

ASASU Supreme Court

Jester v. Fees

Chief Justice Walther, Opinion of the Court

Joined by Justice Haji, Justice Lombard, Justice Murphy

Justice Rios recused himself from this case

Oral Arguments heard on April 24th, 2020

Decision Filed on April 25th, 2020

A. Fact Summary

On April 21st, 2020 Natalie Jester, campaign manager of The Palmer Executive Ticket, submitted a complaint to the Elections Department, alleging multiple violations of the Elections Code during the run-off election. The Elections Department ruled on the complaint, issuing three (3) Level 1 infractions to the Fees Executive Ticket. This constituted nine (9) infraction points against the Fees Executive Ticket, which would have led to an immediate disqualification of the ticket. As the disqualification of a candidate can only be done by the Supreme Court, no candidate appealed this decision, but the Supreme Court has final say over this decision.

B. Jurisdiction

Per Chapter 11-2 of the USG Election Code, “The final decisions regarding the disqualification of a candidate or interpretation of the USG Elections Code is reserved for the Supreme Court.” Therefore, we have jurisdiction over this matter.

C. Holding of The Court

There are 5 violations proposed by the Elections Department:

1. Elections Code 5-3.1, campaigning by candidate Jack Fuller within a classroom
2. Elections Code 5-3.1, subsection A, promotion of USG election by non candidate or staff
3. Elections Code 6-4.1, Non-campaign staff proposing damaging actions against another tickets campaign
4. Elections Code 6-4.1, damage of campaign or non-campaign materials on social media
5. Elections Code 6-4.1, malicious slander by an endorser of the Fees Ticket

The Elections Department issued infractions on Violations 2, 3, and 4. This resulted in three (3) Level 1 violations, accruing 9 total infraction points against Fees.

The Supreme Court has final jurisdiction over all matters related to the disqualification of any candidates for any USG office. The Court sides with the Election Department that the Fees ticket should be disqualified from the race, however, the Court disagreed on which violations occurred.

The Supreme Court is awarding two (2) Level 1 violations for Violations 1 and 2, and one (1) Level 3 violation for Violation 4. Each Level 1 violation accrues three (3) infraction points and each Level 3 violation accrues nine (9) infraction points. This yields fifteen (15) infraction points to the Fees Executive Ticket.

Violation 1 refers to the campaigning of Jack Fuller in one of his classes prior to the class beginning. In the video submitted to the Court as evidence, Jack Fuller clearly understands that his actions may be in violation of the Elections Code, as he says “I think technically it is illegal [against the Elections Code] to campaign in class so I should probably be careful” but then continues to state the exact voting url and encourages his classmates to “[send] that link to all your friends and say “vote Max Fees.”” While campaigning within classroom settings is not inherently against the election code as outlined in 5-3.1, Fuller failed to obtain the pre-requisite permission from his course professor as outlined in 5-3.1a as well as not filing proper paperwork necessary to be allowed to promote USG elections within a classroom setting. Though evidence was given that the TA had brought up the conversation, it was still a flagrant violation of the Elections Code to promote the elections within the classroom environment without the proper approval. This violation was recognized by Fuller prior to him committing the violation, and yet, he still proceeded to violate the Elections Code. This is a Level 1 infraction of failing to abide by the provisions in campaign conduct, accruing three (3) infraction points.

Violation 2 refers to another violation of 5-3.1 as a non-candidate or campaign staff member, Will Owens, sent a message with a USG voting link and a message to vote for Max Fees. Similar to the situation listed above, campaign conduct within a classroom is very closely restricted. Only registered campaign staff and candidates are allowed to promote USG elections material within a classroom setting, and with prior authorization by the professor and Elections Commissioner per 5-3.1a. Will Owens was neither a candidate or registered campaign staff member, nor did he get any approval by the professor prior to making his message public in the Zoom chat. As the campaigning in classrooms guidelines were explicitly laid out in the group chat “Max for Prez,” which Owens is a member of, the Fees Ticket assumed negligence by not ensuring that all members of the group chat understood the rules. While Fees asserts that Owens was unaware of these rules, it is Fees’ own negligence that caused this to happen.

The Court still believes that the Executive Tickets are not beholden to the actions of each and every one of their supporters. However, in situations where a supporter has frequent and direct communication with the Executive Ticket members and staff, there is a different level of accountability to ensure they are aware of all of the rules in the Elections Code. This is also a Level 1 Infraction of failing to abide by the provisions in campaign conduct, accruing three (3) more infraction points.

Violation 4 refers to a violation of 6-4.1 of the Elections Code. Through evidence submitted by both sides, it is clear that there was malicious intent and actions taken to purposefully damage Palmer campaigning on Instagram. On one specific post on Tempe Barstool (@tempebarstool), multiple members of Max Fees group chat “Max for Prez” decided that it would be appropriate for them to work together to comment on that post, and like them all to bring them to the top of the post. This subsequently diminished the views of comments in favor of the Palmer ticket. One member, J.P Breisch, went so far as to report all favorable Palmer comments for spam. Due to this, the Elections Department ruled that the Fees ticket should accrue a Level 1 violation and three (3) infraction points for this violation.

However, in new evidence submitted to the court prior to oral arguments, other messages could be seen from Karston Hart and Andy Borsh, encouraging those in the chat to “drown [the Palmer ticket] out” in comments and that “Our likes are pushing our comments to the top and [Palmer] to the bottom SO fast.” These messages clearly show a malicious intent to minimize Palmer’s visibility on the Instagram post, causing injury as Barstool is a relatively large account with a significant following of ASU undergraduate students. While Instagram comments are not inherently campaign materials, provisions in 6-4.1 allow for non-campaign materials as well.

This would usually result in a Level 3 violation and immediate disqualification. However, the Elections Department believed that none of the messages given to them were from campaign staff, and therefore, a Level 1 violation was more appropriate.

However, in light of new evidence, and cross checking with the Fees Executive ticket campaign staff roster provided to the Elections Department, it has come to be known that both Karston Hart and Andy Borsh are listed as campaign staff. This constitutes a Level 3 violation of “destruction of campaign/non-campaign materials” as outlined in the Elections Code. This Level 3 infraction yields nine (9) infraction points.

The Supreme Court overturns the decision of the Elections Department on Violation 3, removing the three (3) infraction points given by this violation. Cole Macias sent a message to the “Max for Prez” group chat, asking Becca Moser, a campaign staff member, “What if we say Vote Palmer in class so it's an issue for them?” Moser responded with “Lol is it worth them possibly voting for her? But I like how you think.” While Palmer asserts that this was a violation of 6-4.1, the Court finds no evidence that any measurable action was taken on this idea, and therefore, no measurable injury could have been sustained by Palmer.

The Supreme Court holds with the Elections Department decision to dismiss Violation 5 on the grounds that it violates section 8-2, which states that complaints must be filed within one business day. As this incident was made known to Palmer on April 18th but no complaint was

filed until the 21st, there was greater than 1 business day between knowledge on alleged violation and the complaint being filed, and therefore, the Violation is dismissed.

Due to the preponderance of evidence provided to the Court, we hold that there is a probable injury to the Palmer ticket through the unfair campaigning tactics of the Fees Executive Ticket.

Therefore, the Court Orders:

1. The Fees Executive Ticket be given two (2) Level 1 violations and one (1) Level 3 violation, leading to 15 infraction points against their ticket.
2. The Max Fees Executive Ticket be disqualified from the Tempe Campus Executive Ticket Runoff.
3. The Injunction against the release of the Executive Ticket election results be lifted.
4. The Election results be released at the discretion of the Elections Department.

SIGNED BY THE ASASU SUPREME COURT

APRIL 24th, 2020 at 9:10 PM

Justice Rios recused himself from this case