



## **Decision Rationale**

*Jackson Scruggs v. ASB Department of Justice (2)*

March 27, 2024

### **Overview**

On March 27, 2024 the ASB Judicial Council convened to hear an election violation appeal brought forth by the ASB Attorney General against ASB Presidential candidate Jackson Scruggs and his campaign team (hereafter referred to as the “Appellant”). The Appellant’s appeal was on the grounds that the Appellant’s sanctioning to a fine of \$120 by the Election Review Board (ERB) for the combined violation of Title V.c § 121 (P) and Title V.c § 121 (N) of the ASB Code and Constitution (hereafter referred to as the “violation”) was: 1) had its outcome affected by a procedural irregularity, 2) had its outcome affected as the result of a conflict of interest or bias on behalf of the ERB, and 3) 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 an ASB Department of Justice (DOJ) representative that served on the initial ERB hearing; 3) evidence provided by the Appellant; 3) evidence provided by the ASB DOJ; 4) the ASB Code and Constitution; and 5) the Spring 2024 ASB Elections Official Packet during the March 27, 2024 appeal hearing.

### **Ruling**

The violation determined by the ERB was in relation to the presence of a campaign sign at the Appellant’s fraternity house, Sigma Chi, during a party that occurred on Saturday, March 23, 2024. The ERB and DOJ alleged that the presence of this sign was a violation of the hours set for public campaigning and fell under the restricted areas for campaigning, forming the basis of the DOJ’s argument that this instance was an “intentional and flagrant” major violation of Title V’s election rules. The ERB’s decision and sanction was upheld by the Council, as it was impossible to point to a “clearly erroneous” decision of the ERB, the high bar established for the UJC’s power to overrule decisions in Title V.d § 126(d).

The Council agreed with the sign as a violation of the times set for public campaigning, but it was not convinced by the sections of the Code that the DOJ used to argue that public campaigning was stated to only be permissible on the Union Plaza. As such, the ASB Judicial Council and its Chair do caution the Department of Justice and the Election Review Board to consider setting clearer expectations for campaigning in residence halls such as fraternity and sorority houses to minimize similar future violations. Too much of the argument of the DOJ in this case was dependent on broad provisions such as the reliance on the Attorney General's discretion.

### **Findings**

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

Title V.c § 120(A):

A) "Campaigning" shall be defined as any act by a candidate or their representatives intended to present that person to the general public as a candidate.

Title V.c § 120(B):

B) The "general public" shall be defined as two or more persons.

Title V.c § 120(E):

E) "Public campaigning" shall be defined as the public use of campus for campaigning.

Title V.c § 120(J):

J) A "campus residence hall" shall be defined as any building on the university grounds in which persons live. This term shall include university-operated dormitories and Greek houses, but shall exclude common meeting places, such as chapter meetings.

Title V.c § 121(N):

N) Campaigners at the Union shall be limited to the location(s) determined by the Department of Justice at any given period of time during the established times.

Title V.c § 121(P):

P) Campaigning in residence halls will be permitted in accordance with guidelines agreed upon by the Department of Justice and Student Housing.

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.

*Relevant Sections of the “Spring 2024 ASB Elections OFFICIAL PACKET”*

1) “This opinion shall have the effect of Law as stated in Title (I), § 107(B)(5) of the University of Mississippi Associated Student Body Code and is thereby subject to appeal and review by the Associated Student Body Judicial Council.”

2) “2024 Spring ASB Election Schedule:

**Friday, March 22, 2024**

4:00 p.m. - Public Campaigning Pauses, all campaign belongings must be removed

**Monday, March 25, 2024**

10:00 a.m. - Public Campaigning Resumes, candidates may bring campaign belongings

5:00 p.m. - Expense voucher (Google form) due”

*Facts and Judicial Council Opinion:*

The facts of the case are as follows. The Appellant placed a campaign sign supporting his campaign for ASB President at a Sigma Chi party that occurred during the day on Saturday, March 23, 2024. During his testimony, the Appellant acknowledged that multiple individuals at the party were not members of the Sigma Chi Fraternity. The ERB determined in its initial hearing that this action on the part of the Appellant constituted a major violation of Title V of the ASB Code and Constitution for a violation of the provisions regarding “public campaigning.”

In regards to considering the Appellant’s potential grounds for appeal, the Council first considered his argument that there were procedural irregularities that affected the outcome of the case. The procedural irregularity that was identified by the Appellant, that an ERB member was recused in the initial hearing of this case, was found by the Council to indeed constitute a procedural error, but not one that rose to the level of affecting the outcome of the case. This is because the initial decision was as the result of a 7-0 outcome. One individual’s vote would not have changed the outcome of a unanimous decision, as recognized by the Council. Still, though, the ERB should be more careful in the future to follow the protocol for recusal more closely or update it in accordance with how recusal typically occurs.

The second ground for appeal, that of bias or a conflict of interest, was also not found to be sufficiently supported by the Appellant. The Appellant took issue with the presence of AG Davis during the hearing, though, her role was to serve as the impartial chair of the ERB, a non-voting position that only guided the deliberation process, rather than participating actively in it. This was a fact confirmed by the impartial ASB advising team present in both proceedings.

In the opinion of the Council, the last reason for appeal identified by the respondent gave the UJC sufficient reason to closely evaluate the decision made by the ERB in this case to determine whether it was clearly erroneous or not.

The Council agreed with the logic of the Appellant that there was not a clearly defined section of the Code that dealt with the presence of campaign signs at on-campus residence halls past the

section that left it up to the “guidelines agreed upon by the Department of Justice and Student Housing” outlined in Title V.c § 121(P). Since the DOJ testified in this case that Student Housing had not issued any guidelines regarding campaigning, the Council was forced to rely on guidelines that could reasonably be determined to be disseminated by the Department of Justice.

The first issue that the Council considered was whether the Elections Packet provided to all candidates fell into this category. In a unanimous decision, the Council determined that it did meet the qualifications to both: 1) be considered by the UJC (see the first cited quote in the above section) and 2) be considered as a set of “guidelines agreed upon by the Department of Justice.” As such, the document was considered, with particular attention of the Council drawn to the schedule for elections at the end of the document, with the relevant sections included as well above. The Elections Packet is clear that “public campaigning” was to pause on Friday, March 23, 2024 at 4 o’clock p.m. The period of “public campaigning” was then to resume on Monday, March 25, 2024 at 10:00 o’clock a.m. Since the incident investigated by the ERB occurred on Saturday, March 24, 2024 – clearly within the window when “public campaigning was paused” – the Council turned its attention to some relevant decisions outlined in Title V.c § 120 to determine whether the ERB was correct in assessing the violation to the Appellant.

First, the Council agreed with the interpretation of the ERB that the Sigma Chi fraternity house fell under the definition of a “campus residence hall” outlined by Title V.c § 120(J), with the secondary consequence that it is a clear and reasonable determination of this Council that the Sigma Chi fraternity house is part of the Ole Miss campus. Building on this determination, the Council then considered Title V.c § 120(B), the definition of the “general public” in the context of elections, and Title V.c § 120(E), the definition of “public campaigning.” Since there were more than two individuals present that were not affiliated with the Sigma Chi Fraternity, this party was determined to be a gathering of the “general public” by the Council. As such, since there was a campaign sign in the presence of the “general public” at the party, and the location of the party was determined to be part of “campus,” this incident was considered by the Council to be an event that falls under the definition of “public campaigning.”

The Council could not definitely determine whether or not there was any clearly erroneous decision-making done during the sanctioning process, so this issue was not under the jurisdiction of the Council to overturn. Thus, there was no clearly erroneous decision made by the ERB in its determination of a violation or its sanctioning in this case. Their decision is upheld by the ASB Judicial Council.

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