

Coalition for an Equitable Community v. Union Board, SP08-01 (FSU SSC 2008)
CASE NUMBER: SP08-01
PUBLISHED: February 13, 2008

HILLERT, C.J., delivers the plurality opinion of the court. PROCTER, J., joins. STRICKLAND J., and DEL TORO, J., concur in the result.

I. THE FACTS

Florida Administrative law requires any Recognized Student Organization (RSO) to adopt in their bylaws the Student Body's non-discrimination policy. Non-compliance results in the loss of any Activity and Service fees to that organization. Several religious groups chose not to adopt the sexual orientation provisions in the Student Body nondiscrimination policy and were granted exemptions by the administrative department (not a student organization) in charge of conferring RSO status. These exemptions were given due to concern that the University might infringe on the religious organization's right to associate and potentially their right to free speech if these groups were forced to allow members with views inconsistent with the group's expressive purposes. A large body of United States case law has been developed supporting this proposition.

To date, the Union Board has continued to distribute funds to these non-complying organizations. The Coalition for an Equitable Community has taken this action against the board to enforce the cessation of funds.

II. PRECEDURAL POSTURE

The court has denied jurisdiction as writ improvidently granted. The court originally granted jurisdiction and standing in December 2007, motions were heard in January 2008, and briefs were submitted at the start of February. Upon reviewing the briefs and hearing argument, the court

rescinds jurisdiction, as it can find no grounds to maintain this cause of action.

I

III. RATIONALE - JURISDICTION

Article I § 6 Student Body Constitution

"Each student shall be subject to the rules of the courts and the University but these rules shall at no time and in no way abridge the students' rights as citizens under the United States Constitution or the Constitution of the State of Florida."

To grant the relief that the Plaintiff requests would be to disobey the Constitution and infringe upon the rights of the religious groups in dispute. While the Student Body Statutes non-discrimination policy protects sexual orientation, the Florida Constitution and the United States Constitution do not. Article I § 6 forbids subordinating the religious groups' Constitutional 1st Amendment right of association to the Student Body Statutory protection prohibiting discrimination based on sexual orientation.

It should be noted that while the following arguments require the additional issue of standing discussed at the end, Article I § 6, in and of itself, strips us of jurisdiction.

No Statutory Authorization

The plaintiffs argued their case using US Constitutional law. The defendant argued their case using both Florida Administrative Law and US Constitutional law. There exists no Florida or Federal law or constitutional provision endowing this Court with jurisdiction to exert the force of those laws over any parties.

The Federal Supreme Court derives its authority from the US Constitution to enforce the Constitution and the laws of Congress. Congress authorizes the Federal

courts to adjudicate Federal law. This analogy extends to Florida courts as well as all other state courts. The SGA Student Supreme Court is not mentioned in any of those statutes or constitution as having the authority to interpret and apply Florida or Federal Constitutional law.

The Student Body Constitution Only Grants the Court Authority to Apply the Student Body Constitution and Student Body Statutes

As mentioned, every single point of law and issue raised by both parties requires the application of Florida Law and United States Constitutional Law. To apply these laws is outside the province of this Court per the Student Body Constitution. Jurisdiction is laid out in the following provisions of Article IV, Section 3, Subsection C:

Part 1:

Jurisdiction “Over cases and controversies involving questions of the constitutionality of actions by student governing groups, organizations and their representatives.”

This can only mean the constitutionality of the Student Body Constitution. It would be difficult to argue that the Court would have jurisdiction if a Senate disenfranchised a student group during the presidential election by locking them in a room. Or if Student Senate passed a law prescribing the cruel and unusual punishment of one of its members, and then followed through with that punishment. The only way to rationally interpret this section is to read it as the Student Government Constitution.

Part 2:

“Over violations of the Student Body Constitution and Statutes.”

This provision explicitly references only Student Body law.

Part 3:

“Over conflicts between student groups.”

The rationale here is the same as Part 1. If two groups committed criminal acts against each other, no one could suggest that this Court exercise criminal or civil tort jurisdiction over the parties. It must reference only Student Body law.

Part 4:

“To issue writs of mandamus, prohibition, and quo warranto when a Student Body officer is named as a respondent, or such other writs necessary and proper to the complete exercise of its jurisdiction.”

The last part of the passage delegates the authority of Part 4 to serve the other parts of the Court’s jurisdiction. Writs granted against a Student Body officer are generally applied when their noncompliance with a Constitutional or statutory duty is causing injury to another party.

Part 5:

“To issue advisory opinions concerning student rights under the Student Body Constitution upon request of the Student Body President or any Senator.”

Once again, referencing only the Student Body Constitution.

Part 6:

“Over cases and controversies involving student conduct as provided in Article IV, Section 4.”

This section only references another part of student body law.

These six rationales are also consistent with the Student Body Constitution’s choice of members of the court. Law Students by nature are not authorized to practice real law. It would be nonsensical to mandate

that unlicensed law students be explicitly authorized to apply federal and state law to a fact pattern and deliver judgment on the parties, especially when that comes close to violating their and counsel's ethical duty to refrain from engaging in unauthorized practice of law. It is also inconsistent with the extra-curricular nature of student government that law students would be expected to review the expanse of Federal and Florida law, which is literally tens of thousands of times more broad than Student Body law, to decide a case. Finally, these areas of law require years of expertise to become proficient in, and to require the application of these bodies of law would deprive parties of an accurate ruling that they could get from a state or federal court.

After reading this decision, members of Student Body may wonder what cases, if any, they may bring before the Court. However, this fear may be put to rest. A bright line rule is easily ascertainable. If any plaintiff argument necessary to winning the case requires interpretation of the law of the Federal Government, any state, or any foreign country, then jurisdiction will not be granted.

However, it is acceptable that this law be argued as nonbinding persuasive authority, and parties may agree to adopt doctrines as its own. Indeed, Constitutional law, procedural law of various courts, and Florida Law, is occasionally found in our opinions. But, this is not us applying the US Constitution or state law against parties, it is this Court adopting doctrines from other courts to aid in developing our own Student Body Constitutional Jurisprudence. Simply put, this Court is following, not interpreting.

IV. STANDING

Beyond the jurisdictional prohibition, the briefs carved out issues of standing, which became apparent after clarification of the original complaint.

During oral argument, the plaintiff argued alternatively that there was a cause of action under the student body anti-discrimination policy, which, but for a clear lack of standing (and also the first argument made in this opinion), does allow the court to hear the case.

There is No Injury

A fundamental rule of standing is that a party must actually be harmed in a particular way. For example, in *US v. Richardson* the Supreme Court of the United States denied a taxpayer standing when he demanded that the CIA reveal its budget because the Constitution required a "regular statement of account of receipts and expenditures of all public money should be published from time to time." His status as a taxpayer, and so contributor to the CIA's budget, did not give him standing when those taxes were being used in a purportedly impermissible way.

The Coalition might have standing if any member was being discriminated against. Courts may not invalidate a statute until it affects the rights of someone within the court's jurisdiction, or if a particular party is explicitly given a cause of action by statute. Here, it is not alleged that any person has been denied their rights by any organization, only that those organizations have chosen not to adopt the language of the non discrimination pledge. To be justiciable that statement must develop into a controversy through the adverse application of it on a party's rights. Unless and until someone is denied membership on the basis of criteria exempted from an organization's charter, no such controversy exists.

The Judiciary Committee Does not Have Statutory Authority

Senator Vouvalis was added as a party under the theory that the judiciary was "a body responsible for overseeing compliance with applicable student statutes, and the Coalition for an Equitable Community, sought to

enforce compliance.” After reviewing the statutes, the only provision relating to compliance is found in Student Statutes § 900.4 “Creation.”

“The bill shall be referred to the Student Senate Finance Committee to determine financial feasibility, the Student Senate Judiciary Committee to review statutory compliance, and any other Senate standing committee pursuant to Senate Rules of Procedure.”

This provision is written in the context of authorizing new Student Government Association Bureaus within student government. The judiciary is to examine whether a proposed bureau’s mandate conflicts with other statutes, not to create in them the authority to enforce compliance with already existing statutes. The only other enforcement authority relating to the Student Supreme Court to be found regards impeachment proceedings, which do not apply to this case.

Jurisdiction Denied.

STRICKLAND J., concurring in the result:

Upon confirmation by the Senate, each member of this court took an oath to “support and defend the Constitution of the United States of America, the State of Florida and the Florida State Student Body” to the best of our abilities. Statute §202.7.

Currently, both the United States of America and the State of Florida protect individuals from religious discrimination and neither offers protection against discrimination based on sexual orientation. The Student Body Statutes, however, which were enacted by and for the students of Florida State University, prohibit discrimination on the basis of both religion and sexual orientation. §206.1

When, as here, there is a collision between the rights afforded to individuals by the United States and the State of Florida and those afforded to students under the Student Body Constitution or the Student Body Statutes, the jurisdiction of this court is constrained by Article I, §6 of the Student Body Constitution. We are required to act within the confines of current Federal and State law. Accordingly, the question of whether a group can use its religion to justify denying membership to individuals based solely on their sexual orientation is one that must be addressed in either a state or federal court.

This dismissal is not, by any means, a reflection of the court’s opinion in regards to discrimination based on sexual orientation. Rather, it is a difficult exercise in judicial restraint – a recognition that the decision in this case is not ours to make.

DEL TORO J., concurring in the result.

I do not read Student Body Statute § 206.1 to impose upon RSO's a requirement to express a NDP. If this requirement exists it was not brought to the attention of the Court. Student Body Statute 206.1 states: "No Student Government . . . registered student organization . . . will practice discrimination of any kind."

The plaintiff did not allege that there have been acts of discrimination, a requirement, in my opinion, necessary to bring a claim under 206.1 For these reasons I concur with the Court in the result.