



Decision Rationale

Jackson Scruggs v. ASB Department of Justice

March 21, 2024

Overview

On March 21, 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 day’s delay of both in-person and social media campaigning by the Election Review Board (ERB) for the combined violation of Title II.a § 108(C)(2b) and Title VI § 102(C) (hereafter referred to as the “first violation”) and the violation of Title V.c § 121 (B) (hereafter referred to as the “second violation”) of the ASB Code and Constitution was: 1) the result of a conflict of interest or bias on behalf of the ERB, 2) too harsh of a sanction given the nature of the offense, and 3) lacking relevant new evidence that was not submitted to the ERB.

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) evidence provided by the Appellant; 3) evidence provided by the ASB Attorney General; 4) the ASB Code and Constitution during the March 21, 2024 appeal hearing.

Ruling

The first violation determined by the ERB was in relation to the failure of the Appellant’s campaign manager, Cole Reeves, to resign from his position on the ASB Senate Committee on Governmental Operations under the required deadline provided by the Attorney General at the time, Helen Phillips. The second violation was due to a tweet posted by a staff member on the Ole Miss Football Recruiting team and reposted by Ole Miss Head Football Coach Lane Kiffin, reaching an audience of 20,000 on the platform. Several hours transpired from the post itself to the Appellant asking his friend to take the post down, forming the basis of the DOJ’s argument that this instance was an “intentional and flagrant” major violation of Title V’s election rules.

Determining that the ERB had overstepped its jurisdictional bounds set by the ASB Code and Constitution, the ASB Judicial Council ruled unanimously that the Appellant was not responsible for the first violation determined by the Election Review Board, nullifying its sanction. For the second violation, the ERB's decision and sanction was upheld, 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 ASB Judicial Council and its Chair do caution the Department of Justice and the Election Review Board to more carefully consider and argue the evidence in future cases to clearly demarcate the reasons why a violation has (1) occurred and (2) fits into the category of a minor, intermediate, or major violation as opposed to the other two violation types.

Findings

Relevant Sections of ASB Code and Constitution:

Title II.a § 108(C)(2b):

C) The Senate shall have the following Standing Committees:

2) The Committee on Governmental Operations, which shall have jurisdiction over all matters relating to the ASB Code and Constitution, governmental structure, and elections

b) Members of the Committee on Governmental Operations are prohibited from campaigning for or endorsing any candidate. In the event that a member of the Committee on Governmental Operations chooses to campaign for or endorse any candidate, they must immediately resign their position within the Committee

Title V.c § 120 (F):

F) "Coordinated campaigning" shall be defined as actions taken by an external party with the knowledge and consent of a candidate and/or their representatives.

Title V.c § 121 (B):

B) Coordinated campaigning or other support, including donations of money or campaign materials, for candidates by groups not comprised exclusively of University of Mississippi students is prohibited.

1) Students may not publicly campaign for a candidate while acting on behalf of a University department or academic school.

Title V.c § 121 (R):

R) Candidates shall be responsible for the nature and legality of their campaign, materials, and demonstrations.

Title V.d § 125(D)(a):

A) When an alleged violation of the above campaign rules or an order of the Attorney General is brought before the Elections Review Board, the Elections Review Board may, depending on the evidence produced, hold a hearing to determine whether a violation occurred.

Title V.d § 125(D)(b):

B) The Elections Review Board, in compliance with Title I, Section 107, shall consist of the Deputy Attorney General of Elections, the Deputy Attorney General of the Code & Page 96 Edition: 12062023 Constitution, the ten (10) Elections Commissioners, and the Chair and Vice Chair of the Senate Committee on Governmental Operations. All members of the Elections Review Board are voting members, unless serving as Prosecuting or Defensive Counsel.

1) The Elections Review Board shall have the following duties and responsibilities:

a) To levy fines or dismiss with or without hearings or to call a hearing regarding complaints filed against candidates, depending on the evidence produced.

b) To choose to hold hearings as determined necessary on any violations of this Title and to dismiss charges or fine or disqualify the candidate.

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.

Title VI § 102(C):

C) No member of the ASB shall participate in any activity which would place that person in a position where there may be a conflict between a private interest and an interest of the ASB.

Facts and Judicial Council Opinion:

In its argument regarding the first violation, the DOJ cited Title VI § 102 (C) paired with Title II(a) § 108 (C) (2b) to argue that the failure of the Appellant's campaign manager to resign from the ASB Senate's Committee on Governmental Operations was an intermediate violation of the rules of campaigning. The first issue that the Council deliberated on was whether the violation was under the purview of the Elections Review Board. Due to the reasoning outlined below, the

Council determined that there was not appropriate evidence cited of a violation within the jurisdiction of the ERB. It is possible that this behavior may constitute a violation of the ASB Code of Ethics outlined in Title VI.

Whether the failure of the Appellant's campaign manager to resign by the designated day constitutes a violation of the ASB's Code of Ethics ultimately was not an issue that was relevant to be considered by the Election Review Board, or, by extension, the Judicial Council in this proceeding. The ERB's authority is governed by Title V(d) § 125 (A) and (B) (1b). (A) states that the ERB's jurisdiction includes both "an alleged violation of the above campaign rules or an order of the Attorney General" and (B)(1b) lists one of its two duties as "to choose to hold hearings as determined necessary on any violations of this Title and to dismiss charges or fine or disqualify the candidate." In both cases, violations are of Title V, and the ERB failed to cite a violation of this Title in their determination of responsibility for the first violation.

While it is possible that this incident could be conceived as a violation of "an order of the Attorney General," which would allow the ERB to determine that a violation had occurred, a combination of both the new evidence provided by the Appellant and the failure of the DOJ to make this argument was sufficient for the Council to disregard this option. The Appellant demonstrated in his newly submitted evidence that he had not contacted his campaign manager until after the resignation deadline set by AG Phillips. The DOJ relied on the dubious argument that both the Appellant and his campaign manager "should have known" that the campaign manager needed to resign rather than citing an applicable AG order or Title V violation.

The ERB, therefore, in a 5-0 opinion of the ASB Judicial Council, clearly and erroneously was mistaken in determining that a violation under their jurisdiction had occurred. As such, the violation was overturned and the sanction of one day's probation on social media campaigning was nullified.

In the case of the second violation, the Appellant cited what he considered to be bias on the part of the ERB and a sanction that was too harsh based on the violation committed. The Judicial Council first considered this allegation of bias, largely centered around the personal and professional relationship between interim Attorney General Sydni Davis and the currently resigned Attorney General Helen Phillips. Based on the evidence of bias that the respondent submitted and the testimony of the DOJ, in addition to the fact that AG Davis was not a voting member of the ERB in this case, the Council determined that may exist against the Appellant was not clear enough to warrant a nullification based on bias.

The Council further agreed with the fact that a violation of the elections rules had been committed in this case under the provisions of Title V.c § 120 (F), Title V.c § 121 (B), and Title V.c § 121 (R). The tweet from the account of a University staff member was a violation of the above clauses, especially considering precedent, but the Judicial Council urges the DOJ and the ASB Senate to rework the definition of "coordinated campaigning" under Title V.c § 120 (F). Based on a pure reading of the letter of the Code, it is unclear whether actions of non-student actors without the pre-planning or consent of the candidate, if their impact was minimized nearly immediately, would be a violation under this provision. Precedent on how the ERB has handled past cases and the general provision of Title V.c § 121 (R) allowed the Council to determine, though, that any error of interpretation of the Code in this case did not rise to the level of "clear and erroneous."

The Council also agrees with the Appellant, however, that the current state of the rules and how this case was prosecuted leaves the door open for candidates to anonymously attain celebrity endorsement for another candidate and have them receive sanctioning as a result.

The argument that the DOJ made, that the passage of several hours between the Appellant's acknowledgment of seeing the Twitter post and its repost in question demonstrated intentional acceptance to leave the post up was acceptable to the Council. The Appellant's GroupMe message two and a half hours before he requested the post to be taken down that acknowledged that the post might be a violation of campaign rules, while not as strong in the opinion of the Council as the ERB considered it, did reflect a tacit intention to leave the post and Coach Kiffin's retweet up until the ERB acted on it. The Council also agreed with the opinion of the DOJ, that the tweet's exposure to twenty thousand viewers on Twitter had a significant impact on the campaign process.

The Council also found parts of the Appellant's argument persuasive, however, namely that he was not able to text his friend to have the unintentional post removed until 4:54 p.m. on the date that it was posted due to the demands of campaigning on the Union Plaza, class from 2:30 until 3:45 and the need to eat after class concluded. To the Council, these additional obligations cast doubt on the "intentional and flagrant" nature of the violation which is prescribed to major violations in Title V.d § 127(A)(3). To the Council, it was possible that the full breadth of the evidence considered was more accurately attributable to an intermediate violation, which, according to Title V.d § 127(A)(2) are clear violations of the Code about which a "flagrant or intentional" basis may not be determinable. While the Council disagrees with the ERB's decision in this matter, a 5-0 decision of the Council found that no part of their decision-making process, based on the evidence available in the appeal, rose to the level of a "clear and erroneous" mistake that would predicate a nullification of the decision.

The ASB Judicial Chair recommends to the appropriate decision-making bodies that the UJC be given greater latitude in the appeal of ERB decisions in future election cycles and urges the ERB to more carefully consider the evidence in future cases in determining whether violations of the elections have occurred, which type of violation they are most applicable to, and what appropriate sanctioning looks like given precedent and other relevant factors.

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