



# JUDICIAL COUNCIL

## **Decision Rationale**

*Jenna Cripe v. ASB Department of Justice*

September 20, 2022

### **Overview**

On September 20, 2022, the ASB Judicial Council convened to hear an election appeal brought forth by Miss Ole Miss candidate Jenna Cripe (hereinafter referred to as the “Appellant”) against the ASB Department of Justice. The Appellant’s appeal was on the grounds that they had not “flagrantly” violated rules laid out in the ASB’s Code and Constitution, and therefore should not receive the \$100 fine applied by the Election Review Board.

The ASB Judicial Council serves as the supreme judicial body of the Associated Student Body, to include lower courts established in the executive and legislative branches of government, according to Article V, Section 1 of the ASB Code and Constitution. Furthermore, the Council serves as the primary hearing body for all appeals pertaining to ASB elections, according to Title III, Section 107, Subsection A, Title V, Section 120, Subsection A, and Title V, Section 120, Subsection C of the ASB Code and Constitution. Such authorities were utilized to hear and decide this case. The Council operates in the interest of fairness and impartiality.

The ASB Judicial Council came to its decision based on the following evidence presented: 1) testimony of the Department of Justice; 2) testimony of the Appellant; and 3) the ASB Code and Constitution during the September 20, 2022 appeals hearing.

### **Rulings**

The ASB Judicial Council ruled 4 -1 that no error had occurred in the decision made by the Deputy Attorney General of Elections and the Elections Review Board. As a result, the ASB Judicial Council upheld the decision of the Elections Review Board to sanction the Appellant with a fine of \$100 based on the Appellant’s violation of campaign rules laid out in the ASB Code and Constitution.

### **Findings**

*Relevant Sections of the ASB Code and Constitution:*

Title V.c § 120 (D):

“A “campaign material” shall be defined as any material, apparatus, or other property used by a candidate for the purpose of campaigning as defined above. All campaign material shall include the name of the candidate, and that person shall be identified as

such.”

Title V.c § 120 (G):

“A ‘sign’ shall be defined as any campaign material larger than eight-and-one-half-by-eleven (8 ½ x 11) inches, and not larger than seventy-two-by-thirty (72 x 30) inches.”

Advisory Opinion 22-04, Appendix A:

“In accordance with Advisory Opinion 22-01 from last spring, Candidates for Miss Ole Miss, Mr. Ole Miss, Homecoming Queen, and Homecoming King are permitted to display one sign larger than 8.5x11 inches but no larger than 72x30 inches, in accordance with Title (V.c.), § 120(G)”

Title V.d § 126 (A)(3):

Major Violation: violations which are “flagrant or intentional” or violations that damage the integrity of the campaign process, election process, or the University and its population. A number of repeated intermediate violations (no less than three) may also be considered a major violation. Individuals or organizations found to have committed a minor violation shall be subject to this range of penalties including: a) Restitution b) Disqualification c) Disenfranchisement (only in the case of a voter casting more than one ballot) d) Monetary [a charge of at least seventy-five (75), but no more than one-hundred and-twenty-five (125), dollars against the campaign spending limit, which shall not incur any financial obligation] e) Community Service (which must be directly tied to the violation committed) f) Disciplinary action with the Office of the Dean of Students, Office of Student Conduct, Judicial Council, etc.”

*Facts and the Judicial Council Opinion:*

The Appellant appealed the decisions of the ASB Department of Justice and the Elections Review Board (hereinafter referred to as the “ERB”) on the grounds that the Appellant had followed campaign rules and should not be held accountable for a violation in which the Appellant had not intentionally nor “flagrantly” acted on, per the vocabulary of the Code.

During the hearing, the primary claim brought forth from The ASB Attorney General’s Office was that the Appellant was in violation of Title V.c, Section 120, Subsection D, Subsection G, and the Advisory Opinion 22-04.

Based on evidence submitted to the Board, the Council upheld that the Appellant was found to have violated multiple rulings in Title V.c, Section 120 of the Code and Constitution according to procedures surrounding campaign sign policy for candidates. The Appellant’s verdict was ruled as a “major violation” according to such violations and the Advisory Opinion 22-04.

After lengthy deliberation, the ASB Judicial Council was not able to reach a firm conviction that the ERB had committed an “erroneous error” in their process, per Title V.d, Section 125, Subsection D. As there is no precedence to follow for the given ruling, it is up to the interpretation of the Code in how sanctions should be applied. As the wording of “flagrant or intentional” has no further specificity laid out in the ASB’s Code and Constitution, The Council was not able to come to a definite conviction that the interpretation presented by the ERB was clearly erroneous in their decision to sanction a \$100 fine. As the Appellant had already received a major violation previously, they believed a minimum fine would not be an adequate sanction, but did not believe the maximum fine would be appropriate.

Much of this deliberation was focused on the interpretation of the word “flagrant” laid out in Title V.d Section 126, Subsection A of the Code. This led to disagreements on the interpretation of the Major violation sanctioning by the ERB, yet the emphasis on the ambiguity of the grammar surrounding the rulings could not lead the Council to any unanimous and definite conclusion as to their ruling. It is a strong opinion of the Council that the Code be revised to allow for a more specific definition of the given “flagrant and intentional” requisites for a major violation as well as their relationship to minor and intermediate violations.

#### *Dissenting Opinion*

It is of the dissenting opinion that the Elections Review Board (ERB) made an erroneous mistake in classifying the violation as a major violation. The ERB brought forth two primary reasons for the classification.

Firstly, the ERB used Title V.d., Section 126 definition in which a major violation can be considered “A number of repeated intermediate violations (no less than three) may also be considered a major violation”. However, three separate violations did not occur. There was a violation of the number of signs and the size of the second size being above the allowed limits (Advisory Opinion 22-04). The ERB incorrectly counted the second violation as two separate violations as it is written both in the code and once in Advisory Opinion 22-04. It is unreasonable to classify this as two separate violations when the Advisory Opinion is meant to be a clarification and overruling of the original code. Therefore, only 2 violations occurred. Hence, it is inappropriate and clearly erroneous to classify this as a major violation by this reasoning.

Secondly, the ERB claims that the use of the second sign and the size of the sign could be determined to be “flagrant” and therefore classified it as a major violation. The word “flagrant” is not defined in the code and is left up to interpretation. However, there is no reasonable application of the word to the violation that the respondent committed. The physical space on the sign used to display the philanthropy and the respondent's name was a very small portion of

the sign material. Additionally, the sign was only used at a relatively small gathering of philanthropy supporters (30 persons) while most signs are displayed in front of thousands daily at the union. Although a violation did occur, it cannot be reasonably concluded that this violation garnered any significant unfair competitive advantage in the campaign and the word “flagrant” is inappropriately applied.

Therefore, by the nature of multiple clear mistakes in the reasoning of the ERB, it is of the dissenting opinion that the ERB’s application of the code was clearly erroneous and their ruling should therefore be overturned, and the violation should be reclassified.

Drafted By: ASB Judicial Council Member Robert Hughes on behalf of the dissenting opinion

*Conclusion*

The Council found in a 4 -1 vote that, given the arguments and facts presented in the case, the Appellant did violate Title V.c, Section 120, Subsection D, Subsection G, and the Advisory Opinion 22-04 as claimed by the ASB Attorney General’s Office. Consequently, the decision made by the Deputy Attorney General of Elections and the Elections Review Board to fine the the Appellant \$100 was upheld.

Drafted by: Acting ASB Judicial Chair August Boyd on behalf of the ASB Judicial Council