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

YEHIEL KYLE ISRAEL,

Plaintiff,

v.

STACEY PIERRE, Student Body President; BRANDON BROWN, Student Body Vice-President; OMAR PIMENTEL, Student Body Treasurer,

Defendants.
_____/

Moorhead, C.J. delivers the Opinion of the Court.

Drake, J. and *Lagos, J.* took no part in the consideration or decision of this case.

Published December 18, 2018.

SYLLABUS

This case comes before the Court on Plaintiff's First Amended Complaint alleging a violation of his free speech rights guaranteed under the Constitution and Statutes of the Florida State University Student Body. *See* Art. I, §6, Const. of the Student Body; *see also* §200.1, Florida State University Student Body Statutes. Specifically, he claims that his comments made to the Florida State University Student Government Association Instagram account were deleted in violation of his rights protected by the United States Constitution. *See* U.S. Const. Amend. I, U.S. Const. Accordingly, Plaintiff demands declaratory judgment that the Student Government Association violated his First Amendment rights and injunctive relief that prohibits the Student Government Association from deleting comments made by students of the Florida State University on its social media accounts.

ISSUES

1. Were Plaintiff's comments, made to the Florida State University Student Government Association Instagram Account, deleted?

2. Does the deletion of Plaintiff's comments amount to a violation of his First Amendment rights?

HOLDING

1. Yes, Plaintiff's comments were deleted, as alleged.

2. Yes, the deletion of the comments amounts to a violation of Plaintiff's First Amendment rights.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff, Yehiel Kyle Israel ("Israel"), is a student at Florida State University. Israel operates and maintains an Instagram account under the username "kyle.israel" ("Israel Account") and operated and maintained this account at the time the events alleged occurred. On October 16, 2018 Israel made comments on a post which was published on the Florida State University Student Government Association's Instagram account which operates under the username "fsusga" ("SGA Account"). The comments made allegedly criticized the Student Government Association ("SGA") and its "communications team." The comments made by the Israel Account to the SGA Account were subsequently deleted, and Israel instituted the present action. Israel was

later grated leave to amend, and in his amended complaint alleged the First Amendment violation. The action was heard before the Court on November 27, 2018.

ANALYSIS

I

The first question requiring resolution is somewhat dual-pronged. The question is whether or not the comments Israel allegedly made were deleted, which requires an answer to the question: were the comments even made as alleged?

The first question requires no judicial resolution, as it was admitted by Defendants in this action. *See* Answer, at ¶10 (dated Nov. 26, 2018). The second question then requires little judicial fact finding. Having admitted the comments were posted to the SGA Account, and that Israel, by and through the Israel Account, posted them, their absence only allows one inference, that the comments were in fact deleted. The question then becomes "who deleted them?"

Testimony was offered by the Defendants that the person responsible was Jarvis Floyd, the Defendants' Administration's Secretary of Communication. Israel stated he did not know who was responsible, only that his understanding was the SGA Account was controlled by the Defendants' Administration; however, he did claim responsibility should never the less fall on the named Defendants, since the named Defendants are responsible for appointing and overseeing the "Executive Cabinet." However, as to Defendant OMAR PIMENTEL, the Court cannot agree with Israel's assertion. Mr. Pimentel is the Student Body Treasurer, and as such does not hold a position which is accorded rights of succession to the Presidency. *See* §300.4, SBS. Accordingly, the Court entered directed verdict in favor of Mr. Pimentel based on the assertions of both parties, and Mr. Pimentel's inability, statutorily, to exercise any oversight of the President's cabinet members, even if the cabinet is titled the "Executive Cabinet." *See* § 301.2(A), SBS.

II

The second issue before this Court is to determine if the deletion of comments amounts to a violation of Israel's First Amendment rights. This question may be answered in the affirmative because SGA conceded the error at trial. However, SGA's counsel pressed a slew of federal caselaw which supports the idea that where an actor within an Administration acts, as a matter of comity the Courts direct their actions at a lower Executive official. *See Nixon v. Sirica*, 487 F.2d 700, 709 (D.C. Cir. 1973) (en banc) (per curiam); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584, 588 (1952) (affirming an injunction directed to a cabinet member). Moreover, as its grounds to deny Israel his requested injunctive relief, SGA pressed that Courts are to "assume it is substantially likely that the President and other executive…officials would abide by an authoritative interpretation of [a]…constitutional provision." *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (plurality opinion).

The Court is inclined to agree with SGA's first contention, that a Court may direct its actions to a lower Executive official. However, we do so with great hesitance where the official was not joined to the action, since "[a]s a matter of comity, courts should normally direct *legal process* to a lower Executive official." *Nixon*, 487 F.2d at 709 (emphasis added). Our hesitance is especially great where SGA's counsel took

the time to figure out who the actual party at fault was within SGA and not move for the substitution of parties, since Mr. Floyd would have been entitled to the same counsel, namely the Attorney General, had he been substituted for the above-named Defendants. The purpose of joinder is to make sure the appropriate parties are brought before the Court and accorded the due process and respect they deserve when an action is litigated, and their rights may be affected. However, it is not a defendant's duty to do so; the duty to plead and prove a case lies squarely on the plaintiff. Nevertheless, Mr. Floyd, is the lower Executive official responsible, and the defense was able to persuade the Court judgment against him is appropriate.

As the SGA's second contention that this Court should not enter injunctive relief in this case because it is to "assume it is substantially likely that the President and other executive…officials would abide by an authoritative interpretation of [a]…constitutional provision," we cannot agree. *Franklin*, 505 U.S. at 803. Principally, we cannot agree for two reasons. First, "[s]ubordinate officials may, of course, be enjoined by the courts." *Knight First Amendment Institute at Columbia University v. Trump*, 302 F.Supp. 3d 541, 579 (S.D.N.Y. 2018). Second, this case does not resolve in a declaratory judgment founded on the Constitution, rather on a statute. The student body statutes provide that no student will be discriminated against, and "discrimination" as defined in the statute extends to the denial of a substantive right. *See* § 206.1, SBS. Israel testified that his comments were deleted in violation of his substantive rights guaranteed under the First Amendment. SGA then conceded its error and requested declaratory relief be entered against Mr. Floyd. However, in conceding its error, it implicitly conceded a violation of chapter 206.1, SBS.

> Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.

Blair v. U.S., 250 U.S. 273 (1919). Along similar lines, we decline to reach the constitutional question of whether or not Israel's First Amendment rights were actually violated, we only hold as such because SGA concedes the error in deleting the comments as amounting to SGA suppressing the ideas conveyed in the comments. SGA is willing to admit as such, and based on a similar line of reasoning as that in *Blair* we decline to reach the issue where it suffices that SGA concedes at trial the error as plead. Since the Court does not issue any opinion on the constitutionality of the actions, and instead bases its ruling solely on SGA's concession of error, we are not persuaded that *Franklin* controls and bars our entry of injunctive relief.

CONCLUSION

Accordingly, based on SGA's answer that Israel's comments were deleted, and that SGA concedes the error that deletion of those comments made on the SGA Account by the Israel Account amounts to a violation of Israel's first amendments rights, the Court finds that Israel's comments were deleted, by Jarvis Floyd, in violation of Israel's First Amendment rights. The Court gives no opinion as to the constitutionality of the

actions taken since the government concedes its error, and implicitly includes in the concession that the actions amount to a violation of § 206.1, SBS. Since the actions amount to a violation of a statute, and resolution can be reached without passing an opinion as to the action's constitutionality, we enter both declaratory relief, and hereby enjoin Jarvis Floyd and any member of SGA from deleting comments made by students at the Florida State University on any and all of Florida State University Student Government Association's social media platforms.

It is so ordered.