

Complaint 58-SE-04

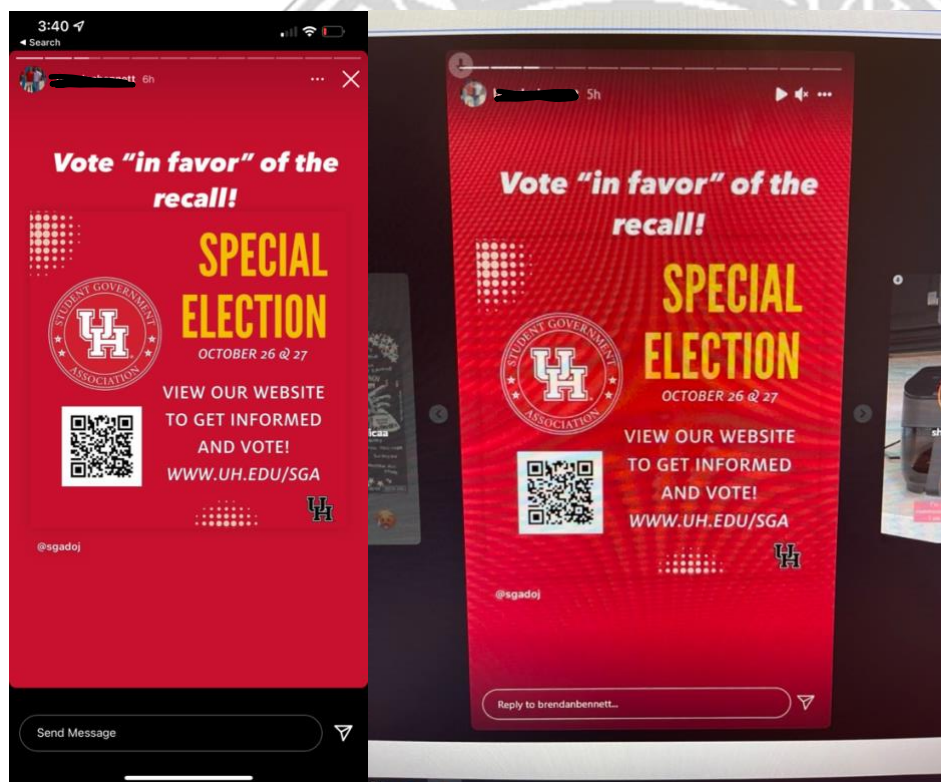
Petitioner(s): The petitioner requested to be anonymous due to being a follower on respondent(s) social media.

Respondent(s): Director Brenden Bennett

The following allegations were filed 10/26/2021 at 3:12PM):

Article 4, Section 2, Clause 1: *A member of the Student Government Association may not participate in or assist an organization in campaigning on behalf of their cause.*

The following evidence was provided by the petitioner:



I reached out to for a statement of defense to these allegations. He was given 5 hours to complete this, with a deadline of 3pm on 10/27/21.

The following defense statement was provided by the respondent:

Attorney General Hutcherson,

Ignoring the fact that the Attorney General is not responsible for filing or receiving complaints, outside of the election season, I will continue with my defense.

As stated in the University of Houston Student Government Association (UH SGA) constitution, under Article II, Section 2.01, UH SGA cannot, “abridge the rights, immunities, or privileges granted to students under the Constitution of the United States of America, the Constitution of the State of Texas, U.S. Federal Law, or the laws of the State of Texas.” It is my opinion that my rights have been violated here. In order to examine whether or not my rights have been violated, one can examine previous Supreme Court Cases, which ultimately are the benchmark for the U.S. Constitutional interpretation. First and foremost, the case of *Tinker v. Des Moines*. In this case, a group of students found themselves suspended from school, simply for wearing a black armband in protest of the Vietnam War. The parents of these students sued, and eventually appealed their case to the Supreme Court. The court, in a 7-2 opinion, reasoned that students, “did not lose their First Amendment rights to freedom of speech when they stepped onto school property,”¹ and that, in order to curtail such speech, “the school officials must be able to prove that the conduct in question would “materially and substantially interfere” with the operation of the school.”² Seeing as I made posts to my personal Instagram account, off school property, and on my own accord, this could not possibly violate any aspect of that opinion. The Recall Election Code, drafted by the Attorney General, expressly contradicts this opinion, in preventing anyone in UH SGA from campaigning, while allowing other students to campaign without fear of repercussion. Seeing as campaigning, and spreading information, is an essential element of an election, students should be allowed to campaign for whomever they choose, without fear of repercussions. Myself, and my fellow colleagues in SGA have effectively found ourselves silenced, and in fear of our jobs, under an Attorney General who has admitted to seeing other students campaign, and has done nothing about it. And, as of this morning, 17 of our Senators have also found themselves suspended indefinitely, all for simply voting on a bill that was presented at a senate meeting. This whole process presents a massive overstep of power, a violation of the First Amendment of the U.S. Constitution via *Tinker v. Des Moines*, and, by extension, a violation of the UH SGA Constitution.

Either all campaigning can continue, or none of it can continue, however, seeing the massive sum of flyers that have been distributed on President Darbin’s behalf, and the Attorney General’s knowledge of such flyers, it would be foolish to assume that ending campaigning wholesale would be the correct course of action. Therefore, in the spirit of democracy, and upholding the constitution, which both things the Justice Department should (in theory) favor, campaigning should continue. It makes no sense that I get punished for a post on my private instagram account (which no DOJ member nor the president have access to), while Daniel Johns and his colleagues continue to spread false claims and misinformation against fellow cabinet members and members of the senate. If you claim to be impartial, then actually show that. Take action against these misinformation spreaders, and uphold the truth, as you all claim to do. These people, such as Mr. John, not only are spreading misinformation, but are hurting the reputation of SGA within the UH community. In an opinion, authored during the most recent election, Chief Justice Eddie Muñoz set the precedent that parties or individuals can be held accountable for the actions of their supporters in an election. Therefore, it is my opinion that if I am facing a suspension for a post on my personal, private instagram, President Darbin should face the same punishment for flyers that are obviously created and distributed on his behalf. If you claim to be impartial, uphold the law for both sides of this election, do not attack myself and my colleagues simply for existing within the Student Government Association and exercising our freedom of speech. This is a gross violation of our rights to freedom of speech and privacy. I urge the Department of

Justice to consider what impartiality means, and to consider the consequences of silencing every member of this organization.

Brendan J. Bennett

Course of Investigation: I examined the Petitioner's evidence and reached out to the Respondent for a defense. I went through the Special Election Code and identified if a violation was present.

Decision October 28, 2021 at 2:48am: Petitioner's complaint **HAS** merit, and this **IS** a violation of the Special Election Code.

Sanction: This is Director Bennett's first violation of the Special Election Code. Due to this, he is suspended from 10/28/21 – 11/1/2021. He may return to work and represent the Student Government Association on 11/2.

Conclusion:

The definition of campaigning in the Special Election Code, mirrors almost exactly the definition approved through a vote by the Student Government Association through its regular Election Code¹.

The Director has asked the Attorney General to allow all campaigning in the favor of impartiality because members of the student body are campaigning against his interest – in favor of the recall. It is extremely odd that the petitioner filed a complaint on 10/26 to the Attorney General against someone but is now saying in the first sentence of a defense statement on a complaint against himself that “the Attorney General is not responsible for receiving or filing complaints outside of the election season.”

Is the attorney general only responsible for complaints when they benefit the petitioner's interest?

Was it an extreme breach of power when the Attorney General suspended the Chief Justice, in response to a complaint filed outside of the election season, for 10 class days for putting an inappropriate message in a GroupMe and violating our Governing Documents regarding ethics? Or, was that forgivable?

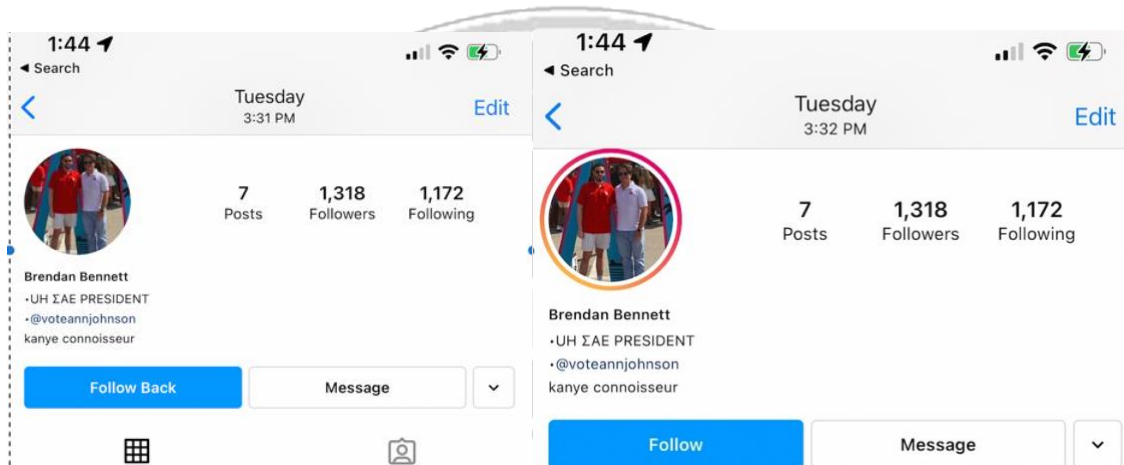
Precedent has also been set within this organization for bans on campaigning. In fact, the election that provided Director Bennett with a position in SGA had MULTIPLE bans against the opposing party. Was that too, a violation of their freedom of speech? Or was that ignored because it benefited the interest of the Director? Has the Director provided recommendations to the Chief Election Commissioner that any ban on campaigning in the Regular Election code is invalid because it violates the US Constitution?

Multiple violations in the regular election have been filed because of things that occurred on social media, in private conversations and “off campus”. It is my understanding it was actions on social media that lead to the complaint that a court deemed was worthy of disqualification of an entire party. Was that also a violation of privacy?

¹ Campaigning is defined as the intentional direct or indirect solicitation of votes, the purposeful bolstering of one's personal brand and/or name, and/or any form of personal, group, or mass advertising initiated by a known and/or prospective candidate or campaign staff member with the purpose of effecting the election outcome.

The exact same court that Director Bennett references in his defense statement to have set precedent on people being responsible for actions of others on their behalf also released 2 opinions certifying the Recall Election Code as constitutional and the governing document for this Special Election. Does Director Bennett respect the decisions of the Supreme Court or only when it serves their interest by disqualifying an entire opposing party?

The respondent's account was not private at the time the violation was sent to the Attorney General. The DOJ Instagram was unable to view the story due to being blocked from seeing it (the DOJ account does not follow any member of SGA but was able to view his account and its photo) it was very clearly public to myself when I viewed the story in question on my personal account – which I do not follow the Director on either.



Respectfully,

Nadiia Hutcherson

Attorney General

This complaint will be shared and made public on SGA website for transparency and archival purposes.