAINTIFF; PLAINTIFF instead provides minimal explanation for why this expansive order would be lawful or is needed.

The Court should deny PLAINTIFF’s motion for temporary restraining order as: (1) PLAINTIFF cannot establish a likelihood of success on the merits; (2) PLAINTIFF has not established that an order is needed to preserve the jurisdiction of the court or that an order is necessary to protect their rights or that other remedies do not exist; (3) PLAINTIFF has not established they are clearly entitled to relief; (4) PLAINTIFF has not demonstrated that the extreme circumstances and when necessary doctrine ought to be applied; (5) On balance, the *Whittemore* and *Klein* standards favor DEFENDANTS not PLAINTIFF.

**STATEMENT OF FACTS**

PLAINTIFF seeks to run for the office of Student Body President and President of the Graduate and Professional Student Government. On or about January 11<sup>th</sup>, PLAINTIFF requested that the Board of Elections determine if they would be qualified to

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<sup>1</sup> DEFENDANTS reserve, and do not waive, any arguments relating to standing or failure to state a claim.

seek the offices of Student Body President and President of the Graduate and Professional Student Government. On or about January 18<sup>th</sup>, DEFENDANTS determined that PLAINTIFF is not qualified to seek the offices of Student Body President and President of the Graduate and Professional Student Government. After meeting with DEFENDANT Sophie van Duin and Chair of the Joint Governance Council Matthew Tweden, Acting Chair of the Board of Elections Sophie van Duin, informed PLAINTIFF that they are not qualified to seek the office of the President of the Graduate and Professional Student Government.

On or about January 19<sup>th</sup>, PLAINTIFF sued in this Court, seeking that DEFENDANTS' determination be overruled and that precedent be issued allowing individuals to seek the office of the President of the Graduate and Professional Student Government if they are an undergraduate student returning in the following year as a graduate student. PLAINTIFF claims that the intent of the Constitution and Student Codes is not to restrict the ability of individuals to run for office. On or about January 21<sup>st</sup>, PLAINTIFF filed a Motion for Temporary Restraining Order.

## ARGUMENTS

R.40 of the Bylaws of the Student Supreme Court provides that a party may request that the Court issue an order restraining the opposing party from acting until such time as the rights of the movant can be determined. R.40 allows for such motions to be filed without notice to opposing parties, as was the case here. A temporary restraining order (TRO) is an extraordinary relief that requires the movant to show sufficient cause that the movant is clearly entitled to relief. R.40 provides a two-pronged test for evaluating a TRO: a motion requesting a TRO must show “the granting of the TRO or extraordinary writ is necessary to preserve the jurisdiction of the Court, the rights of the party requesting the order, or the availability of remedies” and that “the party requesting the TRO or extraordinary writ must be clearly entitled to the relief requested”. Both of these requirements must be met before a TRO can be granted, and in this case, PLAINTIFF does not meet either.

### **I. PLAINTIFF Cannot Establish a Likelihood of Success on the Merits**

Implicit in the requirements for granting a TRO is that a plaintiff's complaint must be likely to succeed on the merits. This implicit standard can be traced to the Court's order in *Dexter v. Levin-Manning* when the Court declined to issue a temporary injunction because they found the Plaintiff's claim to lack merit. Order Denying Temporary Injunction, 09-002. While this Court ought not make determinations on the laws of the United States or of the state of North Carolina, it has taken inspiration from their legal systems and the legal systems of other nations. *See USG Senate v. Grodsky*, 2 S.S.C. \_\_\_\_ (2022), *Pearce v. RHA Executive Board* 2 S.S.C. \_\_ (2022). The United States has established a four-part test for evaluating requests for TROs, which includes “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Real Truth About Obama, Inc. v. Federal Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009), vacated on other grounds, 130 S. Ct. 2371 (2010), reinstated in relevant part on remand, 607 F.3d 355 (4th Cir. 2010) (per curiam) citing *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374-76 (2008). Of these four requirements, the Court already enforces the second in the form of R.40(b)(1). The Court also recognizes the third and fourth requirements in the form of R.40(b)(2). By

requiring someone moving for a TRO to show that they are clearly entitled to relief, this standard implicitly recognizes that in order to grant a TRO, the balance of equities and the public interest must favor granting a TRO. While the Court does not explicitly recognize the first requirement, it has previously enforced such a standard and should do so in this matter. *Dexter*, 09-002. This standard is important, as it prevents baseless claims from stopping the government or individuals from carrying out their duties or business. Here, PLAINTIFF does not claim they are likely to succeed on the merits nor do they establish a claim which is remotely plausible.

## **II. PLAINTIFF Has Not Established That an Order Is Needed to Preserve the Jurisdiction of the Court Or That an Order is Necessary to Protect Their Rights Or That Other Remedies Do Not Exist**

There are three requirements that a Plaintiff must establish at least one of which in order to succeed on a motion for a TRO. In *Robinson v. Bass*, the Court previously held that a movant must first show that they have not exhausted all available remedies as this is the “baseline requirement.” ON MOTION FOR TEMPORARY RESTRAINING ORDER, 22-008. Here, the PLAINTIFF has not exhausted all available remedies, as other remedies do exist. For example, III J.C.S.G. §541 allows the Court to issue injunctions against the Board of Elections “extreme circumstances and when necessary.” The PLAINTIFF has not sought an injunction in this case.

As explained in DEFENDANTS’ Answer, there is no right to seek or hold any office; therefore, a TRO is not necessary to protect the rights of the PLAINTIFF. *See* Brief for DEFENDANTS at Paragraphs 16, 27, 28, *Edwards v. B.O.E.*, 23-002.

The jurisdiction of this Court will not be harmed by the election proceeding on schedule. PLAINTIFF alleges a constitutional question, which this Court always has jurisdiction to address.

## **III. PLAINTIFF Has Not Established They are Clearly Entitled to Relief**

As established above, PLAINTIFF has not shown how an order is needed to preserve the jurisdiction of the Court, protect the rights of the PLAINTIFF, or that they have exhausted all other remedies. Therefore, as established in *Robinson v. Bass*, this motion ought to be denied for failing to meet the “baseline standard.” ON MOTION FOR TEMPORARY RESTRAINING ORDER, 22-008.

However, even if the Court finds that PLAINTIFF does meet the standard in R.40(b)(1) and *Robinson v. Bass*, PLAINTIFF has failed to clearly establish why they are entitled to relief. PLAINTIFF’s motion makes no substantive factual claim and instead presents a dizzying array of case, statutory, and rule citations without context. The closest that PLAINTIFF comes to making a factual claim can be seen in Paragraph 5, where PLAINTIFF asserts without evidence that DEFENDANTS are improperly administering elections. PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER, *Edwards v. B.O.E.*, 23-002. The Court has routinely employed an evidentiary standard of preponderance of evidence. In *Pearce 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.” As PLAINTIFF makes an allegation in Paragraph 5 without any substantive evidence, by a preponderance of the evidence, the Court must find

that the election is being administered properly. PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, *Edwards v. B.O.E.*, 23-002; *See Nicholas v. Raynor* 1 S.S.C. 232 (2009).

**IV. PLAINTIFF has not demonstrated that the extreme circumstances and when necessary doctrine ought to be applied**

PLAINTIFF's motion does not request an injunction; therefore, the Court should not consider the extreme circumstances and when necessary doctrine when evaluating a motion for a TRO. The Court should not interpret DEFENDANTS' response to Paragraph 3 as recognizing their motion as a motion for an injunction. PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, *Edwards v. B.O.E.*, 23-002. DEFENDANTS' response to this paragraph should only be considered if the Court does choose to consider this doctrine, as PLAINTIFF would not prevail regardless.

PLAINTIFF asserts the extreme circumstance and when necessary doctrine ought to be applied in this case. The Court should refrain from applying this doctrine here because the precedent surrounding this doctrine dictates a clear standard that it should be applied sparingly and only when injunctive relief is the only means possible to preserve the Court's jurisdiction and the rights of a plaintiff. Here, as established above, the Court's jurisdiction and the rights of the PLAINTIFF are not threatened and do not exist, respectively. However, if the Court does determine that this doctrine does apply, the precedent cited by PLAINTIFF establishes that the Court recognized that there are very limited circumstances under which an entire election can be halted under this doctrine and the terms of III J.C.S.G. §541: "the petitioner does not allege the ballot itself is defective, nor does he forecast a permanent injunction against ever presenting the referendum. Therefore, the circumstances raised do not rise to a level that this Court should order that voting be stopped." *Nicholas v. Raynor* 1 S.S.C. 232 (2009). Here, the PLAINTIFF does not allege a defective ballot, nor are they requesting that the election be permanently postponed.

**V. On Balance, the *Whittemore* and *Klein* Standards Favor DEFENDANTS Not PLAINTIFF**

PLAINTIFF asserts that the standard established by *Whittemore v. Ruffin*, 1 S.S.C. 2 (1970) must be "must be viewed with a contemporary lens, as *Whittemore* assumes the absence of equal protection provisions that have since been codified into the Student Constitution under the Non-Discrimination Policy. *Whittemore* similarly places value on consistency between the body of Student Law and University Policy, which includes fundamental equal protection provisions." PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, *Edwards v. B.O.E.*, 23-002. On balance, this updated standard favors DEFENDANTS. As explained in DEFENDANTS' Answer, the qualifications set for the offices of Student Body President and President of the Graduate and Professional Student Government were created in part by the University Administration. *See* Brief for DEFENDANTS at Paragraph 34, *Edwards v. B.O.E.*, 23-002.

PLAINTIFF also asserts that the *Klein* standard ought to be applied when considering their motion. PLAINTIFF does not elaborate as to why this standard is relevant; however, DEFENDANTS assert that, on balance, the standard favors them. The *Klein* standard holds that election violations that occur earlier in the election cycle are considered to be more significant by the Court. Allowing PLAINTIFF to run for the offices of Student Body President or President of the Graduate and Professional Student Government would be an extreme violation of the fundamental principles of the

constitutional order that this government functions by. *See* Brief for DEFENDANTS at Paragraphs 27, 28, 31, 34, *Edwards v. B.O.E.*, 23-002.

**CONCLUSION**

For the foregoing reasons, DEFENDANTS respectfully requests that this Court deny PLAINTIFF'S Motion for Temporary Restraining Order.

/s/ Andrew H. Gary

