

2023 ASI ELECTION COMPLAINT COMMITTEE DECISION

By NICKI CROLY, chair

Members Present:

NICKI CROLY, Vice President for Student Affairs designee (chair)

JESSICA MORENO, Faculty Senate designee

MAI LAM, student representative

ANTHONY PEREZ, student representative

Members Absent:

SALMA MOHEY EL-MOUSLY, student representative

May 10, 2023

Akhumov, Nikita vs Jimenez, Isabella

I. Statement of the complaint

Isabella Jimenez brought charges against Nikita Akhumov stating that he and his volunteers participated in harassment and campaign interference. Specifically,

Article V: Fair Campaigning and Publicity

F. Areas in Which Campaigning is Prohibited

2. “Harassment, as defined within this section, is prohibited. This includes verbal, written (printed or electronic) and/or physical abuse by any candidate or Interested Student.

H. Campaign Interference Prohibited

No independent candidate, Presidential Ticket, organization, Interested Student, or individual shall interfere with the campaign of another candidate. Interference includes, but is not limited to, unauthorized removal of campaign posters, banners, or other materials, or other disruption of campaign activity. Any violation of this Section may result in disqualification, unless it can be shown that the candidate, organization or Interested Student was not aware of the violation and did not condone the violation, in which case the Elections Complaint Committee will fashion an adequate remedy.

II. Summary of the testimonial and documentary evidence received at hearing in support of the complaint

Jimenez presented the Committee with testimony stating that Akhumov’s campaign interfered with hers and that her opponent was fully aware of it occurring. Jimenez shared that Busch-Estrada and Akhumov acknowledged their behavior while campaigning; Busch-Estrada apologizing for his competitiveness and Akhumov came to her after an instance of Busch-Estrada yelling “there are other candidates” and apologized for it. She states this proves they were aware of their actions. Jimenez shared she was uncomfortable with Akhumov’s volunteers setting up in the Amador quad area in all points to strategically block voters from coming to her. On the first day of campaigning, Jimenez set up away from Akhumov on the grass area where she stated Busch-Estrada would run up to potential voters as she would attempt to talk to them. On the second day, Jimenez was there first and set-up her table. Jimenez shared that voters came up to her to express their own feelings about watching her experience the interferences.

Jimenez entered into evidence into the hearing which was not relevant to the allegations and therefore was not considered by the Committee in its decision-making process.

III. Summary of the testimonial and documentary evidence received at the hearing in opposition or rebuttal to complaint

Akhumov presented the Committee with testimony stating that his volunteer, Austin Busch-Estrada, at no time interfered or yelled at potential voters “Vote for Nikita” or “there are other candidates”. There was one instance Busch-Estrada did interrupt Jimenez when speaking with a friend. He shared that Busch-Estrada did rush to constituents, sometimes faster than his opponents, but never interrupted Jimenez’s pitch. Akhumov stated he and his volunteers never surrounded the other candidates.

Akhumov entered into evidence into the hearing, which was not relevant to the allegations, and therefore was not considered by the Committee in its decision-making process.

IV. Summary of witness testimony

- a. Jimenez provided the Committee with three witnesses. The witnesses were Nataly Andrade-Dominguez, Robert Jose Gonzalez, and Veronica Bulos. Andrade-Dominguez testified to the screenshot evidence submitted by Jimenez which was not relevant to the policies alleged to have been violated in this matter and therefore was not considered by the Committee in its decision-making process. Gonzalez stated he saw Busch-Estrada run up to two students that Jimenez was speaking to and interrupted. He stated in a conversation with Bulos and Akhumov, in which Bulos inquired if Akhumov thought it was right what Busch-Estrada did in interrupting Jimenez. He claims Akhumov said “yes, that was wrong. I will talk to him.” He states Hunter (witness for Akhumov) was not present during this interaction. Gonzalez stated he only saw this one interaction and Jimenez shared this same thing happened on multiple occasions each day, including after this one incident. Bulos testified that she also witnesses Jimenez to engage with two students and Busch-Estrada ran up and interrupted the conversation. Bulos stated she informed Akhumov that Busch-Estrada running up and interrupting Jimenez was not respectful and that Akhumov said he agreed and would speak with Busch-Estrada. Bulos shared she was not aware if that conversation ever took place. Bulos continued to check in with the candidates running, given her current role as the outgoing Director for the College of SSIS, and throughout the process Jimenez shared her concerns with the uncomfortable environment, feeling circled by Akhumov’s volunteers which felt intimidating, and that Jimenez believed it was impacting her success of her candidacy. Bulos stated that the engagement by Akhumov’s campaign was not based on them sharing their platform but just in yelling out things such as “vote for Nikita” or “there’s other candidates”. That all candidates are advised prior to running to stay focused on their platforms when campaigning and not pressuring students which she believed Akhumov’s campaign was more aggressive in by yelling out.
- b. Akhumov provided the Committee with four witnesses. The witnesses were Austin Busch-Estrada, Gerson Escoto, Christian Hunter and Lisette Salazar. Before his witnesses gave testimony, Akhumov began with refuting that he witnessed Busch-Estrada yell and that he apologized to Jimenez. Busch-Estrada stated the one instance of him running up and interrupting Jimenez was to speak to a student about a class they shared, not campaigning. He shared the volunteers were around the area but weren’t circling to entrap and apologized if it felt that way as it was not intentional. Busch-Estrada stated he yelled out to larger crowds, but not to smaller groups talking to a particular candidate. Akhumov said that Bulos told him that Busch-Estrada’s behavior was not acceptable and Akhumov replied he wasn’t interrupting. Busch-

Estrada stated he never interrupted, other than the one time when he came up to talk to a mutual friend, who he already knew had voted for Jimenez. Busch-Estrada said it is alleged he took a student's phone and voted from them. He stated he only assisted when asked by the student. Busch-Estrada said he talked to larger groups loudly but never yelled as he walked by for students to vote for Nikita or that there were other candidates. He then asked to speak to one more point from his written statement and shared that interruptions were done on both sides. Escoto stated he never saw Akhumov or Busch-Estrada harass anyone. Hunter stated that he was present for the interaction with Gonzalez and Bulos. He said that they both did make sure Akhumov was aware of the interruption by Busch-Estrada and were upset by it. Hunter stated that Akhumov reassured that he would go talk to Busch-Estrada. He shared that Akhumov did have a conversation with Busch-Estrada about his behavior. Akhumov denies this and said his conversation was prior to the interruption. Hunter shared he did not witness any hostility or yelling (though there was projection to get attention of folks in the area). Salazar spoke about wanted to volunteer for Akhumov but that he asked her to not given he already had so many volunteers.

In her rebuttal, Jimenez spoke of the incident with Busch-Estrada and the phone voting. She shared that she had brought two students over to her table and stated to share her campaign materials and information. Busch-Estrada walked up to the table and told the student he could navigate her through voting on her phone. He skipped all the ballots and picked Akhumov, gave a short explanation of what he did. Jimenez was unsure if the student even understood what was happening and she was unable to make her own decision. This is when she publicly stated "Austin did you just vote for her?" which they (Busch-Estrada and Akhumov) later repeated when making fun of the situation. The other student with her had voted for Jimenez. Jimenez also shared that with the one incident spoke about with the mutual friend of Busch-Estrada, when he came up and interrupted he had done so to campaign and was not aware until the interruption that the student of question had already voted for Jimenez.

In his rebuttal, Akhumov denied the phone voting situation and that Busch-Estrada was just helping the student navigate the system.

In closing, Jimenez reiterated her experience and frustration with the interference she experienced. She stated she only lost by 30 votes and that her campaign likely would have been successful with the disruptions.

In closing, Akhumov validated Jimenez's experience, however, his campaign didn't scream, interrupt, or campaign aggressively. He never was the one questioned in the testimony to be the person interfering.

V. Statement of the remedy requested

Disqualification under Article X. Remedies for Complaints, Section D

VI. Statement of the burden of proof the complaining party or parties was required to meet

Clear and convincing proof is required for the Committee to award the remedy of disqualifying a candidate. Clear and convincing evidence is defined as that which "leaves no substantial doubt as to the veracity of the claim."

VII. Conclusion as to whether the complaining party met the applicable burden of proof

The Committee found the evidence presented by Jimenez was clear and convincing because she was able to provide a preponderance of evidence to show that Akhumov's volunteer (Austin Busch-Estrada) repeatedly interrupted Jimenez's conversations with possible voters. Also, the Committee believed by admission that Akhumov was aware of the concerns around his volunteer's behavior toward other candidates and he chose to not address said behavior.

VIII. Summary and reasoning supporting the Committee's conclusion

The Committee unanimously found that the burden of proof was met by the complainant as it relates to campaign interference. According to the policy, "interference includes... disruption of campaign activity." The repetitive nature of Busch-Estrada's interactions with Jimenez as she spoke with potential voters through yelling while walking by and interrupting conversations would constitute disruption.

During these witness statements, the Committee observed multiple inconsistencies in the statements given by Akhumov and his witnesses. One notable inconsistency regarded whether or not Akhumov was aware of Busch-Estrada's behavior and acknowledgement to correct said behavior.

The Committee does not believe the interference would meet the threshold to state that the behavior was to the level of harassment. Given the regularity at which it is believed Akhumov's campaign interrupted Jimenez's and that only 33 votes separated the two candidates, it is reasonable to believe the interference could have changed the results of the election.

IX. Statement of the relief

The Committee unanimously agrees to the statement of relief as it relates to campaign interference. The Committee did not find that the behavior met the threshold of harassment. The Committee recommends disqualification as specified in Article X. Remedies for Complaints, Section D, given it was proven the candidate was aware of the violation and condoned the behavior.

According to Article X. Remedies for Complaints, Section A, the Committee further recommends revision to ASI Election Code for review of the days of campaigning (including locations, proximity, etc.). We would recommend further that there be clarity around the definition of harassment, as well as, a review of the role (if any) campaign volunteers should have.