

# **ASASU Supreme Court**

## ***20-1: Elgamal v. Elections Department***

Chief Justice Lombard, Majority Opinion of the Court  
Joined by Vice Chief Justice Bhat and Associate Justices Hedges  
Associate Justice Gordon, Dissenting Opinion of the Court  
Associate Justice Eli Shenker abstained from this decision

No Oral Argument was requested  
Decision Filed on March 26<sup>th</sup>, 2021

## A. Fact Summary

On March 16<sup>th</sup>, 2021, Arjun Rondla filed a complaint against Aino Elgamal and Miguel Ortega to the Elections Department. The Elections Department decided to issue a Level 2 Violation of six (6) violation points to Elgamal and Ortega for their independent violations of Chapter 6-2.2 of the Elections Code for using “Arizona State University copyrighted images on any campaign materials (including online materials)”. The Elections Department sent out their decision via email on March 17<sup>th</sup>, Elgamal and Ortega jointly appealed the decision of the Elections Department to the Supreme Court within one (1) business day.

## B. Jurisdiction

According to Chapter 11-1 of the USG Election Code - “A candidate has the right to appeal a decision by the Elections Department to the Supreme Court via the appropriate online form. The candidate has one (1) business day after a decision is issued to appeal.” The conditions Chapter 11-1 were met. Per Rule 10 of the Undergraduate Student Government Supreme Court Rules, the appeal must include a “copy of the Election’s Department decision and the complaint which was originally filed,” and must challenge the “Election Code as applied, or the Election Code’s Constitutionality.” The Rule 10 conditions were met. Furthermore, according to Chapter 11-2 of the USG Elections Code - “The final decision regarding the disqualification of a candidate or interpretation of the USG Elections Code is reserved for the Supreme Court.” Therefore, with the conditions met, the Court has jurisdiction in this case.

## C. Holding of the Court

The Court seeks to address the two main issues presented by this case:

1. Did Aino Elgamal and Miguel Ortega violate Chapter 6-2.2 of the Election Code by using ASU copyrighted images on various campaign materials?

2. Did said violations of Chapter 6-2.2 of Elections Code cause injury to any other senatorial candidates?

Ainor Elgamal and Miguel Oretga utilized an ASU logo on various posts to their individual senatorial campaign pages on Instagram. The use of the intertwined AS image on an Instagram post, which is officially registered to Arizona State University, is located on the ASU Branding Guide (<https://brandguide.asu.edu/>). Chapter 6-2.2 of the Elections Code says “there shall be no use of USG and/or Arizona State University copyrighted images on any campaign materials (including online materials)”. In addition, the Holding of the Court in *Fees v. Palmer* (2019) states “a flagrant or intentional use of ASU copyrighted materials for the purpose of campaigning is unacceptable for any USG campaigns”. The use of this logo has not been disputed by any of the senate campaigns or the Elections Department. As a result, the Court finds that a flagrant use of an ASU copyrighted logo was utilized by both the Elgamal and Ortega campaigns.

The punishment for any violations of Chapter 6 of the Election Code is a Level Two (2) Violation, incurring six (6) points to any candidate at fault. In order to issue any violations, an injury to the Plaintiff must be substantiated. Candidates Elgamal and Ortega were informed of Chapter 6-2.2 at a mandatory candidate meeting and each signed a document saying they would not violate any provisions of the Elections Code, including Chapter 6-2.2. Their subsequent use of the ASU logo on social media posts violated the signed contract and subsequently gave Elgamal and Ortega an unfair advantage over other candidates who did not violate 6-2.2 of the Elections Code. The Court finds that Ainor Elgamal and Miguel Ortega both clearly violated Chapter 6.2-2 of the Elections Code and all other senatorial candidates were injured by this violation. Therefore, the Court upholds the Elections Department decision to award Level Two (2) Violations, equaling six (6) violation points, to both Elgamal and Ortega.

This case also illuminated some significant issues within the Elections Department and the Elections Code. First, the Court has some significant concerns in regards to the notification of the Respondents, Elgamal and Ortega. Chapter 8-5 of the Elections Code stipulates “notice of complaint and subsequent hearing information, if requested by the Petitioner, shall be given to all

parties within one (1) business day of the complaint being filed”. While the Elections Department decided the matter within twenty-four (24) hours of the complaint being filed, the Elections Department did not notify senatorial candidates Elgamal and Ortega of the complaints filed against them until the decision was rendered on March 17, 2021. As a result, the candidates had no notice of a complaint filed against them, as well as no opportunity to dispute or defend any claims against them to the Elections Department. This is a significant problem, as all parties implicated in a complaint should have the notice and opportunity to contest the complaint. Since the Elections Department did not properly notify Aino Elgamal and Miguel Ortega of a complaint filed as stipulated by Chapter 8-5 of the Elections Code, the court awards three (3) violation points to the Tempe Elections Department.

In addition, the Court struggled to address the issue of injury within this case due to the insignificant evidence and discussion of the topic by all parties involved. All candidates involved in this matter (Arjun Rondla, Aino Elgamal, and Miguel) mentioned very little on the subject of injury and the Elections Department only dedicated a sentence to the matter. As a result, the Court recommends some actions to more clearly demonstrate injury or lack thereof on several levels. These recommendations serve to improve the functioning not only of the Elections Department, but also the Supreme Court.

First, the Court recommends that the Elections Department request Plaintiffs to illustrate substantiated injury on the Elections Complaint Form. In this way, the Plaintiff’s believed injury is undeniably stated for the Elections Department and Supreme Court. This is especially important for matters decided without hearings or oral arguments. This also allows the Court to see what injury the Plaintiff mentioned to the Elections Department since the Court does not have access to or record of any hearing. If the Plaintiff only specified injury during said hearing, then the Court will have no knowledge of the statement. As a result, specifying injury in the Elections Complaint Form prevents any misunderstandings on both the Elections Department and Supreme Court levels.

The Court is also recommending two changes to the Elections Code to make the assessment of injury more uniform for the Elections Department and Supreme Court. First, the Elections Code should define the term injury. Chapter 13 of the Elections Code provides a

glossary of terms. Adding a definition of injury to this glossary only serves to provide a transparent standard for the assessment of injury. Additionally, the Court recommends that the Elections Code include a standard to which the Plaintiff needs to prove injury in a complaint. Similar to the previous revision, this allows for a more uniform standard of review for all cases at the Elections Department and Supreme Court level. The clear definition and standard will leave less room for interpretation, forcing Plaintiff's to prove their injury with more than just an argument. As a result, this will make the injury assessment process less influenced by opinions and dictated instead by the standard set in law.

Therefore the Court orders:

1. The Elections Department must uphold the decision to award the campaign of Ainor Elgamal and the campaign of Miguel Ortega six (6) violation points each for their Level Two (2) Violations of Chapter 6-2.2 of the Elections Code.
2. The Elections Department abides by Chapter 8-5 of the Election Code, which stipulates proper notification of cases to all parties when a complaint is filed.
3. The Elections Department's failure to abide by Chapter 8-5 of the Elections Code results in the issuance of three (3) violation points to the Tempe Elections Department.
4. The Elections Department should include a section on the Elections Department Complaint Form requesting Plaintiffs to specify and/or quantify sustained injury.
5. The Elections Code should be amended to define injury.
6. The Elections Code should define to what extent a Plaintiff needs to prove injury in complaints.

***SIGNED BY THE ASASU SUPREME COURT***

***MARCH 26<sup>th</sup>, 2021 at 9:33***

A handwritten signature in black ink, appearing to read 'A. Lombard'.

Chief Justice Amanda Lombard

A handwritten signature in brown ink, appearing to read 'Shakki P. Bhat'.

Vice Chief Justice Shakki Bhat

A handwritten signature in black ink, appearing to read 'Madison Hedges'.

Associate Justice Madison Hedges

**JUSTICE GORDON, dissenting.**

In agreeing with my fellow Justices, I too have found that a violation of Elections Code 6-2.2 occurred. Undoubtedly, candidates Elgamal and Ortega used an Arizona State University (ASU) branded logo. Yet, this case is not only about a 6-2.2 violation but about whether a violation occurred with a specified "injury."

Per Elections Code 8-3, the original complaint "shall specify in what way the Plaintiff was allegedly injured." In the original complaint, Plaintiff Rondla did not specify such an injury. Thus, per 8-4, the duty of finding injury falls to the Elections Department. In releasing their decision to candidates Elgamal and Ortega, the Department sided with Plaintiff Rondla. This decision presumes to find a violation of 6-2.2 and an injury borne of said violation, according to a preponderance of evidence standard, per 8-6.

Plaintiff Rondla merely proved, to the aforementioned standard, that a violation of 6-2.2 occurred by providing the Elections Department and this Court screenshots of the use of the ASU branded logo by candidates Elgamal and Ortega. But, the preponderance of evidence of an injury is absent. Plaintiff Rondla's complaint only featured proof of a 6-2.2 violation but no statement proving injury to that standard needed by 8-6. In rendering its decision, the Elections Department provided no additional documentation or description, aside from noting an "implied understanding" that some injury occurred, to necessarily prove injury either. Therefore, the question of this Court is not whether a violation solely occurred, but whether the mere breach of an Elections Code provision constitutes an injury that would fulfill the standard set out by 8-6.

Seeing that the question to this Court has evolved, then imagine a case where a Level 3 Violation of the Elections Code is found, such as a violation of spending limits. This violation would merit severe consequences if the Elections Department, as they did in this case, affirmed a violation, but did not provide necessary evidence of an injury. Imagine further that the spending violation was only for \$1; such an overage would be a violation under the strictest standard, but it would hardly purchase a game-changing amount of campaign materials. Thus, was an injury done for a \$1 overage versus an overage of a more significant sum?

If violations, such as using a version of an ASU branded logo hidden within a special section of the branding guide (as in this case), constitute an injury in every such case, then why

provision a preponderance of evidence standard to prove injury in 8-3 and 8-4? Why provision 8-3 and 8-4 at all? The simple answer, in the course of elections, violations come in all shapes and sizes. Not all violations are maligned attempts to gain an advantage, and even if they are, some proof of injury must still be provided. Plaintiff Rondla and the Elections Department erred in not providing this Court a preponderance of evidence for more than a non-injurious violation.

Injury is either a low- or high-bar. If low, any such violation may hold water as an injury. If high, sections 8-3 and 8-4 could be more readily satisfied. The truth of the matter, simple accidents or even overt attempts to sway an election, may not result in earth-shattering consequences. They may not result in injury. And, though they may still result in injury, this does not absolve the original Plaintiff or the Elections Department of proving, via a preponderance of evidence, that an injury occurred. That evidence must be tendered, regardless of how high the burden to do so is.

The absence of the 8-6 standard and the failure to adhere to a high-bar injury test as laid out by 8-3 and 8-4 should free the candidates, Elgamal and Ortega, of this complaint.

As further support, the Elections Department's failure to provide notification to candidates Elgamal and Ortega of a complaint filed against them before a decision, per 8-5, is evidentiary of this argument for dismissal. While the breach of 8-5 violated the Elections Code, it constituted no injury as candidates Elgamal and Ortega still maintained the ability to appeal. Thus, not all violations incur injuries.

The Elections Code lacks specificity and it is this Court's responsibility to define the ambiguities and set forth a better path to dispute resolution. Candidates Elgamal and Ortega should benefit from this more flexible interpretation of the Court's responsibility. Unfortunately, the interpretation laid out in the majority opinion fails to provide candidates Elgamal and Ortega their relief. While candidates Elgamal and Ortega irrefutably violated 6-2.2 of the Elections Code, it should not be used as justification to support this incomplete claim on its merits. A burden of a preponderance of evidence needed to be met. It was not. The candidates, Elgamal and Ortega, truly suffer the greatest injury as a result.



Associate Justice Chase Gordon