

**IN THE STUDENT SUPREME COURT
IN AND FOR THE FLORIDA STATE UNIVERSITY**

JOSEPH WOLSKI

Case No. 2018-6

Plaintiff

v.

SUPERVISOR OF ELECTIONS

Defendant

J. Moorhead writing for the Court.

ORDER OF DISMISSAL

Jurisdiction

Pursuant to Article IV, Section 3(C)(1), 3(C)(2), of the Student Body Constitution, this Court has jurisdiction over “cases and controversies involving questions of the constitutionality of actions by student governing groups, organizations and their representatives” and over alleged “violations of the Student Body Constitution and Statutes.”

Factual and Procedural Background

On February 20, 2018 a Florida State University Student, Joseph Wolski, filed his Complaint against the Supervisor of Elections (SOE), alleging the following. First, that he submitted his declaration of candidacy for the Student Senate, specifically the College of Social Science’s Seat 2 (Seat 2); second that he was informed at 12:23 p.m. on February 20, 2018 by SOE that the seat was held by the Senate President Pro-Tempore, and accordingly not a seat open for election. *Pet.*, at Response 1 ¶ 1; *See* Section 705.1, Student Body Statutes (2018). Both parties stipulate that Plaintiff was running unopposed. SOE asserts that all unopposed candidates are not placed on the Official Ballot as outlined in Chapter 712, Student Body Statutes (2018). Plaintiff asserts the notification that Seat 2 was not up for election in this cycle amounts to a violation of section 712.1(G), stating that no material changed may be made to the Official Ballot within twenty-four hours of an election. Additionally, he asserts section 705.1(B) amounts to an “unfair automatic re-election” of the individuals holding the Senate’s President, and President Pro-Tempore positions.

As a demand for judgment, he first demands SOE, and her deputy, be removed from office. Second, that he be appointed to a vacant seat within the Student Senate. Third, that section 705.1, Student Body States (2018) be “removed as it renders an unfair [result].”

Holding

We hereby dismiss the Complaint, without prejudice, as presenting a non-justiciable issue.

Reasoning

To determine justiciability, this Court must ascertain if “the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded.” *Baker v. Carr*, 369 U.S. 186, 198. It is the opinion of the Court the protection for the right cannot be judicially molded.

With regard to Plaintiff’s demand for appointment, a similar case has come to this Court before, but with slightly different facts. In a prior case, a student was not interviewed for a Student Government Association (SGA) position, as it relates to this case Student Senate Seats 4, and 10, within the College of Arts and Sciences. He was interviewed for another position which he applied for, but was not interviewed for either Senate seat. Both seats were subsequently filled, and after appeal it was decided by the Vice President for Student Affairs that the student should have been interviewed, and that as a remedy, he was entitled to an interview, and those appointed to their seats would not be required to vacate them, as was the Order of this Court. *Supreme Court case of Ravelo v. Wilson*, Fla. St. Univ. Rep. (2014). Here, Plaintiff demands that he be appointed to a vacant Senate seat. This falls outside our jurisdiction as we are unable to pack the legislature, in the same way President Franklin Roosevelt wanted to pack the Supreme Court of the United States. Our statutes are very clear in outlining appointment procedures for those students who wish to be a member of Student Senate, but were not elected. *See* Chapter 304, Student Body Statutes (2018). Even in the *Ravelo* decision, it was clear the opinion of the Vice President for Student Affairs was that candidates are to be appointed to open positions, as evidenced by the fact Mr. Ravelo had applied, and been denied a chance to interview. The right to interview, which is the subject of the decision, is part of that application process. Here, the Plaintiff is free to interview for an appropriate seat. Nothing in this Order shall be construed to in any way bar Plaintiff, or hinder the same from participation in SGA. We only point Plaintiff to the established procedures, and will not allow him to circumvent those procedures through us.

Second, Plaintiff demands SOE, and her deputy be removed from office. Again this is a task outside our jurisdiction, at least initially. Our Court does have the power to remove SGA officers from their position, make no mistake; however, again, there are procedures for doing so. In this specific case, the Student Senate would need to first vote for her impeachment, then this Court would sit to hear the case to determine if it would convict the impeached officer, and subsequently remove her. At this time, the Court explicitly gives no opinion regarding whether or not this procedure should be instituted against either the SOE, or her deputy, we simply state there is a procedure that must be followed. Again, this Court will not circumvent the procedures the Legislature has enacted, to the benefit or gain of anyone, and in this case, Plaintiff.

Finally, Plaintiff demands that section 705.1(B), Student Body Statutes (2018), be “removed as it renders an unfair automatic re-election...of the Senate President and Senate President Pro-Tempore.” *Pet.*, at Response 4 ¶ 1. Not only has Plaintiff failed to state a claim on which relief can be granted, he also is asking this Court to declare a statute “unfair.” *See* Supreme Court Rules of Procedure 3.1(b)(3). The Court will analyze these claims in turn. First, in order to state a claim on which relief can be granted, one must actually state a claim, not just bare assertions. *Ashcroft v. Iqbal*, 556 U.S. 662, 681. Plaintiff makes no challenge as to the constitutionality of the statute. In fact, he only alleges that the seat is unavailable, since it currently held by the Senate President Pro-Tempore, and then he demands judgment of fairness grounds. Since Plaintiff has not met our own

pleading requirement by showing he is entitled to relief, his claim cannot stand. Arguendo, if we had found this to state a claim, the Court does not have the power to determine if something, here a statute, is “fair” in a way which it is valid, or “unfair” in a way which it is invalid. This “Court will not, and may not, substitute its judgment for that of the Legislature insofar as the wisdom or policy of [section 705.1(B), Student Body Statutes (2018)] is concerned.” *Hamilton v. State*, 366 So. 2d 8, 10 (Fla. 1979). Accordingly, no remedy can be judicially molded based on the “unfair” result which is complained of.

However, there remains one very important, but subtle, issue left to speak on. The stipulation of the parties. Section 703(Q), Student Body Statutes (2018), says the following, “if an election is uncontested...[those c]andidates...may be excluded from the ballot at the discretion of the Supervisor of Elections.” This means if a seat is uncontested, SOE may exclude the candidate, who is running for that seat, from the ballot. Both parties believed, and admit, the position was uncontested. This allowed to SOE to exclude the candidate from the ballot. Plaintiff claims that his being left off the ballot was a material ballot change. Section 712.1(G), *supra*. However, there can be no change, in terms of removal, to something that never existed. Plaintiff was never on the ballot to begin with, since, as all parties agree, his seat was uncontested, meaning he could be excluded from the ballot. It does not matter that he later found out the seat he declared for was currently filled, and statutorily protected from being contested, since even if the circumstances had been as thought, Plaintiff would have not been listed on the Official Ballot anyway. Since Plaintiff was not on the ballot to begin with, the ballot could not have been changed when he was informed he could not run for election under the seat he declared for. Since the ballot was never changed, there can be no violation of section 712.1(G), *supra*.

Conclusion

Since Plaintiff was never on the ballot to begin with, and the case presents a non-justiciable issue, the Complaint shall be dismissed without prejudice. Nothing in this Order shall be construed to in any way bar, or hinder Plaintiff from seeking office within SGA under the appropriate procedures, be it through appointment, or election next cycle.

The Complaint is hereby DIMISSED WITHOUT PREJUDICE.

DONE AND ORDERED, this the 20th Day of February, 2018, Tallahassee, Florida.