

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 BOE 03399

<p>Constitution Party of North Carolina State Executive Committee Walter V. Smith Treasurer, Petitioner,</p> <p>v.</p> <p>North Carolina State Board of Elections, Respondent.</p>	<p>FINAL DECISION GRANTING SUMMARY JUDGMENT IN FAVOR OF PETITIONER</p>
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THIS MATTER comes before the Undersigned pursuant to Respondent's Motion for Summary Judgment (the "Motion"), filed in the Office of Administrative Hearings on November 28, 2022. Petitioner timely filed a response. Respondent filed a reply on December 9, 2022, and Petitioner filed a sur reply on December 19, 2022. All parties having been given the opportunity to be heard, the matter is now ripe for disposition.

Upon consideration of the parties' written arguments, the Undersigned hereby GRANTS summary judgment for Petitioner.

APPEARANCES

For Petitioner: Walter Vincent Smith, *pro se*
Treasurer, N.C. Constitution Party
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For Respondent: Mary Carla Babb, Special Deputy Attorney General,
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ISSUE

Is Petitioner subject to quarterly reporting requirements under N.C. Gen. Stat. § 163-278.9(a)(3) during a year when it did not support or oppose a candidate?

STATUTES AND REGULATIONS AT ISSUE

N.C. Gen. Stat. § 163-278.9(a)(3).

UNCONTESTED FACTS

1. On August 5, 2022, Respondent assessed a civil penalty in the amount \$500.00 against Petitioner for failing to file a 2022 First Quarter Campaign Finance Report under N.C. Gen. Stat. § 163-278.9(a)(3). (Res. Ex. A).

2. On September 7, 2022, Petitioner filed a Petition for a Contested Case Hearing (the “Petition”) in the Office of Administrative Hearings. Petitioner alleged that Respondent substantially prejudiced Petitioner’s rights and acted erroneously, failed to use proper procedure, and failed to act as required by law or rule in levying the civil penalty, as Petitioner was not subject to quarterly filings under N.C. Gen. Stat. § 163-278.9(a)(3).

3. On October 27, 2022, Respondent filed a Motion to Dismiss, in which Respondent asserted that it had waived the civil penalty and this contested case was thereby rendered moot.

4. The Undersigned denied Respondent’s Motion to Dismiss by order dated November 8, 2022, finding that this case was not rendered moot by Respondent’s voluntary waiver of the penalty at issue. The case falls within one of the exceptions to the mootness doctrine, *i.e.*, voluntary cessation of a challenged action capable of repetition, yet evading review. Respondent asserted it would seek to enforce its interpretation of the governing statute in future years against Petitioner. Respondent’s threat of future civil penalties placed this case squarely within the “capable of repetition, yet evading review” exception to mootness.

5. On November 28, 2022, Respondent moved for summary judgment, arguing that Petitioner was subject to the quarterly reporting requirements of N.C. Gen. Stat. § 163-278.9(a)(3). More specifically, Respondent argues that, by virtue of being a political party, Petitioner properly is deemed to be “supporting or opposing a candidate” during years in which it is not *actually* supporting or opposing a candidate on the ballot.

6. Also on November 28, 2022, N.C. State Board of Elections Executive Director Karen Brinson Bell issued an advisory opinion in this matter, addressed to Petitioner (the “Opinion”). The Opinion concluded that Petitioner was subject to the filing requirements of N.C. Gen. Stat. § 163-278.9(a)(3).¹

7. Petitioner timely filed a response to the Motion on December 8, 2022, and Respondent filed a reply on December 9, 2022. Petitioner filed a sur reply on December 19, 2022.

8. Petitioner did not support or oppose a candidate in 2022.

¹ Respondent has caused the Opinion to be published in the North Carolina Register and in the North Carolina Administrative Code, pursuant to N.C. Gen. Stat. § 163-278-23. The Opinion appears in the North Carolina Register at 37:13 N.C. Register, p. 922 (January 3, 2023). The Opinion has not been published in the North Carolina Administrative Code as of the date of this Final Decision.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and there is no question as to misjoinder and nonjoinder.

2. To the extent the Uncontested Facts contain Conclusions of Law and the Conclusions of Law contain Uncontested Facts, they should be so considered regardless of their given label. *See Westmoreland v. High Point Healthcare, Inc.*, 218 N.C. App. 76, 79, 721 S.E.2d 712, 716 (2012) (citations omitted); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011) (citations omitted).

3. This Tribunal is authorized to grant summary judgment. N.C. Gen. Stat. § 150B-34(e).

4. The purpose of summary judgment is to bring litigation to an expeditious and efficient conclusion on the merits where only a question of law on the indisputable facts is in controversy. Summary judgment is proper under Rule 56 of the North Carolina Rules of Civil Procedure if “there is no genuine issue of material fact and . . . the moving party is entitled to judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56 and 26 N.C. Admin. Code 3 .0101(b).

5. Summary judgment “is an extreme remedy and should be awarded only where the truth is quite clear.” *Lee v. Shor*, 10 N.C. App. 231, 233, 178 S.E.2d 101, 103 (1970). “[A]ll inferences of fact . . . must be drawn against the movant and in favor of the party opposing the motion.” *Caldwell v. Deese*, 288 N.C. 375, 378, 218 S.E.2d 379, 381 (1975).

6. “[A] party does not have to move for summary judgment to be entitled to it . . .” *Carriker v. Carriker*, 350 N.C. 71, 74, 511 S.E.2d 2, 5 (1990). North Carolina courts have the authority to grant summary judgment in favor of the nonmoving party. *A-S-P Assocs. v. City of Raleigh*, 298 N.C. 207, 211, 258 S.E.2d 444, 447-48 (1979).

7. N.C. Gen. Stat. § 163-278.9(a) requires the treasurers of political committees to file certain reports with Respondent. Subsection (a)(3) provides, “[d]uring even-numbered years during which there is an election for that candidate or in which the **campaign committee** is supporting or opposing a candidate, the treasurer shall file a report . . . after the end of each calendar quarter covering the prior calendar year . . .” (Emphasis added.)

8. “Political committee” is defined for the purposes of Article 22A of Chapter 163, in relevant part, as “a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and . . . [i]s a political party or executive committee of a political party.” N.C. Gen. Stat. § 163-278.6(74)(b).

9. Petitioner is a political committee for the purposes of N.C. Gen. Stat. § 163-278.9(a).

10. Unlike “political committee,” the term “campaign committee” used in N.C. Gen. Stat. § 163-278.9(a)(3) is not defined for the purposes of Part 1 of Article 22A. Pursuant to the plain

language of N.C. Gen. Stat. § 163-278.9(a)(3), a “campaign committee” is the only type of committee subject to the quarterly reporting requirement.

11. Respondent does not address the meaning of “campaign committee” in the Motion. However, Respondent does address the meaning of “campaign committee” in the Opinion, which was drafted after the Petition was filed. The Opinion is attached to the Motion as Exhibit E.

12. The Opinion concludes the term “campaign committee” is “interchangeabl[e]” with the term “political committee” because 1) “campaign committee” is not defined for this purpose, and 2) N.C. Gen. Stat. § 163-278.9(a) provides that subsection (a) applies to reports of “the treasurer of each candidate and each political committee.” The Opinion then asserts that division (3) of subsection (a) was meant to parallel “each candidate and each political committee” when it requires quarterly reporting “during years which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate.” (Res. Ex. E p. 3).

13. The Tribunal finds the Opinion’s definition of “campaign committee” incorrect because it ignores the principle of meaningful variation in favor of reading a false “parallel” into the statutory subsection at issue. When a legislative body “includes particular language in one section of a statute but omits it in another [section] of the same Act, it is generally presumed [the legislative body] acts intentionally and purposefully in the disparate inclusion or exclusion.” *Rusello v. United States*, 464 U.S. 16, 23 (1983) (internal quotations and citation omitted).

14. The principle of meaningful variation requires this Tribunal find that, had the General Assembly intended subsection (a)(3) to apply to all political committees, it would have used the term “political committee.” The General Assembly demonstrated that it was capable of the consistent use of this defined term in the two subdivisions preceding (a)(3), *i.e.*, (a)(1) and (a)(2). Thus, this Tribunal must conclude that the legislature meant the term “campaign committee” to have a meaning not identical to “political committee.”

15. When a term is undefined, courts use the ordinary meaning of the term. *Midrex Techs. Inc. v. N.C. Dep’t of Revenue*, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016).

16. A “campaign committee” is a committee engaged in a “campaign.” “Campaign” is defined by Black’s Dictionary most broadly as “[a]ny organized effort to promote a cause or to secure some definite result with any group of persons.” *Campaign*, Black’s Law Dictionary (5th ed. 1979).

17. Therefore, the Tribunal holds that the ordinary meaning of “campaign committee” in this context is a political committee that is engaged in an effort to promote a cause. That cause is identified in the phrase following “campaign committee” as “supporting or opposing a candidate.” N.C. Gen. Stat. § 163-278.9(a)(3).

18. Thus, during years that Petitioner supports or opposes a candidate, it is both a “political committee” and a “campaign committee.” During years, such as the year at issue in this contested case, when Petitioner does not support or oppose a candidate, it is not a “campaign committee” and thus is not subject to the quarterly reporting requirement. It remains a political committee,

however, and is subject to the semi-annual reporting requirement of N.C. Gen. Stat. § 163-278.9(a)(4).

19. Where a statute is unambiguous, North Carolina courts “eschew[] statutory construction” and are “bound by the plain language of the statute.” *Belmont Ass’n, Inc. v. Farwig*, 381 N.C. 306, 2022-NCSC-64, ¶ 16 (citation omitted); *Town of Belhaven, N.C. v. Pantego Creek, LLC*, 250 N.C. App. 459, 475 793 S.E.2d 711, 721 (2016) (citations omitted).

20. Other than the meaning of “campaign committee,” N.C. Gen. Stat. § 163-278.9(a)(3) is unambiguous on its face and the Tribunal should end its analysis of this provision and apply it as written.

21. Respondent, however, contends that the *actual* support or opposition of a candidate by Petitioner is not relevant. Instead, Respondent argues that, because a “campaign committee” is a “political committee” and a “political committee” is defined as a “political party” and a “political party” is *generally* defined as an entity involved in “nominating and electing candidates,” Petitioner is *deemed* to be continually “supporting or opposing a candidate” for the purposes of N.C. Gen. Stat. § 163-278.9(a)(3).

22. The Tribunal recognizes that it would be easier for Respondent to administer a system in which all political committees report on a quarterly basis in even numbered years and a semi-annual basis in odd numbered years, but it is beyond the power of this Tribunal to ignore what the legislature has written in favor of such a system.

23. Not only is the Tribunal without authority to deem a “campaign committee” to be a “political committee,” the Tribunal cannot ignore the phrase “supporting or opposing a candidate” which is used in the statute to describe the campaign committees that must file quarterly reports. If the Tribunal ignored this phrase, the Tribunal would violate the principle of not treating statutory language as surplusage. *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981) (“It is presumed that the legislature . . . did not intend any provision to be mere surplusage.”); *In the Matter of: B.L.H.*, 376 N.C. 118, 122-23, 852 S.E.2d 91, 95 (2020) (citation omitted).

24. Finally, Respondent asserts that this Tribunal may ignore the plain language of the statute, the product of the public and constitutional process of lawmaking, because of the “absurd result doctrine” (Opinion § 4), which Respondent mischaracterizes as a “well established” method of determining legislative intent. (Motion, p. 13).

25. Neither the Tribunal nor Respondent have the authority to, in effect, amend a statute.

26. Even if North Carolina courts had established the “absurd result doctrine” and also established that it could apply in the absence of statutory ambiguity, it could not apply in the case at hand because “[a] literal interpretation of . . . [this statute] . . . will [*not*] lead to ‘absurd results, or contravene the manifest purpose of the Legislature, as otherwise expressed’” *State v. Rankin*, 371 N.C. 885, 889 (2018) (quoting *State v. Beck*, 359 N.C. 611, 614 (2005)).

27. Respondent claims that it is absurd that Petitioner will be subject to four months of 48-hour large sum contribution reporting in even number years when it does not support or oppose a candidate, and only 15 days in even numbered years when it does support or oppose a candidate.

28. This result is neither “absurd,” nor does it “contravene the manifest purpose” of the statutes governing campaign finance reporting.²

29. If the General Assembly did not intend the obvious result of its adoption of N.C. Gen. Stat. § 163-278.9(a)(3), which this Tribunal finds highly unlikely, as the legislative branch of the State’s tripartite constitutional system, the General Assembly may correct that mistake. The Executive branch may not.

30. There are no genuine disputes of material fact and Petitioner is entitled to judgment as a matter of law. The plain and ordinary language of N.C. Gen. Stat. § 163-278.9(a)(3) requires a political committee that is supporting or opposing a candidate to file a quarterly report with Respondent. Petitioner did not support or oppose a candidate in 2022, and thus Petitioner is not subject to quarterly filing requirements in that year.

FINAL DECISION

BASED UPON the foregoing Uncontested Facts and Conclusions of Law, the Undersigned hereby GRANTS summary judgment in favor of Petitioner. Petitioner did not support or oppose a candidate during the 2022 election season and thus is not required to comply with the quarterly filing provisions of N.C. Gen. Stat. § 163-278.9(a)(3).

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision.** In conformity with the Office of Administrative Hearings’ rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of

² The difference in reporting requirements may reflect the legislature’s determination that most political committees do not receive as many contributions in years they are not involved in a campaign and thus semi-annual reporting is adequate, while those few that receive large contributions while not campaigning need heightened supervision. Or it may reflect a compromise between those legislators who favored heightened scrutiny of campaign contributions and those who wished to restrict such supervision. These are but two of the many possible explanations for the campaign finance reporting system established by the General Assembly that do not include error on its behalf.

Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 5th day of January, 2023.



Linda F. Nelson
Linda F. Nelson
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which subsequently will place the foregoing document into an official depository of the United States Postal Service.

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Petitioner

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This the 5th day of January, 2023.



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