



## Decision Rationale

*Sarah Doty v. ASB Attorney General's Office*

April 4, 2019

### Overview

On April 4, 2019, the ASB Judicial Council convened to hear an election violation appeal brought forth by ASB Vice President candidate Sarah Doty (hereinafter referred to as the "Appellant") against the ASB Attorney General's Office. The Appellant's appeal was on the grounds that the Appellant's initial disqualification for an alleged campaign finance violation had been erroneous. The Appellant believed she did indeed follow campaign rules and that the Appellant's due process rights were violated.

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 reviewed the following evidence provided to arrive at its unanimous decision: 1) written complaint of the Appellant; 2) testimony of the Appellant; 3) testimony of the ASB Attorney General Office's Representative; 4) testimony of the interim ASB Attorney General; and, 5) the ASB Code and Constitution during the April 4, 2019 appeals hearing.

### Rulings

*The ASB Judicial Council ruled unanimously with definite and firm conviction that a mistake had occurred. The Council deemed the decision of the interim Attorney General and the Elections Review Board to find the Appellant in violation of the ASB Code and Constitution to be clearly erroneous and thus invalidated. The Council deemed the decision of the interim Attorney General to disqualify the candidate to be clearly erroneous and thus invalidated. Additionally, the Council ruled that the Appellant was not provided an equal opportunity to campaign on April 4, 2019 because of this erroneous process and thus requested the ASB Attorney General's Office to re-hold the ASB Vice President runoff race in the spirit of free and fair elections. Lastly, the Council requested the interim Attorney General and the Deputy Attorney General for Elections, who served as the ASB Attorney General Office's Representative during the appeals hearing, recuse themselves from the race in question solely because of their participation in the appeals process.*

### Findings

1. The initial decision to find the Appellant in violation of Title V, Section 116, Subsection E was clearly erroneous and thus invalidated.
2. The process utilized by the interim Attorney General and Elections Review Board was inconsistent with due process protections afforded in Title V, Section 119, Subsections B, D, and K, as well as recent election violation practices, and was clearly erroneous and thus invalidated.
3. The erroneous process and decision caused the Appellant to lose an equal opportunity to campaign on April 4, 2019.

## **Finding 1: The Initial Violation was Erroneous**

### *Relevant Sections of the ASB Code and Constitution:*

#### Title V, Section 116, Subsection D:

“At the time the candidate is certified, the certifying officials thereof shall issue three (3) expense forms on which the candidates shall state campaigning expenditures and the nature thereof, and to which they shall attach all receipts necessary for the justification of expenses, and the candidate shall certify vouchers and file them in the receptacle in the ASB office provided for such purpose. One (1) expense form shall be filed between 1:00 p.m. and 4:00 p.m. on the Monday immediately preceding the election, and, if necessary due to a run-off election, one (1) expense form shall be filed by 5:00 p.m. on the day of the run-off elections.”

#### Title V, Section 116, Subsection E:

“Failure of a candidate to make a required report to the Deputy Attorney General of Elections on the prescribed date and time shall result in disqualification, unless in a hearing by the Elections Review Board, it is determined to have been excusable due to unforeseeable and extremely mitigating circumstances. The Elections Review Board shall have the power to hear evidence presented by the candidate regarding the accuracy or timing of the required report. Should the candidate be found guilty of not turning in a voucher at the prescribed date and time by the Deputy Attorney General of Elections and this failure was not the result of unforeseeable and extremely mitigating circumstances, this shall be considered flagrant and intentional violation of these election laws resulting in the candidate’s disqualification.”

### *Facts and Judicial Council Opinion:*

The Appellant appealed the decisions of the interim ASB Attorney General and ASB Elections Review Board on the grounds that the Appellant had indeed followed campaign rules and that the Appellant’s due process had been violated.

During the hearing, the ASB Attorney General Office’s Representative (hereinafter referred to as “the ASB Representative”) claimed that the Appellant was initially found by the interim Attorney General and then by the Elections Review Board to be in violation of Title V, Section 116, Subsection E, Rules Regarding Expenditures. The ASB Representative stated that “we want it to be known that we disqualified Sarah... as a result of her spending funds that were not listed in her expense voucher.” The Representative then expressed to the Council, “We do want it to be known that new facts have come to light that expense forms can be turned in by 5:00PM on the day of the runoff... We received her expense voucher... Tuesday before 4:00PM that did not include expenses included today.”

Furthermore, the interim Attorney General said during the hearing that the Appellant had, “brought it to light that she spent some money that wasn’t on her runoff expense form,” sometime in the morning of April 4, 2019. The interim Attorney General then reported she told the Appellant, “Let me do a little further research before I give you a final decision on what has to happen.” The interim Attorney General then stated, “I called her and I let her know that as of right now... having new expenses would be a disqualification. I took it upon myself to let her know that. I sent her an email... in writing of what I said... Then I had an emergency meeting with the Election Review Board.” Finally, the interim Attorney General said, “They [Elections Review Board] looked at it [the ASB Code and Constitution] and upheld my decision.”

The Council established that the Appellant was in a runoff election. Therefore, the Council established that according to Title V, Section 116, Subsection D, the Appellant should have been afforded the

opportunity to file an additional expense form by 5:00PM on April 4, 2019 – the day of the runoff election. The Council determined the Appellant was erroneously found in violation by the interim Attorney General and that the decision was then erroneously upheld by the Elections Review Board. The Appellant’s disqualification occurred prior to 5:00PM on April 4, 2019 – the time in which the additional runoff expense form was to be due. The Council determined there was no way for the Appellant to turn in an expense voucher on Tuesday, April 2, 2019 that reflected expenses related to the runoff portion of the election, as the Representative had claimed violated the ASB Code and Constitution, because the Appellant had no way to predict by 4:00PM on Tuesday, April 2, 2019 that the Appellant would even be in a runoff election. The initial primary election results were announced after 8:00PM on Tuesday, April 2, 2019. Lastly, the ASB Representative’s concession that “new information came to light,” which suggested the Appellant was allowed to spend money during the runoff election, indicated to the Council that the ASB Representative had admitted the ASB Attorney General’s Office was aware during the hearing that it had erred in its decisions.

The Council found, given the facts and arguments presented in the case, that the Appellant did not violate Title V, Section 116, Subsection D as claimed by the ASB Attorney General’s Office and therefore the interim Attorney General and the Elections Review Board did not have adequate reason to initially disqualify the Appellant. The Council had further concerns regarding the process, which if properly executed could have possibly prevented the issue above.

## **Finding 2: The Process Afforded to Appellant was Erroneous**

### *Relevant Sections of the ASB Code and Constitution:*

#### Article X, Section 4, Due Process:

“Excluding violations of elections law, which shall be under the sole jurisdiction of the Elections Commission and the ASB Judicial Council, no student shall be held to answer for a violation of the ASB Code or Constitution unless on a presentment of an indictment; nor shall any student be subject for the same offense to be twice put in jeopardy; nor shall be compelled in any case to be a witness against him/herself; nor be deprived of liberty or property without due process of law.”

#### Title V, Section 119, Subsection B:

“Notice shall comprise informing all parties involved of the time, date, and place of the hearing. All parties concerned shall be advised as to the nature of the charges levied against them and specific grounds thereof, and shall be provided with a copy of the complaint filed.”

#### Title V, Section 119, Subsection D:

“No violation shall be heard by the Elections Review Board unless in the physical presence of the complainant listed on the violation form. If the complainant was not a witness to the alleged violation, a witness must be produced for testimony and questioning.”

#### Title V, Section 119, Subsection J:

“Proceedings of the Elections Review Board on said cases of disqualifications shall not be made public until the full range of appeals has been waived or exhausted. If said hearings result in the disqualification of a candidate before a primary or run-off election, his or her name shall be removed from the ballot.”

#### Title V, Section 119, Subsection K:

“In all cases, all parties shall be presumed innocent of the charges levied against them, until a hearing is held and the Elections Review Board finds the party to be guilty. On appeal to the Associate Student Body Judicial Council, the facts shall be taken as decided at the Elections Review Board hearing and only the legal issues of intent, interpretation or other related legal issues shall be in question. Appeal of any hearing shall be the responsibility of the candidate and said appeal must be filed with the Associated Student Body Judicial Council in writing within twenty-four (24) hours of written notification of the findings to the parties involved.”

#### Title V, Section 116, Subsection E:

“Failure of a candidate to make a required report to the Deputy Attorney General of Elections on the prescribed date and time shall result in disqualification, unless in a hearing by the Elections Review Board, it is determined to have been excusable due to unforeseeable and extremely mitigating circumstances. The Elections Review Board shall have the power to hear evidence presented by the candidate regarding the accuracy or timing of the required report. Should the candidate be found guilty of not turning in a voucher at the prescribed date and time by the Deputy Attorney General of Elections and this failure was not the result of unforeseeable and extremely mitigating circumstances, this shall be considered flagrant and intentional violation of these election laws resulting in the candidate’s disqualification.”

### *Facts and Judicial Council Opinion:*

According to all parties involved, the Appellant’s initial disqualification was triggered when the Appellant asked the interim Attorney General a question on the morning of April 4, 2019 regarding expenses related to flyers that were incurred between the primary election and the runoff election. As noted in Title

V, Section 116, Subsection D, the Appellant was required to turn in additional runoff expense reports by 5:00PM on April 4, 2019. After telling the Appellant that she would do further research on the matter, the interim Attorney General unilaterally determined the Appellant had violated the ASB Code and Constitution and notified the Appellant via email at 12:38PM on April 4, 2019 that “you are, at this point, disqualified. At this time, the Election Review Board is having an emergency meeting to discuss whether or not they will uphold this decision.” The Appellant was not asked to attend the emergency meeting, was not made aware of its time, date, or location, and was thus unable to provide a defense to either the interim Attorney General or the Elections Review Board. The Appellant stated she asked a simple question to gain clarification and then was subsequently informed that her question triggered a disqualification. Following the Election Review Board’s emergency meeting where they upheld the interim Attorney General’s decision, the interim Attorney General emailed the Appellant, “The Elections Review has upheld the decision of disqualification. We reviewed Title V, Subtitle C, Section 116, Subsection E. It is your right to appeal the decision.”

The Representative and interim Attorney General both stated during the hearing that the interim Attorney General made her initial unilateral decision based off Title V, Section 116, Subsection E, that says, “Failure of a candidate to make a required report to the Deputy Attorney General of Elections on the prescribed date and time shall result in disqualification, unless in a hearing by the Elections Review Board, it is determined to have been excusable due to unforeseeable and extremely mitigating circumstances. The Elections Review Board shall have the power to hear evidence presented by the candidate regarding the accuracy or timing of the required report.” The ASB Judicial Council interprets Title V, Section 116, Subsection E to mean that should a candidate be found in violation of this charge in a hearing of the Elections Review Board where the charged candidate is afforded the opportunity to present evidence and mitigating circumstances, only then can the Elections Review Board disqualify the candidate.

According to the Representative and interim Attorney General, the ASB Attorney General’s Office interpreted this section of the code to allow the interim Attorney General to immediately disqualify a candidate and then hold an emergency Elections Review Board meeting to uphold or reverse the decision. During the hearing there was contradiction between the interim Attorney General and the Representative as to whether or not the interim Attorney General’s decision to disqualify the Appellant was a “suggestion” to the Elections Review Board to rule on or purely a “decision” for the Elections Review Board to uphold or reverse. However, both emails to the Appellant clearly demonstrate that both the interim Attorney General and the Elections Review Board decided, not merely suggested, that the Appellant was disqualified prior to the close of polling. This is important to the ruling that the erroneous disqualification did not provide the Appellant an equal opportunity to campaign on April 4, 2019.

At no point was the candidate allowed to appear in front of the interim Attorney General or Elections Review Board to offer a defense to the alleged violation. The Council determined that both the initial disqualification and the Elections Review Board’s upholding of the disqualification violated Title V, Subtitle C, Section 116, Subsection E and Title V, Section 119, Subsection B, D, and K. Because the Appellant was not afforded an opportunity to provide a defense or mitigating circumstances, which the Elections Review Board must use to determine if “this failure was not the result of unforeseeable and extremely mitigating circumstances,” there was no way for either party to fairly rule on the issue.

Additionally, the Attorney General’s Office and the Appellant both stipulated that the Appellant was not made aware of the “time, date, and place of the hearing,” as required in Title V, Section 119, Subsection B. There was also no indication to the Council that the interim Attorney General was merely acting as a complainant to an alleged election violation in a formal Elections Review Board hearing as prescribed in Title V, Section 119, Subsection D. A complainant generally brings forth a charge for others to decide, not their decision for review. In this case, the interim Attorney General (the leader of the Elections Review Board) expressed her decision, which had already been shared with the candidate as fact, with subordinates and asked them to uphold or reverse her decision. It is important to also note the Elections Review Board decision was also categorized as an “emergency meeting” and not a hearing. Because of

this complex dynamic, the Council determined the Appellant was also likely not “presumed innocent of the charges levied against them” as required in Title V, Section 119, Subsection K during the Elections Review Board “emergency meeting.”

Concern about whether or not due process must be afforded to candidates in elections violations issues also came up in the hearing with regards to the authorities of the Attorney General’s Office. Article X, Section 4 of the ASB Constitution notes, “Excluding violations of elections law, which shall be under the sole jurisdiction of the Elections Commission and the ASB Judicial Council, no student shall be held to answer for a violation of the ASB Code or Constitution unless on a presentment of an indictment...” The ASB Judicial Council does not interpret this section to permit a lack of due process in elections violations cases. Instead, the Council makes this interpretation because this section concedes that the handling of elections violations are the sole jurisdiction of the Elections Commission and the ASB Judicial Council. As the supreme judicial body of the ASB, with supreme power over the Elections Review Board and/or Elections Commission, the ASB Judicial Council rules that due process – the right for a charged candidate to respond to such charges – must be afforded to a candidate in all election violation cases, given that the ASB Code and Constitution affords fragments of due process to charged candidates throughout Title V, Sections 116 and 119.

Lastly, the Council determined that the fact that the Appellant was not provided an opportunity to make a defense in this specific case was inconsistent with the recent election violation hearing processes. For example, the Appellant was subjected to an election violation hearing on April 2, 2019 and was afforded the opportunity to meet with the Elections Review Board to provide a defense and/or mitigating circumstances for the alleged violations. In that specific instance, the standard process known to a reasonable ASB candidate and/or campaign staff was correctly followed.

### **Finding 3: Appellant Lost an Equal Opportunity to Campaign Due of Errors**

#### *Relevant Sections of the ASB Code and Constitution:*

Title V, Section 119, Subsection J:

“Proceedings of the Elections Review Board on said cases of disqualifications shall not be made public until the full range of appeals has been waived or exhausted. If said hearings result in the disqualification of a candidate before a primary or run-off election, his or her name shall be removed from the ballot.”

#### *Facts and Judicial Council Opinion:*

The Council determined that because the erroneous disqualification process occurred during the polling period on April 4, 2019, as opposed to occurring following the end of the polling period, the Appellant was not afforded an equal opportunity to campaign during the day of April 4, 2019 given the uncertainty of her status created by the situation. The Appellant was told twice before the end of polling and the appeals hearing that she was indeed disqualified, while her name still remained on the ballot. The Council found that this adversely affected the Appellant.

Additionally, evidence presented at the hearing suggested that the current ASB President, who the Appellant reported has a direct nexus to and active role within the campaign of the Appellant's opponent, was copied on the original email from the interim Attorney General to the Appellant notifying the Appellant of the initial disqualification. Though it was determined the interim Attorney General only did this to report up her chain of command within the executive branch on the situation, and not evidence of nefarious intent was found, the Council determined that informing an active member of the opponent's campaign team of the Appellant's initial disqualification violated Title V, Section 119, Subsection J, which states states, “Proceedings of the Elections Review Board on said cases of disqualifications shall not be made public until the full range of appeals has been waived or exhausted.” The sharing of this private information, though unintentional, provided an unfair advantage to the Appellant's opponent and could have affected the integrity of voting on April 4, 2019.

The purpose of the ASB Judicial Council is to serve as the ultimate authority for interpretation of the ASB Code and Constitution. This rationale and the authorities granted to the Council demonstrates this. Furthermore, an additional purpose of an independent judiciary, the ASB Judicial Council, is to rule on complex and ambiguous issues that writers of the ASB Code and Constitution may not have originally foreseen, such as this unprecedented issue. Given the unprecedented nature of this case and the large impact the errors may have had on the integrity of the voting process on April 4, 2019, the Council issued a binding request to the ASB Attorney General's Office to re-hold the ASB Vice President runoff race in the spirit of hosting free and fair elections at the University of Mississippi.

Lastly, Council issued a binding request that the interim Attorney General and Deputy Attorney General for Elections be recused from the election in question because they were directly involved in the appeals process. This was not a punitive measure.

*Drafted By: ASB Judicial Chair Alex Crouch on behalf of the ASB Judicial Council*