

STUDENT GOVERNMENT ASSOCIATE SUPERIOR COURT

ECHOLS V. SGA ELECTION BOARD  
(IN RE 2016 SGA PRESIDENTIAL RUN-OFF ELECTION)

DEC., 2016

CHIEF JUSTICE Bourland delivered the unanimous opinion of the Court.

Petitioner David Monlux (on behalf of the Ryan Echols Campaign for SGA President and hereinafter “petitioner”), brings this appeal of the decisions of the Election Board (“Board”) regarding five grievances filed during the 2016 SGA Presidential Election. Petitioner challenges the Board’s decision to: (a) uphold its decisions regarding Grievances 18, 21, and 22<sup>1</sup> and (b) reverse its decision regarding Grievances 19 and 20.<sup>2</sup> Petitioner asks this Court to reverse the Board’s decision on each Grievance. We hold that the Board’s decisions regarding Grievances 18, 19, and 20 were erroneous and see no error in its decisions regarding Grievances 21 and 22. Accordingly, we REVERSE the Board’s decisions regarding Grievances 18, 19, and 20 and AFFIRM the Board’s decisions regarding Grievances 21 and 22.

This appeal arises out of the recent run-off election for SGA President between J.D. Baker and Ryan Echols which occurred after none of the candidates for SGA President received a majority of the votes cast in the general election. Echols received 47.74% of the vote (1836) to Baker’s 52.26% (2010).<sup>3</sup> During the campaign and election process (including the run-off election), an astonishing number of grievances were filed against both the Baker and Echols

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<sup>1</sup> Each Grievance was filed by the Echols Campaign against the Baker Campaign and denied by the Board both on initial hearing and on appeal to the Board. Official Record, 71–72.

<sup>2</sup> The two Grievances were filed by the Echols Campaign against the Baker Campaign and were combined into one upon consideration by the Board. The Board initially upheld the grievance against the Baker campaign and reversed its decision on appeal to the Board. Official Record, 67–68.

<sup>3</sup> Official Record, 57.

Campaigns, in addition to grievances filed against their General Election competitors. In fact, between the General Election and Run-off, forty-one grievances were filed.

I

A

The Court has jurisdiction over this matter.<sup>4</sup> The election of the Student Government Association President is an action arising under the SGA Constitution; therefore, the challenges to this election considered herein are within the purview of this Court.

While the Court has agreed to rule on these Grievances, we want to address the proper appellate channels that should be taken in the future. We do not believe that the decisions of the Board should be appealed back to the Board before they are appealed to this Court. Since the SGACA, as written, does not provide an explicit method by which decisions of the Election Board may be appealed, it is left to the province of the Election Chair to proscribe rules and procedures for conducting an efficient and fair election pursuant to his or her power.<sup>5</sup> In this election, the Election Chair, operating fully within her power, allowed decisions of the Board to be appealed back to the Board.<sup>6</sup> Additionally, the SGACA does not currently require the Board to notify candidates or candidates' campaigns when grievances are filed against them.<sup>7</sup> We find both procedures to be erroneous and reject both.

In the future, all appeals of decisions of the Board must be made to this Court. This will eliminate a tedious intermediate appellate adjudication. It simply does not make sense to appeal the decision of an adjudicative body back to the same adjudicative body. Just as a party to a lawsuit

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<sup>4</sup> SGACA Tit. IV, Ch. 2, § 33 (“The SGA Superior Court is . . . the final appellant [sic] review of any action arising under the SGA Constitution.”).

<sup>5</sup> SCACA Tit. VII, Ch. 2, § 12.a.i.2.

<sup>6</sup> Official Record, 46, 50.

<sup>7</sup> Tit. VII, Ch. 4, § 28.

in Federal District Court would not appeal back to the District Court, it seems improper for a campaign to appeal back to the Board. Furthermore, changes to the SGACA need to be made to allow ample notice to be given to accused parties. Currently, the Board is required to rule on all Grievances within one business day of filing.<sup>8</sup> We find that the current procedure of non-notification may violate the accused's procedural due process rights. While they may be rectified through subsequent appeal to the Board, it would be more efficient for the Board to conduct a full hearing the first time and for the parties to appeal those decisions to this Court. If the current one business day ruling window does not allow sufficient time to also notify the accused and allow them to prepare a defense, then the legislature should look into giving the Board more time to rule. If the SGACA does not change, the Election Chair likely has the power to promulgate a fair procedure, including timing requirements, for accepting a response to such allegations from said campaign.<sup>9</sup> The Court believes that these new procedures will be more efficient, will uphold candidates' rights of procedural due process, and will provide for expeditious resolution of election grievances in the future.

## B

This Court has not previously established, nor has the SGACA created, a standard of review regarding appeals of the Board's rulings on grievances. Because this Court has now ruled on two appeals in the last year relating to SGA campaigns<sup>10</sup> (and in light of our decision regarding this Court's appellate jurisdiction<sup>11</sup>), we find it of the upmost importance to establish a standard

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<sup>8</sup> *Id.*

<sup>9</sup> SCACA Tit. VII, Ch. 2, § 12.a.i.2.

<sup>10</sup> *Shen v. SGA Election Board*, SC 2016-001.

<sup>11</sup> *Supra* Section II.A. Our decision that Election Board rulings should not be appealed back to the Board makes it all the more likely that this Court will hear a higher volume of Grievance appeals in the future. That possibility, alone, makes a clarification of the standards by which to rule on those appeals all the more important.

of review to guide us in future decision making and to inform the SGA of the appellate procedure regarding these matters. Keeping in line with the Code, we shall follow a similar standard of review used by appellate courts at both the state and Federal Level.<sup>12</sup>

In line with State and Federal procedure, this Court shall review questions of law and questions of facts, in reference to grievance-related appeals, by two separate and distinct standards. We will review all questions of law regarding grievance rulings (as set out by the Code or by this Court's opinions) de novo. This means that anytime we are asked to answer a question regarding the interpretation of the SGACA, this Court shall review each question as if we are reviewing it for the first time, without deference to the decision of the lower tribunal (in this case, the Election Board).<sup>13</sup> Regarding questions of fact related to election grievances, this Court will review for clear error. This Court shall grant deference to the trier of fact (the Election Board in relation to election grievances), and will overturn their decision only in the presence of clear error.<sup>14</sup>

Each of the appeals brought before this Court today involve some interpretation of the SGACA, and we, therefore, review each de novo.

## II

### A

The Court overturns the Election Board's ruling on Grievance18. The SGACA campaign rules require candidates to "assume responsibility for the accuracy and truthfulness of their

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<sup>12</sup> See SGACA Tit. VII, Ch. 4, § 38.

<sup>13</sup> For instance, someone challenged the Election Chair's decision that Facebook advertising is an unsolicited electronic message, we would review that question without deference to the Election Chair's decision.

<sup>14</sup> For instance, if asked to overturn a ruling by the Election Board that a campaign chalked in the wrong area, we would review that question with extreme deference to the Election Board absent a showing that the Board's factual findings were clearly erroneous.

statements and campaign materials."<sup>15</sup> If a candidate or member of their staff makes a false claim regarding another candidate, then the claim would be a violation of campaign rules. In the its deliberations, the Board applied a "clear and concise" standard to determine whether a statement referred to a specific candidate and whether that statement implied a false claim.<sup>16</sup> In doing so, the Board determined that the statements the Petitioners took issue with in Grievance 18 did not violate the SGACA.<sup>17</sup> However, there is no mention of such a standard in Title VII. While we cannot fault the Board for implementing such a standard, we found that their standard imposed an unnecessarily high burden. Therefore, it is necessary to overrule the "clear and concise" standard. We adopt, instead, a "reasonable person" standard, based on a preponderance of the evidence, to decide whether statements were made about an opposing candidate. In other words, could a reasonable person conclude that a statement—more likely than not—refers to a particular candidate.

Grievance 18 is an illustrative example of the application of this standard. In Grievance 18, a member of the Baker Campaign made a Facebook post urging students to vote for Mr. Baker.<sup>18</sup> The post was in response to an incident in which some of Mr. Baker's campaign material was vandalized.<sup>19</sup> One sentence in the post stated that students should "vote for the campaign that has always chosen to act with compassion and understanding."<sup>20</sup> Another sentence stated that "[t]here is no room for the hatred that has been displayed on the opposing side within our campus."<sup>21</sup> On initial appeal, the Board held that neither statement referred to the Echols campaign because the

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<sup>15</sup> SGACA Tit. VII, Ch. 3, § 21.

<sup>16</sup> Official Record, 62.

<sup>17</sup> *Id.*

<sup>18</sup> Official Record, 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (emphasis added).

reference was not clear and concise and that the Baker Campaign, therefore, did not make any false statements.<sup>22</sup>

The first statement (urging students to vote for the campaign that acted with compassion and understanding) did not imply any false statements about the Echols Campaign. The quote was highlighting a characteristic of the Baker Campaign. This statement neither implies nor means, as petitioner argues, that another campaign was not compassionate or understanding.<sup>23</sup> A campaign member's statement regarding a positive characteristic of their candidate does not imply a negative characteristic on another candidate.<sup>24</sup> That would be an unreasonable interpretation. We find that a reasonable person would not read that statement to mean anything negative about the Echols Campaign.

However, a reasonable person would find the second statement in the Facebook post referred to the Echols Campaign. Unlike the first statement, this post directly referred to the hate displayed by the opposing side.<sup>25</sup> The Baker Campaign claimed that the "opposing side" referred to an Alt-Right group.<sup>26</sup> While it is perfectly possible that the post referred to the Alt-Right group, a reasonable person would read the sentence and believe that the sentence referred to the Echols

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<sup>22</sup> Official Record, 62.

<sup>23</sup> Official Record, 4.

<sup>24</sup> In briefs submitted to this Court, there was a fear that a ruling which held a party liable for a violation even if they did not specifically mention the other campaign would severely restrict the freedom to speak candidly about a candidate. Our holding today in no way supports that fear. As articulated above, a campaign is free to speak about their candidate, because a reasonable person would not conclude that a positive characteristic of one candidate does not imply a negative characteristic on another candidate. However, additional factors could change what a reasonable person would conclude. Time, place, and manner could all be relevant factors to determine what a reasonable person would conclude.

<sup>25</sup> Official Record, 2.

<sup>26</sup> *Id.*

Campaign. In the context of an election between two candidates, it is reasonable to say that the “opposing side” refers to the other side.

Because a reasonable person would find the statement more likely than not referred to the Echols Campaign, this Court overturns the Board's ruling which gives the Baker campaign three code violations.

## B

The Court affirms the Board’s decision of Grievance 21 and 22. The SGACA states that “candidates shall assume responsibility for the accuracy and truthfulness of their statements and campaign materials.”<sup>27</sup> In Grievance 21 and 22, the Echols Campaign claimed the comments of a Baker Campaign members on Facebook were “inaccurate and untruthful.”<sup>28</sup> The Board found that the comments were not “clear and concise” references to the Echols campaign.<sup>29</sup> The Board reasoned that the statements “could be implied in a large variety of ways and do not explicitly reference the Echols Campaign.”<sup>30</sup> We agree that these statements do not violate the SGACA, but for different reasons. Instead of the “clear and concise” standard, we again apply the “reasonable person” standard of review based on a preponderance of evidence discussed *supra*, Section III.A.

The post in Grievance 21 asked students to “vote for a clean campaign, and elect the people who really care about OU and us as students.”<sup>31</sup> Applying the reasonable person standard, “a clean campaign” doesn’t refer to the opposing side, nor would a reasonable person assume that the other campaign is not clean. The use of “a” implies that the subject is indefinite in nature, meaning that campaign being referred to is not definite.

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<sup>27</sup> SGACA Tit. VII, Ch. 3, § 21.

<sup>28</sup> Official Record, 31.

<sup>29</sup> Official Record, 32.

<sup>30</sup> Official Record, 33.

<sup>31</sup> Official Record, 36.

The post in Grievance 22 urged students to “elect a leader that is qualified, compassionate and kind,” and to “elect someone who wants to lead by example and offer a voice to the voiceless.”<sup>32</sup> A reasonable person would say that this post more likely than not was just campaigning. It would be unreasonable to assume that positive comments directed at one candidate implied negative characteristics of another. Furthermore, a reasonable person would not read this statement and assume that it refers to the Echols Campaign.

Because a reasonable person would not, based on a preponderance of the evidence, read these statements as directed against the Echols Campaign, we affirm the Board’s decision.

C

The Court overturns the Board’s decision regarding Grievances 19 and 20, and therefore upholds Grievance 19 as originally filed. The Court views Grievances 19 and 20 as a single Grievance.

First and foremost, Mr. Mazeitis does not have any standing to appeal to the Board or this Court. The SGACA clearly states that the Superior Court “shall not hear any matter relating to an election” unless the petitioner first shows: “(1) a distinct and palpable injury to himself or herself; (2) that the injury is caused by the challenged activity; and (3) that the injury is apt to be redressed by a remedy that the Superior Court is able to grant.”<sup>33</sup> Because Mr. Mazeitis is not a member of either Campaign, he cannot show “a distinct and palpable injury” to himself. Therefore, Mr. Mazeitis has no standing before this Court to appeal Grievances 19 and 20, and his thoughts were only considered inasmuch as Mr. Baker adopted his statements.

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<sup>32</sup> Official Record, 38.

<sup>33</sup> SGACA Tit. VII, Ch. 4, § 37.

Grievances 19 and 20 were originally claims against the Baker campaign for violating the SGACA provision that states that “Candidates shall assume the responsibility for the accuracy and truthfulness of their statements and campaign materials.”<sup>34</sup> The alleged violation of the SGACA was that a Facebook post by a Baker Campaign member, Mr. Noble, was “inaccurate and untruthful” by stating as fact that the Echols Campaign had “repeatedly demonstrated behavior undermining the legitimacy of this race and violating the rules for the election.” Less than 24 hours later, the Board reversed their own decision to uphold Grievance 19 based on the testimony of Mr. Mazeitis.

We agree with the General Counsel’s opinion that a Campaign is not guilty of a violation of the rules until the Board has ruled on the Grievance. When the Baker Campaign member posted on Facebook as a matter of fact that the Echols Campaign had violated the rules, the Board had not yet ruled on whether or not the Grievance was to be upheld. Therefore, we hold that Mr. Noble’s statement about the Echols Campaign was an untruthful and inaccurate allegation represented as a statement of fact. Because we view Grievances 19 and 20 as one, this constitutes the Baker Campaign’s fourth campaign violation.

### III

In summary, we REVERSE the Board’s decisions regarding Grievances 18, 19, and 20 and AFFIRM the Board’s decisions regarding Grievances 21 and 22. Accordingly, the Baker Campaign now has a total of four grievances upheld against them. Pursuant to the SGACA, this Court directs the Board to vote whether or not to disqualify Mr. Baker.<sup>35</sup> This vote should be conducted with the utmost expediency. Our decisions regarding the aforementioned grievances

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<sup>34</sup> SGACA Tit. VII, Ch. 3, § 21.d

<sup>35</sup> SGACA Tit. VII, Ch. 4, § 26.

require a remand to the Board with instructions to uphold the grievances filed and to issue whatever fines the Board deems necessary.<sup>36</sup> Because there is no listed procedure for appeals long after the closing of the polls (for instance, a possible appeal of the disqualification vote), this Court believes it is within its right to grant a twenty-four-hour window after the disqualification vote to appeal that decision. Accordingly, we direct the Board to issue a new Election Report to be filed after the disqualification vote. As such, this Court grants a twenty-four-hour window to appeal anything in the new Election Report. At the conclusion of that window, this Court will vote to validate the election.

As we did in our opinion in *Shen v. SGA Election Board*, this Court again expresses its frustration with the conduct of both campaigns. Just six months ago, this Court called the 2016 CAC Run-off Election the most contentious in recent memory. Sadly, it seems that title has been usurped. The fact that twenty-three grievances were filed in the Run-off and that the Board found only four to have merit does not reflect the spirit and purpose of the grievance filing process. The grievance filing process is meant to facilitate a fair election. The volume of grievances filed here indicates nothing more than a desire to get the other candidate disqualified and a lack of control by campaign leadership. This conduct was not only a waste of the Board's valuable time, but also caused nothing but bitterness and strife to form between the two sides. We urge the legislative branch of the SGA to consider serious election reform to include rules against frivolous grievance filing. The Court, once again, reminds candidates to treat each other as fellow competitors with the same goal in mind: service to the University. It is imperative that our student leaders be able to work with one another at the end of an election to further the interests of the SGA.

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<sup>36</sup> SGACA Tit. VII, Ch. 4, § 28.