



Decision Rationale

Jack Jones v. ASB Department of Justice

March 26, 2024

Overview

On March 26, 2024 the ASB Judicial Council convened to hear an election violation appeal brought forth by the ASB Attorney General against ASB Vice-Presidential candidate Jack Jones and his campaign team (hereafter referred to as the “Appellant”). The Appellant’s appeal was on the grounds that the Appellant’s sanctioning to disqualification by the Election Review Board (ERB) for the violation of Title V.c § 121(C) (hereafter referred to as the “violation”) of the ASB Code and Constitution was: 1) the result of meaningful procedural irregularities, 2) lacking relevant new evidence that was not submitted to the ERB, 3) the result of a conflict of interest or bias on behalf of the ERB, and 4) too harsh of a sanction given the nature of the offense.

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.

ASB Judicial Council reviewed the following evidence provided to arrive at its unanimous decision: 1) testimony of the Appellant; 2) testimony of the ASB Attorney General; 3) testimony of five witnesses of the Appellant, 4) further evidence provided by the Appellant; 5) evidence provided by the ASB Attorney General; and 6) the ASB Code and Constitution during the March 21, 2024 appeal hearing.

Ruling

The UJC determined that the Appellant’s argument that new evidence that was unable to be reasonably heard during the initial hearing was relevant to this case and was exacerbated by procedural irregularities during the initial ERB hearing, denying the Appellant a reasonable and fair process. Considering the new evidence that was unavailable to the ERB, the UJC determined that the ERB decision that the issue in question, detailed below, could be considered as an example of “incentivization” under Title V.c § 121(C) was clearly erroneous. As such, the decision was overturned and the Appellant was restored to candidacy in the run-off election for the office of ASB Vice-President.

The ASB Judicial Council and its Chair recommend that the Department of Justice and the Election Review Board 1) reconsider the use of precedent in their proceedings, 2) attempt to codify a minimum length of time between notification and the hearing on Election Day, and 3) be careful to address future cases that may be similar to this instance as separate entities.

Findings

Relevant Sections of ASB Code and Constitution:

Title V.c § 121(C):

C) Any attempt by a candidate, campaign representative, or organization to coerce, bribe, incentivize, intimidate, or force a person to vote or campaign in any form, shall result in the candidate's immediate disqualification.

Title V.d § 126(D):

D) The decision of the Elections Review Board/Attorney General shall be upheld by the ASB Judicial Council unless the ASB Judicial Council finds the decision was clearly erroneous. Under this standard, the ASB Judicial Council must have a definite and firm conviction that a mistake has been committed.

Facts and Judicial Council Opinion:

Prior to addressing the Council's analysis, it is important to give a context of the additional evidence considered, primarily the witness testimony. Witness names will remain anonymous, but the following brief descriptors of their role in this case are listed here: the former campaign manager of the Appellant, two members of the Delta Gamma sorority's Executive Board, two individuals that had been (but had concluded at the time of this hearing) candidates for other ASB Executive Officer positions in this election cycle.

The facts of the case are as follows. The Appellant's former campaign manager, a member of the Delta Gamma (DG) sorority, was consulted by chapter leadership regarding the idea of a "student government" point available for members that were involved on campus. According to the cross-corroborated testimony of the witnesses only available in this appeal, this conversation occurred as a phone call from one member of chapter leadership to the Appellant's campaign manager at the time. Advanced notice of the call was not provided to the Appellant's campaign manager, and the call, according to witness testimony from the individual who called the Appellant's campaign manager, was made with the intent of determining whether or not a past discussion from that evening's chapter meeting could constitute an elections violation that could result in sanctioning for the wide variety of candidates that were members of the Delta Gamma chapter. The caller further testified that she was unaware of the Appellant's campaign manager's involvement in any ASB campaign for this election cycle, including the campaign of the Appellant, and rather decided to call them based on a vague knowledge of their past involvement with the ASB Department of Justice in past election cycles.

In addition, the Appellant was clear to mention that he had not campaigned in the DG sorority house, had not himself or through a representative campaigned in any DG-affiliated group chat, and was actively discouraged by his former campaign manager to worry about campaigning with DG, as certain members of their executive board publicly supported another candidate for ASB Vice-President. This was corroborated by the testimony of witnesses within DG leadership.

Finally, according to testimony from several different witnesses, the proposed “student government” point for the Delta Gamma sorority was never implemented. Points that are available for the chapter to earn are posted on Flare so that evidence can be submitted. Not only was this point never available on Flare, witness testimony from the Appellant’s hearing indicated that another point regarding participation in the Ole Miss Big Event that was proposed in the same chapter meeting on March 25, 2024 was already available on Flare on election day (March 26, 2024). This, paired with the fact that witnesses at chapter left with the knowledge that the proposed point was subject to further discussion is an important piece of the Council’s decision.

In the case of the violation in this case, the UJC began by determining whether the Appellant had grounds for an appeal. The testimony of five individuals in this case was the key determinant for considering the Appellant’s case. All of these witnesses were, in the opinion of the Council, truthfully unable to attend and testify in the initial ERB hearing, thus granting the Council jurisdiction to consider their testimony alongside the facts of the case and the ERB’s decision-making process in nullifying their decision. The availability of this new and previously unavailable evidence was also exacerbated by significant procedural irregularities. These procedural irregularities were the following: 1) the role of past precedent is unclear and was misrepresented in the Appellant’s hearing, 2) the Appellant initially was told one name of his defense counsel on the phone with AG Davis, which was changed when he received official notice of the violation, and 3) the Appellant received the incorrect ERB violation form, receiving another candidate’s form rather than his own. This mistake was not resolved for an hour and nineteen minutes and, at the time that it was resolved, there were less than four hours prior to his scheduled ERB hearing. Other procedural irregularities were also cited by the impartial ASB advising team during the UJC’s deliberation process that will not be discussed here, but also factored into the Council’s decision.

After unanimously determining that the Appellant had sufficient grounds for an appeal, the Council considered the decision-making of the ERB in their initial hearing. Their argument was clear. First, the Appellant’s campaign manager at the time of the violation was considered to be a “campaign representative.” Second, the text message considered as evidence by the ERB was sufficient to reflect that campaign representative’s attempt to “coerce, bribe, incentivize, intimidate, or force a person to vote or campaign in any form.” So, since both of those conditions were met, the ERB had no option but to administer the sanction mandated in Title V.c § 121(C), “immediate disqualification.”

The Council agreed with the ERB on the first point, that the Appellant’s campaign manager (a fact that was freely admitted by the Appellant) was a “campaign representative.” Though the Appellant’s argument that “campaign representative” is never defined in the ASB Code and Constitution was compelling and an area for future code rewriting that should be considered by the Department of Justice and the ASB Senate Committee on Governmental Operations, the

Council determined that the campaign manager could be clearly and reasonably considered as a campaign representative under the spirit of Title V of the ASB Code and Constitution.

The second point of the ERB's argument is where the Council found clearly erroneous decision-making. In an argument bolstered by additional witness testimony, the Council addressed this point first, that the evidence suggested a violation of the "incentivization" clause of Title V.c § 121(C). First, the Council determined its interpretation of the word "attempt" in that clause. After some discussion, and supported by this Council's decision in *Lees v. ASB DOJ*, "attempt" as it is used in this section of the Code requires an intentional action on the part of the candidate or campaign representative that is being accused of violating Title V.c § 121(C). In this case, the Council found that, based on the additional witness testimony, the statements of the Appellant's campaign manager implied through the text evidence available to the ERB were made in an advisory capacity regarding a decision that was already made by the DG Executive Board. There is evidence to support the fact that the Appellant's campaign manager was not contacted until hours after the chapter meeting where the point was concluded, and that the campaign manager – though a member of the DG sorority – was not present at the chapter meeting.

There was also a complicating factor addressed by the witness that sent the text that served as the ERB's evidence, that in her call with the Appellant's campaign manager, she expressed concern that her actions during the earlier DG chapter meeting could have resulted in sanctioning for other DG members that were running for various Senate seats and ASB Exec positions. Through this perspective, the Council was able to reinterpret various parts of the text from suggestions to get around the ASB Code and Constitution's election rules to retroactive considerations that were relevant to the witness understanding the scope of her already considered actions.

Additionally, and possibly more importantly, the Council put great stock in the fact that the DG chapter was not under the impression that a point could be earned by voting in spring elections. The Council made this determination based on: 1) the clear, verbal disagreement between a DG candidate and chapter leadership immediately after the point was proposed at the DG chapter meeting, 2) the verbal agreement at the chapter meeting between those two parties that the matter would be further discussed later, 3) what would be considered by the DG executive board to count for the point was never clearly stated, and 4) that by all relevant testimony, the point itself was never available on Flare or any other official platform to be earned. Since the point was not available, nor was it reasonably expected to be available by chapter members that witnessed the disagreement in the 3/25 chapter meeting, the Council determined that the proposal of this point did not meet the standard of incentivization defined in Title V.c § 121(C).

As a result of both the conception of "attempt" as requiring initiating action to be taken by the relevant entity, and the fact that the proposed "student government" point was not ultimately available to DG chapter members, the Council determined that the second piece of the ERB's argument was not met. As such, the conclusion – that "immediate disqualification" must be imposed – did not follow. The ERB decision was overturned as clearly erroneous. The Council urges the ERB in future cycles to more carefully follow set procedural rules and clarify what the Council and its Chair have found to be a confusing and obfuscated relationship between decision-making based on precedent. In the Council's opinion, if precedent is to be legitimately considered as a way to determine the appropriate sanctioning in a particular case, it ought to be derived from a past written decision rather than the institutional memory of certain members on a

hearing. Standardizing this process to ensure fair hearings for all candidates subject to the ERB's jurisdiction should be a top priority for reforms following this election cycle.

Drafted By: ASB Judicial Chair Harrison Stewart on behalf of the ASB Judicial Council