

2023 ASI APPELLATE COUNCIL DECISION

By BILL MACRISS, chair

Members Present:

BILL MACRISS, chair

JASON PRITCHARD, faculty representative

JESSICA GONZALES, student representative

SUSAN JUAREZ, student representative

KYLE LANSING, student representative

Members Absent:

none

MAY 30, 2023

ELECTION COMPLAINT COMMITTEE (ECC) CASE DECISION 2-2023 APPEAL

Statement of the appeal

Nikita Akhumov's list of violations by the Election Complaint Committee (ECC) and Violations of conduct by witnesses to be considered for appeal by the Appellate Council including the following:

1. Ignoring, mischaracterizing and contradicting witness testimony;
2. Pressuring witness, interrupting witness and speaking without recognition of the chair;
3. Violating its own precedent and definition of burden of proof;
4. Violating the right to campaign and free speech as defined by the elections code and University policy;
5. Hindrance by untruthful testimony and a premeditated collective of candidates supported by new evidence.

Summary of the documentary evidence received in support of the appeal request

1. Mr. Akhumov believes the ECC violated Appendix I: Fair Hearing Plan, Part D, Deliberations, Section 3, Contents of the Decision
2. Mr. Akhumov believes the ECC violated Appendix I: Fair Hearing Plan, Part B, Presentation of Evidence, Section 4, Examination of Witness (The Chair will preside over the hearings, but must allow the members their right to question and raise points in the meeting)
3. Mr. Akhumov believes the ECC violated Appendix I: Fair Hearing Plan, Part C, Remedies/Burden of Proof, subsection Burden of Proof
4. Mr. Akhumov believes the ECC violated the right to campaigning, as defined by the ASCSUS Elections Code, page 4, as well as the Time, Place and Manner rights protected under the First Amendment
5. Mr. Akhumov believes that according to ASCSUS Election Code, P. 6 (definition of "Preponderance of Evidence") he is afforded the chance to provide evidence collected after the Election Complaint Committee case decision to support his claims.

Statement of the remedy requested

The remedy Mr. Akhumov would like to propose is the reinstatement and his position as ASI Director of SSIS and the overturning of the decision by the 2023 ECC Case 2. Mr. Akhumov also proposes that protective action for him be taken against Robert Gonzalez, Veronica Boulos, Isabel Jimenez, and Nataly Andrade-Dominguez for violation of student code of conduct section 1.2 Grounds for Student Discipline, Subsection 19 violation of student conduct procedures Sections A, B, C and the ECC Hearing. Also, a recommendation to the ASI Board of Directors to add to the Fair Hearing Plan a section to allow the Chair to review the evidence and the relevance of witnesses before allowing them to be distributed to the committee and present at the hearing, respectively.

Grounds for Appeal

Pursuant to ASI Elections Code, Article XI, Section D, the Appellate Council may only overturn the original decision of the Elections Complaint Committee due to a violation of applicable rules or laws governing the elections (the Fair Hearing Plan, the Elections Code, and the ASI BYLAWS). The Appellate Council is not authorized to re-hear complaints from the Elections Complaint Committee.

Summary and reasoning of the Appellate Council deliberation to determine whether there are grounds for appeal and the Council has jurisdiction to hear the complaint

The following summary reflects the outcome of the deliberations of the appellate council as they reviewed the appeal:

- In regard to item 1 (ignoring, mischaracterizing and contradicting witness testimony), the Appellate Council unanimously agreed the ECC acted within all applicable rules or laws governing the elections (The Fair Hearing Plan, the Elections Code, and the ASI BYLAWS) as it weighed the significance and consistency of testimony during Case 2-2023.
- In regard to item 2 (pressuring witness, interrupting witness and speaking without recognition of the chair), the Council unanimously affirmed the ECC followed the guidelines governing the examination of witnesses. As pointed out in Mr. Akhumov's appeal request, the Chair will preside over the hearings, but must allow the members their right to question and raise points in the meeting. Per Appendix I: Fair Hearing Plan, Part B, Presentation of Evidence, Section 4, Examination of Witness, the Appellate Council agreed members of the ECC were afforded their right to question witnesses and acted within the guidelines of the Fair Hearing Plan.
- In regard to item 3 (violating its own precedent and definition of burden of proof), the Council unanimously affirmed the ECC followed the guidelines under which they are to determine burden of proof. Per Appendix I: Fair Hearing Plan, Part C, Remedies/Burden of Proof, Burden of Proof, the preponderance of evidence in the case of election complaints, "shall mean the evidence shows that it was more likely than not a that a violation occurred". Specifically, the case cited by Mr. Akhumov (ECC Decision 1) is immaterial and lacked sufficient case similarities, therefore the Appellate Council unanimously affirmed that there were no grounds to hear an appeal on appellant's claims.
- In regard to item 4 (violating the right to campaign and free speech as defined by the elections code and University policy), the Council unanimously agreed the ECC acted within

its jurisdiction. The ECC did not rule against Mr. Akhumov's right to campaign, rather that his campaign volunteers interfered with another student's campaign (ASCSUS Election Code Article V; Fair Campaigning and Publicity, Part H; Campaign Interference Prohibited). Mr. Akhumov also argues University policy regarding Time, Place and Manner should be applied in consideration, but the Appellate Council can only overturn the original decision of the Elections Complaint Committee due to a violation of applicable rules or laws governing the elections (the Fair Hearing Plan, the Elections Code, and the ASI BYLAWS). Therefore the Appellate Council unanimously found that there were no grounds to appeal since the ECC acted within its purview in ruling on this point.

- In regard to item 5 (hindrance by untruthful testimony and a premeditated collective of candidates supported by new evidence), the Appellate Council unanimously agreed that, per ASCSUS Election Code, Article X, D: Grounds for Appeal, the Council is not authorized to re-hear complaints from the ECC. Therefore, the Appellate Council unanimously agreed there were no grounds to appeal.

Conclusion as to whether the appealing party met the burden of proof

It is the finding of the Appellate Council that there was no violation of applicable rules or laws governing the elections (the Fair Hearing Plan, the Elections Code, and the ASI BYLAWS) by the ECC. As such, the Council has determined the appeal cannot be heard since there were no valid grounds for appeal stated by appellant Akhumov.

Additionally, as explained in ASCSUS Elections Code Article XI: Appeal of Elections Complaint Committee Action, Section E, 1, since the appeal may only be filed against the Elections Complaint Committee (which means the Committee will act as the defendant), it is the unanimous decision of the Appellate Council that there are no grounds for this Council to take action against individuals who participated in the original election complaint, as requested by Mr. Akhumov in his statement of remedy.