

ASASU Supreme Court

Fees v. Palmer

Chief Justice Walther, Opinion of the Court

Joined by Associate Chief Justice Haji, Justice Lombard, Justice Rios, Justice Murphy

Oral Proceedings heard on April 15th, 2020

Decision Filed on April 16th, 2020

A. Fact Summary

On April 14, 2020, The Fees Executive Ticket filed a complaint against the Palmer Executive Ticket for violation of Chapter 6-2.2 of the Election Code for using “Arizona State University copyrighted images on campaign materials” through the re-posting of an image on their official Instagram story that contained the official University logo. This violation would be a Level 2 violation, incurring six (6) infraction points to Palmer. Later that day, the Elections Department decided to dismiss the case against Palmer as “the original post was not made by the campaign or a campaign staff member” therefore “there was not enough injury sustained by other tickets and candidates to warrant this going into a hearing process.” Following the April 14th decision, Fees appealed this decision to the Supreme Court.

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.” 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, the Court has jurisdiction in this case.

C. Holding of the Court

Fees presented two main issues to the Court:

1. The Palmer campaign violated Chapter 6-2.2 of the Election Code by using ASU copyrighted images on their campaign material
2. These violations caused injury to the Fees and Leveque ticket

The Court sides with Palmer in this case. After hearing oral arguments, the court remains unconvinced that Palmer did not violate the election code. However, the Court believes that the injury sustained by the Fees and Leveque tickets were so insignificant as to warrant a decision in Palmer's favor.

Through evidence submitted to the Court prior to the hearing, it was shown that all 3 of the Executive Tickets had, at some point during the campaigning timeframe, violated Chapter 6-2.2 of the Election Code. The Court holds that infractions of the election code are inherently inappropriate, and does not dismiss that both the Palmer and Fees ticket were in violation of this section at some point during their campaign.

The Court agrees with Fees in the respect that the actions of Palmer were an infraction, however, it also sides with Palmer in the respect that the injuries sustained by the other campaigns were so insignificant as to not warrant infraction points being granted in this case. Fees presented the argument that these infractions should be implemented "across the board" against any campaign which violated this section of the Elections Code. However, the Court sees that a blanket punishment for violation of this section would lead to a dismissal of all 3 Executive Tickets, as shown through the evidence provided by the Palmer ticket.

While Amanda Andalis, Assistant Elections Commissioner for Tempe, notified the Fees campaign via email that the reposting of ASU copyrighted material was a violation, that notification failed to be provided to all Executive Tickets, therefore leading to miscommunication about the meaning of Chapter 6-2.2 of the Elections Code.

Material created by individuals outside of the campaign or campaign staff cannot be fairly tied back to the campaign itself. However, the reposting of such material is a direct action, and can be seen to be an endorsement by the campaign. The Court is not ruling in Palmer's favor on the basis that an infraction did not occur, but on the basis that that injury sustained was not enough to warrant punishment. The Court believes that in Palmer's case, the infraction did not

create significant injury and therefore did not warrant infraction points. Fees failed to present significant injury to his campaign, which is a prerequisite for a complaint, as shown in the initial decision of the Elections Department.

The Court believes that as available campaigning materials become available through the advancement of technology, the Elections Code must change in order to have a clear and detailed outline of what is and is not considered campaign material. The image reposted by the Palmer campaign was not created for the intent of associating the campaign with the ASU copyrighted material, and was reposted out of goodwill and without malice. Thus, the Court finds that this reposted material does not constitute a substantial violation of Chapter 6-2.2 of the Elections Code.

However, the Court does not believe that this ruling should be used as precedent for future violations of the Elections Code, as flagrant or intentional use of ASU copyrighted materials for the purpose of campaigning is unacceptable for any USG campaigns.

While the Court holds that Palmer did violate the Elections Code, there is no suitable punishment laid out for a minor infraction that sustained insignificant injury to the other campaigns.

Therefore the Court orders:

1. The decision of the Elections Department be upheld.
2. The language of the Elections Code be updated to more clearly and adequately define campaign materials and guidelines.

SIGNED BY THE ASASU SUPREME COURT

APRIL 15th, 2020 at 7:12 PM