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

THE FLORIDA STATE UNIVERSITY STUDENT GOVERNMENT ASSOCIATION SUPERVISOR OF ELECTIONS,

Petitioner,

v. Case No. 2021-AP-1

THE PROGRESS PARTY AT FLORIDA STATE UNIVERSITY,

Respondent.

_____/

Wolski, J., delivered the opinion of the court.

SYLLABUS

This action was brought before this Court on two separate appeals by The Florida State University Student Government Supervisor of Elections ("Supervisor of Elections") from a decision by the Florida State University Elections Commission denying Petitioner's motion to dismiss for lack of standing and finding in favor of Respondent on two counts.

Respondent, The Progress Party at Florida State University ("Progress Party") originally brought this action before the Elections Commission of four separate allegations against the Supervisor of Elections, claiming that (1) The Supervisor of Elections violated SBS §712.1(B) by failing to place three proposed amendments to the FSU Constitution on the Official Ballot; (2) The Supervisor of Election violated SBS §712.1(B) by failing to correctly list all candidates for office on the Official Ballot; (3) The Supervisor of Election violated SBS §712.1(G) by altering the Official Ballot within twenty-four hours, failing to notify parties of that alteration, and failing to afford students that had already voted on the unaltered ballot the opportunity to recast their votes; and (4) The Supervisor of Elections violated SBS §713.3(A) by failing to extend polling hours by twenty-five minutes to make up for polling time lost during technical difficulties.

The Elections Commission found for Petitioner on Allegations II and IV, and Respondent does not appeal those decisions. On Allegation I & III, Respondent requests this Court order Special Elections to remedy their alleged injuries.

ISSUE

Did the Elections Commission err in denying Petitioner's motion to dismiss for lack of standing?

HOLDING

Yes. This Court reverses the decision of the Elections Commission and grants Petitioner's motion to dismiss for lack of standing.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The relevant facts are as follows. Every Spring and Fall semester, the Florida State University Student Government Association ("SGA") holds elections for Student Senate seats. In Spring 2021, the election was held on February 24, 2021. At some point before that, Matteo Guillamont filed to run as a member of the Movement Party for the Student Senate in Undergraduate Studies Seat 10. At the same time, Jamie Botel, also a candidate for Student Senate for the Movement Party, filed for the same seat. Additionally, Chase Freeman filed to run as a member of the Progress Party for the Student Senate in Undergraduate Studies Seat 8. None of these students are parties to this action.

During this time, both the Movement Party and the Progress Party maintained social media posts that listed their "slate" of candidates and what seats they were running for. Despite both Guillamont and Botel filing to run in Seat 10, the Movement Party's social media noted that Guillamont was to be their candidate for Seat 8.

On February 22, 2021, two days before the election, the Supervisor of Elections released the Unofficial Ballot. On this ballot, both Guillamont and Botel were listed as running for Seat 10, and Freeman was the lone candidate listed for Seat 8. However, a separate section on the Unofficial Ballot listed "Uncontested" seats, and no candidate for Seat 8, including Freeman, was listed in this category.

Upon reviewing the social media of both parties, the Supervisor of Elections was made aware of Movement's intentions to have Guillamont run in Seat 8 rather than Seat 10. She then notified the Movement Party Chair via email that Guillamont would be switched to Seat 8 in accordance with the Movement Party's intentions.

However, this is when things began to go awry. When the Official Ballot opened on the morning of February 24, 2021, Guillamont and Botel were still both listed in Seat 10, and Freeman was the lone candidate listed in Seat 8.

At this same time, a glitch occurred that did not allow anyone to submit their votes. This was remedied at 8:21 a.m., resulting in twenty-one minutes of students being unable to cast their votes.

At 8:25 a.m., SGA Staff was made aware of the ballot error concerning Guillamont being listed on the incorrect seat despite the Supervisor of Elections stating the change would be made. The Supervisor of Elections did not have the power to make the change, so it was up to the SGA Staff to do so. At 8:46 a.m., SGA Staff corrected the Official Ballot, which then listed Guillamont running against Freeman in Seat 8, and Botel running against another independent candidate in Seat 10 that did not appear on the Unofficial Ballot two days earlier.

The Progress Party contends that they were first made aware of the ballot change when Guillamont was declared the winner of Seat 8.

In a separate event that is also germane to this case, the Student Senate passed three separate amendments to the FSU Constitution. For one reason or another, these amendments were not forwarded to the Student Government Association Attorney General ("Attorney General") to then be forwarded to this Court for review in accordance with Student Body Statutes ("SBS"). As a result of this process not occurring, the amendments were not placed on the Official Ballot for the Spring 2021 elections.

On February 26, 2021, two days after the election, Respondent filed this complaint with the Elections Commission, bringing four allegations against Petitioner. (1) The Supervisor of Elections violated SBS §712.1(B) by failing to place three proposed amendments to the FSU Constitution on the Official Ballot. (2) The Supervisor of Election violated SBS §712.1(B) by failing to correctly list all candidates for office on the Official Ballot. (3) The Supervisor of Election violated SBS §712.1(G) by altering the Official Ballot within twenty-four hours, failing to notify parties of that alteration, and failing to afford students that had already voted on the unaltered ballot the opportunity to recast their votes. (4) The Supervisor of Elections violated SBS §713.3(A) by failing to extend polling hours by twenty-five minutes to make up for polling time lost during technical difficulties.

On March 16, 2021, Petitioner filed a motion to dismiss the entire complaint for lack of standing.

On March 17, 2021, the Elections Commission held a hearing on this complaint. Upon hearing arguments on the motion to dismiss, the Commission denied the motion and proceeded to the merits. On the merits, the Elections Commission issued a split decision: On Allegation I, the

Commission ordered a Special Election for the proposed constitutional amendments. On Allegation III, the Commission ordered a Special Election for Undergraduate Studies Seats 8 and 10. The Commission found for Petitioner on Allegations II and IV.

Petitioner then filed two separate appeals: one appealing the Commission's denial of their motion to dismiss and another appealing the Commission's decision on Allegations I and III.

OPINION

As a prelude, it should be noted that we do not address the merits of Respondent's claims in this opinion. If a court finds it has no subject matter jurisdiction to hear a claim, it cannot address the merits of that claim. *Stalley ex. rel. U.S. v. Orlando Regional Healthcare System, Inc.*, 524 F.3d 1229, 1234 (2008) ("Since we conclude that [Plaintiff] lacks standing…the district court lacked subject matter jurisdiction over the complaint, and it had no power to render a judgment on the merits.")

Additionally, this Court is obligated to raise the issue *sua sponte* if subject-matter jurisdiction comes into question, even if the parties do not. The Federal Rules of Civil Procedure state that, "[i]f the court determines *at any time* that it lacks subject-matter jurisdiction, the court must dismiss the action." F.R.C.P. 12(h)(3). (emphasis added). Standing falls under subject-matter jurisdiction.

Procedural Error

Before we get into the substantive reasons why the Elections Commission erred in their denial of the motion to dismiss, we must first address the Commission's procedural error. In their written opinion, the Elections Commission stated that,

> "Further, the Florida Rules of Civil Procedure require only the following for an original claim: "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends …, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief and, (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled." Fla. R. Civ. P. 1.110(b)."

While this is *a* standard for a motion to dismiss, *it is not the correct one*. The test above is the standard for a motion to dismiss for failure to state a claim upon which relief can be granted, *not* the standard for a motion to dismiss for lack of standing. So, before even addressing the merits of the motion, the Commission applied the incorrect test to Petitioner's motion. This, in itself, is a reversable error.

Standing Law

Now, on to the merits of the motion. The controlling case here is *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992), in which the Court succinctly outlined the three necessary elements for complainants to establish standing. First, the plaintiff must have suffered an injury in fact which is "(a) concrete and particularized, and (b) actual or imminent." *Id.* at 560. Second, the injury must be "fairly…trace[able] to the challenged action of the defendant, and not…th[e] result [of] the independent action of some third party not before the court." *Id.* (citing *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)). Third, it must be likely that the court's action will remedy the injury. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992).

Similarly, Florida courts adopted the *Lujan* test for standing in *DeSantis v. Florida Educ. Ass'n.,* 306 So. 3d. 1202 (Fla. 1st DCA 2020).

Respondent argues that, rather than *Lujan*, this Court's view of standing should be controlled by *Massachusetts v. Environmental Protection Agency,* 549 U.S. 497 (2007). In *Massachusetts*, the Court noted that when the legislature has "accorded [a litigant] a procedural right to protect his concrete interests," that litigant "can assert that right without meeting all the normal standards for redressability and immediacy." *Id.* at 517-18 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573, n. 7 (1992)).

Respondent argues that *Massachusetts* should apply because SBS §708.1 states that, "[s]tudents or political parties who show actual injury shall have standing to contest the results of any election on grounds within or outside the scope of the Election Code until 8 p.m. on the Friday following the election." SBS §708.1. Thus, Respondent argues, the Student Senate has granted them the procedural right to have standing under *Massachusetts.*

We find these arguments unpersuasive. The statute specifically requires that the political party bringing a claim "show[s] actual injury" to qualify for the procedural right to bring a claim. As we discuss at greater length later in this opinion, we find that there was no actual injury suffered by Respondent.

As such, *Lujan* remains the controlling law in this dispute.

In their motion to dismiss, Petitioner addresses the issue of standing separately for each of Respondent's four claims. In the interest of clarity and consistency, we shall do the same. It should also be noted that Respondent never submitted a written

response to Petitioner's motion to dismiss; as such, references to their arguments are rather limited.

Allegation I

In their first allegation, Respondent contends that the Supervisor of Elections violated SBS §712.1(B) by failing to place three proposed amendments to the FSU Constitution on the Official Ballot. Petitioner challenges Respondent's standing on all three prongs of the *Lujan* test, arguing that (1) there is a lack of injury in fact, (2) there is a lack of a causal connection between the alleged injury and the actions or inactions of the Supervisor of Elections, and (3) the relief sought by Respondent will not remedy the alleged injury.

To Petitioner's argument that there is no injury in fact, we agree. The alleged injury – the inability to vote on proposed constitutional amendments – is an injury to the FSU Student Body as a whole. Respondent is an on-campus political party. While they may *represent* the members of their party – who themselves are FSU students – neither the party themselves nor their members suffered any "concrete or particularized" injury. Petitioner argues that in the case of a generalized harm such as this, it is the authority of the Executive Branch to remedy the situation. Petitioner states that, "[a]llowing any member of the Student Body to litigate a generalized harm would destroy the role of the executive branch as the enforcers of the law." This is a compelling public policy argument that strikes at the heart of the idea of separation of powers, one of the fundamental building blocks of our nation's system of government.

Similarly, we agree with Petitioner's contention that there is no causal connection between the alleged injury and the actions or inactions of the Supervisor of Elections. Pursuant to SBS §402.1 and §506, once the Student Senate passes a constitutional amendment, the Senate President must forward that proposed amendment to the Attorney General, who then in turn forwards it to this Court for a review of its constitutionality. If seven days pass and this Court has not issued an opinion, or if we find no constitutional issue with the proposed amendment, the amendment is then placed on the ballot. Respondent first claimed that the failure for these amendments to be placed on the ballot this time around is attributable to the actions of the Supervisor of Elections. However, the amendments were never sent by the Student Senate to the Attorney General in the first place. Further, both parties later conceded that there were multiple oversights in this process that went beyond the

Supervisor of Elections. Therefore, the failure for these amendments to be placed on the ballot cannot be reasonably attributed to the actions or inactions of the Supervisor of Elections. As such, there is no causal connection between the alleged injury and the action or inaction of the Supervisor of Elections.

We find it unnecessary to address the third prong of the *Lujan* test regarding remedy as Student Body Statutes already indicate a procedure for if the amendments are left on off the Official Ballot.

For the above reasons, we find that Respondent lacks standing on Allegation I and the Elections Commission erred in denying Petitioner's motion to dismiss on this issue.

Allegation II

In their second allegation, Respondent contends that the Supervisor of Election violated SBS §712.1(B) by failing to correctly list all candidates for office on the Official Ballot. Petitioner argues that Respondent does not qualify for third-party standing on this claim as Respondent has failed to show that the injured party cannot bring a claim themselves. Additionally, Petitioner argues that there is no causal connection between the alleged injury and the actions or inactions of the Supervisor of Elections. Finally, Petitioner argues that the relief sought by Respondent is not likely to remedy the alleged injury.

As a general rule, parties may not claim standing to litigate the rights of a third party. *Barrows v. Jackson,* 346 U.S. 249, 255 (1953). To establish third-party standing, a litigant must establish an injury in fact and that they have a sufficiently concrete interest in the outcome of its litigation. *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936 (Fla. 2002). The litigant must also establish a close relationship to the person they are alleging was injured. *Id.* Finally, the litigant must show that there is some hindrance to the person's ability to protect their own interests. *Id.* Petitioner does not dispute that Respondent meets the first two elements, arguing only that Respondent did not present adequate evidence that the harmed students could not bring this litigation themselves. This is a crucial element of third-party standing, and we agree that it has not been met.

Respondent argues that they have organizational standing to bring this action on behalf of their members. The controlling case on organizational standing is *Hunt v. Washington State Apple Advertising Com'n,* 432 U.S. 333 (1977). In *Hunt*, the Court

outlined a three-pronged test for establishing organizational standing:

> "Thus we have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

Id. at 343. While this Court recognizes that Respondent would certainly satisfy the first prong of the *Hunt* test, and would likely satisfy the second, we do not agree that Respondent satisfies the third prong. It is our view that the participation of the individual candidates is absolutely necessary to correctly assess the alleged injury, since they, not Respondent, are the ones whose names allegedly appeared on the ballot erroneously.

Petitioner also argues here that, like Allegation I, there is no causal connection between the alleged injury and the action or inaction of the Supervisor of Elections. Petitioner alleges that it was the role of SGA Staff, not the Supervisor of Elections, to handle the electronic balloting system. This claim is supported by a letter from Dr. Brandon Bowden, a faculty advisor for the SGA, and no evidence was presented by Respondent to dispute it. Assuming these facts as true, we agree with Petitioner's contention that there is no causal connection between the alleged injury and the action or inaction of the Supervisor of Elections.

Finally, we agree with Petitioner's assertion that the relief sought by Respondent is not likely to remedy the alleged injury. Respondent requests that multiple contests be vacated and a special election ordered for those races. Respondent appears to engage in a fair bit of speculation here, discussing how a number of races "*could have"* seen a different outcome were they to be granted a new election (emphasis added). However, Respondent goes on to concede that the results of a new election are completely immeasurable, stating, "[a]lthough the intended votes of these particular students cannot be enumerated…" Despite this, Respondent still goes on to argue, "the *possibility* that their votes *could have* changed the results of these elections demands relief for injured students." (emphasis added). However, the standard in *Lujan* requires that it must be *likely*, not merely possible, that the relief requested would remedy the injury. Petitioner's motion to dismiss points out that Respondent's

claims are "riddled with possibilities and speculation, rather than firm facts showing a likelihood that they will receive votes." Furthermore, according to the statement of Dr. Bowden, on the morning of the election, prior to the administrative correction to Seat 8's ballot, it was candidate Freeman whose name appeared as the sole option for whom students could vote to fill Seat 8 from the time the ballot opened, until approximately 8:46am. This means that no student would have been able to cast their vote for candidate Guillamont during the first 46 minutes of the election, which Respondents themselves concede is "one of the most active and critical times" when students cast their ballots during an election. Thus, notwithstanding the fact that Respondents claims of injury are abstract and hypothetical, in this Court's view, it appears more likely that candidate Freeman may have actually *benefitted* from the absence of his opposing candidates name on the ballot. Nevertheless, this Court is in no position to make assumptions of the outcome of elections, and we have not seen substantial evidence that the holding of a special election would result in any different—let alone positive—result that could remedy any injury presented to us. Simply put, it is Respondent's allegation is far too speculative for us to determine whether there has been *any* harm to *any* individual, and thus falls far short of the *Lujan* requirement of likeliness.

For the above reasons, we find that Respondent lacks standing on Allegation II and the Elections Commission erred in denying Petitioner's motion to dismiss on this issue.

Allegation III

In their third allegation, Respondent contends that the Supervisor of Election violated SBS §712.1(G) by altering the Official Ballot within twenty-four hours, failing to notify parties of that alteration, and failing to afford students that had already voted on the unaltered ballot the opportunity to recast their votes. Petitioner argues there is a lack of injury in fact and that Respondent does not qualify for third party standing on this claim.

To Petitioner's argument that there is no injury in fact, we agree. The alleged injury – changing the Official Ballot and thus affecting the ability of students to vote – is a generalized harm. Any specific harm to particular students affected by a ballot change is harm to those students alone, not harm suffered by Respondent. So as to not beat a dead horse, we will simply reincorporate our same conclusions about generalized harm and separation of powers from Allegation I.

Petitioner also argues that Respondent does not qualify for third-party standing on Allegation III. Like Allegation II, the Petitioner does not dispute that Respondent meets the first two elements required for third-party standing. They argue only that Respondent did not present adequate evidence that the harmed students could not bring this litigation themselves. We agree.

Respondent asserts that they have organizational standing on this claim. As organizational standing was discussed at length above, we will not delve into those details again. However, to address organizational standing as it relates to this Allegation, we again see the participation of the individual candidates as absolutely necessary to correctly assess the alleged injury. Because part of the Respondent's argument for injury on this Allegation was that candidate Freeman required better notice that his candidacy was contested in order to campaign effectively, we could not evaluate this claim – and thus address the merits of the alleged injury – without Freeman being a party to the case themselves.

For the above reasons, we find that Respondent lacks standing on Allegation III and the Elections Commission erred in denying Petitioner's motion to dismiss on this issue.

Allegation IV

In their fourth allegation, Respondent contends that the Supervisor of Elections violated SBS §713.3(A) by failing to extend polling hours by twenty-five minutes to make up for polling time lost during technical difficulties. Petitioner argues that Respondent raises no injury in fact.

We agree. The alleged injury – reduced time for students to vote – is a generalized harm. Again, so as to not be repetitive, we will simply reincorporate our same conclusions about generalized harm and separation of powers from Allegation I.

CONCLUSION

In conclusion, Respondent lacks standing to bring this action on Allegations I-IV. As such, the Elections Commission erred in denying Petitioner's motion to dismiss for lack of standing.

We hereby reverse the decision of the Elections Commission. The Petitioner's motion to dismiss for lack of standing is GRANTED.

DONE and ORDERED, this the 31st day of March 2021, in Tallahassee, Florida.