

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

List of Violations by the ECC and Violations of Conduct by Witnesses:

(i) Ignoring; Mischaracterizing; Contradicting Witness Testimony

- (a) The ECC Violated Appendix I: Fair Hearing Plan, part D, Deliberations, Section 3, Contents of the Decision

(i) Ignoring Witness Testimony

- 1) The ECC has failed to properly and objectively analyze and produce witness testimony in the ASI Election Complaint Decision Case 2.
 - a) The 2023 ECC fails to include a vital part of Mr. Akhumov's testimony about his recollection of the only alleged incident in the ASI Election Complaint Decision Case 2 . Mr. Akhumov stated that he saw Mr. Busch-Estrada came up to them, waited until they finished voting on the phone, and waited after they finished.
 - b) The 2023 ECC fails to include a vital part of Ms. Jaminez testified that she admits that at no point has she addressed anyone about the alleged interruptions or yelling.
 - c) The 2023 ECC fails to include a vital part of Mr. Hunter's testimony that he has not witnessed any instance besides one perceived interruption(which Mr. Akhumov and Mr. Busch-Estrada explained they were not aware of an interruption and did not condone it. Explained in section "a" of this section)

(ii) Mischaracterizing Witness Testimony

- a) In Section III of the ASI Election Complaint Decision Case 2, Summary of the testimonial and documentary evidence received at the hearing in opposition or rebuttal to complaint,
 - i) The committee ruled that "Akhumov presented [...] There was one instance Busch-Estrada did interrupt Jimenez when speaking with a friend". Mr Akhumov not only stated in his opening testimony that it was perceived as an interruption,

he emphasized the second time upon a question from a committee member that it was “perceived” (Preceded by ECC Decision 2). The committee failed to properly transcribe and characterize Mr. Akhumov’s Testimony.

(iii) Contradicting Witness Testimony

- 1) In Ms. Isabelle’s Jaminez’s original complaint she contradicted herself at the hearing on multiple vital elements:
 - a) While in the ASI ECC complaint #2, Ms. Jaminez states “[o]n thursday, during the last push for votes, I was constantly cut off while talking to potential voters by Nikita’s Volunteer” in her hearing statement, Ms. Jimenez changed the statement of facts as she stated this happened throughout the day of her campaigning.
 - i) The committee at no point questioned her contradiction.
 - b) While in the ASI ECC complaint #2, Ms. Jaminez states “The both of them [Mr. Busch-Estrada and Mr. Akhumov] would directly intervene as I was talking to students, in her hearing statement she stated that it was only Mr. Busch-Estrada and the committee ruled that “He never was the one questioned in the testimony to be the person interfering” (Preceded by ECC Decision 2).
 - i) The committee at no point questioned her contradiction.
- 2) In Mr. Robert Gonzales and Ms. Veronica Bulos’s testimony they contradicted themselves at the hearing on a vital element of the ECC Decision:
 - a) Mr. Gonzales and Ms. Bulos both testified that they did not hear yelling or shouting, however, the committee stated “Bulos stated that the engagement by Akhumov’s campaign was not based on them sharing their platform but in just yelling out things such as “vote for Nikita” and “there’s other candidates” (Preceded by ECC Decision 2).
 - i) The committee at no point questioned their contradiction.

- 3) The 2023 ECC contradicts that Mr. Akhumov spoke to Mr. Busch-Estrada before his volunteer went up to Ms. Jaminez and her friends stating that he talked with Mr. Busch-Estrada before he came up to them asking Mr. Busch-Estrada not to interrupt them, while in the 2023 ECC ruling produced that he was aware and condoned the violation.

(2) Pressuring Witness; Interrupting Witness; and Speaking without Recognition of the Chair

- (a) The ECC Violated Appendix I: fair hearing plan part B entitled Presentation of evidence section 4 Examinations of Witness.
 - (i) “The Chair will preside over the hearings, but must allow the members their right to question and raise points in the meeting.”
 - 1) Mr. Akhumov presented to the committee that Mr. Hunter was sexually harassed by a member of the 2022-2023 ASI Board, to clarify that the witness is in a form of distress and that his memory is prone to take time to remember events.
 - 2) Upon Mr. Hunter’s testimony, the committee abandoned and violated the ECC Fair Hearing’s Plan to be “recognized by the chair and raise point points” in the hearing as members started interrupting Mr. Hunter’s witness testimony and each other while raising questions and points.
 - a) Mr. Hunter stated, at one point, in the ECC hearing that the environment was not “hostile” rather competitive.
 - b) When Mr. Hunter stated that the environment was competitive, Faculty Designee Jacklyn Moreno interrupted Mr. Hunter’s witness testimony stating “but just a moment ago you said that there was hostility” to which Mr. Hunter responded “apologies, I misspoke”, Ms. Moreno proceeded to mock Mr. Hunter by smirking, and mockingly repeating “oh, you misspoke”.
 - c) Mr Hunter shares that due to the committee’s unprofessional and aggressive behavior during his witness testimony, in addition to the stress from recent sexual harassment, he experienced a panic attack at which point he had to end his testimony and leave the committee room calm down and breathe.

- d) Mr. Hunter shares that the committee “coerced and brow-beat him into a statement which they had clear bias as this behavior was only expressed towards him and no other witness”
 - e) The Committee’s failure to abide by the Fair Hearing Plan caused distortion and coercion of Mr. Hunter’s Testimony which was used to issue an unfair ruling based on his witness testimony.
- 3) Mr. Hunter shared after the committee meeting that he experienced disassociation because of the trauma he experienced and the committee has not only failed to abide by the Fair Hearing Plan, they, knowing Mr. Hunter went through trauma, proceeded to pressure, interrupt, and considerably raised their tone at him.

(3) Committee Violated Their Own Precedent and Definition of Burden of Proof

(a) ECC violated Appendix I; fair hearing plan part C entitled to remedies/burden of proof. Sub Section “Burden of Proof”

(i) ECC Violated its own precedent ruling set forth by the ruling on Lillian Weese in ASI Election Complaint Decision Case 1:

- 1) “Burden of Proof” as defined by the 2023 ECC Committee stated: “The Committee did not find the evidence presented by Lillian Weese to meet the burden of clear and convincing because she was **unable to provide a preponderance of evidence other than her own testimony.**” (Preceded by ECC Decision 1)
- 2) Ms. Jamineze’s own witnesses, Mr. Gonzales and Ms. Bulous stated that they did not hear yelling from Mr. Busch-Estrada or Mr. Akhumov.
- 3) The 2023 ECC, however, ruled that Ms. Jamineze’s statement of alleged yelling was truthful even though she was unable to provide a preponderance of evidence other than her own testimony in the 2023 ECC Hearing 5-10-23.
- 4) In the 2023 ECC Hearing 5-10-23, both Mr. Gonzales and Ms. Boulus stated that they were there for a short period of time. To which Mr. Akhumov’s witnesses have testified it was around 10-15 minutes.
- 5) On the same principle, Ms. Jamineze failed to provide any preponderance of evidence in which either Mr. Akhumov or Mr.

Busch-Estrada had interrupted her, besides one alleged instance in the 2023 ECC Hearing 5-10-23.

- 6) The 2023 ECC, however, ruled that Ms. Jamineze's statement of alleged interruption was truthful, stating "[g]iven the regularity at which it is believed Akhumov's campaign interrupted Jimenez's" even though she was unable to provide a preponderance of evidence other than her own testimony in the 2023 ECC Hearing 5-10-23 (Preceded by ECC Decision 2).
- 7) Furthermore, in ASI Election Complaint Decision Case 2, "The Committee unanimously found that the burden of proof was met by the complainant as it relates to campaign interference." According to the ASI Elections Code, the committee does not have jurisdiction to define what the Burden of Proof is.
 - a) The 2023 ECC has failed to understand the concept of the Burden of Proof as stated in the ASCSUS Elections Code.
 - i) Example: Ms. Jaminez alleges that a volunteer interrupted her. The volunteer, and their witness states that this did not happen. Legally, and conditionally, the burden of proof was not met.

(4) Committee Violated Right to "Campaign" and "Free Speech" as defined by the Elections Code and University Policy

- (a) ECC Violated the right to "campaigning" as defined in the ASCSUS elections code P. 4. As well as violated the time, place, and manner rights protected under the first amendment.
 - (i) The committee ruled that Mr. Busch-Estrada allegedly interfered in Ms. Jaminze's campaign activity stating that "[t]he 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."(Preceded by ECC Decision 2).
 - (ii) The committee has failed to properly analyze the ASCUS Election Code's definition of "Campaigning" (p.4). The definition of "campaigning" shall mean distribution of printed matter (Except for editorial material in student publications such as the STATE HORNET during the campaign period), publishing paid political ads in student publications, making public speeches, displays or demonstration in support of or in opposition to any candidate or any ballot measure.

- (iii) Furthermore, according to University Policy in pursuance of the “Time, Place, Manner” policy, “While one may find certain expression or materials to be offensive or even insulting, the appropriate way to counteract such materials is through discourse, criticism, and the expression of contrary points of view” and “Any member of the campus community who finds freedom of expression insulting or posted materials to be offensive or disrespectful is encouraged to contact a responsible organizations or individuals to address their objections”
- (iv) According to Ms. Jamineze’s own testimony, when addressing alleged interruptions or yelling, she at no point let either Mr. Akhumov or Mr. Busch-Estrada, or Mr. Tyler Gardener, the ASI Elections Officer, about the alleged interruptions.
- (v) Furthermore, the evaluation of sound amplification, according to the same university policy “Time, Place, and Manner”, subsection “Sound Limits”, “ The University reserves the right to identify a maximum permissible sound level, as measured by a sound meter or otherwise determined that must be maintained (but not exceeded) for any approved event.”
- (vi) The ASCSUS Elections Code does not define or place sound limits by a “maximum permissible sound level, as measured by a sound meter or otherwise determined” meaning that the ECC has no formal jurisdiction to define or rule on any alleged amplified sound or speech, without amplified sound, as a violation.
- (vii) The jurisdiction of the committee does not extend or afford them the right to define the First Amendment or create Time, Place, and Manner if it has not been defined by University Policy or University Institutions:
- (viii) According to the precedent and legal court rulings of the First Amendment and the Time, Place, and Manner policy, individuals are afforded less rights from disruption of their speech or demonstration in a public setting, due to the fact this was not a planned event were one is formally afforded a venue by a University on which expression has the right without obstruction to be presented. Rather it was an open public space, in a public university, in which anyone in the public has a right to challenge one's ideas. Anyone has the right to speak an opposing point of view and be boisterous as there is no reason why any member of the community cannot express a counter point of views. Those who disagree are allowed to express themselves as long as they are not censoring and

obstructing one's ability to express themselves and the speaker is able to also have their say.

- 1) Examples of obstructing would be stalking, constant shut down of speech where only one speaker has the ability to express oneself but the other cannot, Destruction of Campaign materials as well as violence and intimidation to censor free speech.
 - 2) Under the First Amendment individuals it is clear with the allegations this would be considered protective speech. One's free speech cannot be favored more than the others as well as one has the right to debate and challenge ideas in any public area.
- (ix) Due to the fact the ASCSUS Elections Code does not define the manner in which one can express themselves, or the time during the campaign period during campus hours, the vagueness of the ASCSUS Election Code in this important legal area permitted by the First Amendment does not justify disqualification due to alleged interference.

(5) Committee was Hindered by Untruthful Testimony and a Premeditated Collective of Candidates as Preponderance of New Evidence will Show

- (a) According to the ASCUS election code, P. 6 definition of preponderance of evidence is "evidence presented that provides more convincing than pre-existing evidence presented in an election complaints hearing or appeal hearing." Multiple witnesses stepped forward upon the release of the Sacramento State Hornet article entitled "Elections complaints committee recommends disqualification for ASI student candidate" and the ECC decision entitled "ASI Election Complaint Decision Case 2".
- (b) The collection of evidence was pursuant to the following:
 - (i) Under California Common Law, recorded evidence, even in violation of the two-party consent state, may be allowed as a declaration against interest, an inconsistent or contemporaneous statement, a party admission or used to impeach a witness. This is the same rule as under federal law.
 - (ii) Annoying or Harassing Phone Calls - Penal Code 653 PC
 - 1) Calls or communication that use "obscene language"
 - 2) Calls or communication that involve a threat to injure the recipient, any of his family members, or his property
 - 3) Repeated calls or communication (regardless of the content)

- a) The witness who stepped forward is filing a civil restraining order against Mr Gonzales, and the amount of times she was stalked, molested, and harassed by Mr. Gonzales the evidence provided is being used as evidence she is wilfully sharing.
- (iii) According to University Policy, student conduct procedures:
 - 1) “E. Formal rules of evidence applied in courtroom proceedings do not apply in the hearing (e.g. California Evidence Code). All information that responsible persons are accustomed to rely upon in the conduct of serious affairs including hearsay is considered. Unduly repetitive information may be excluded. The Hearing Officer bases his or her decision only on the information received at the hearing.”
- (c) The preponderance of new evidence will show that the conduct of witnesses and complainant has hindered the committee from making a fair decision.
- (d) Robert Gonzales, Veronica Boulos, Isabel Jaminez, and Nataly Andrade-Dominguez violated Title 5 Article 2 Student Code of Conduct 1.2 Grounds for Student Discipline subsection 19 Violation of the student conduct procedures Sections A, B, and C.
 - A; Falsification, distortion, or misrepresentation of information related to a student discipline.
 - B: Disruption or interference with the orderly progress of a student discipline proceeding.
 - C; Initiation of a student discipline proceeding in bad faith.

Remedy:

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 Gonzales, Veronica Boulos, Isabel Jaminez, and Nataly Andrade-Dominguez for violation of the student code of conduct section 1.2 Grounds of Student Discipline, Subsection 19 violation of student conduct procedures Sections A, B, and C at 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 a witness before

allowing them to be distributed to the committee and present at the hearing, respectively.

EVIDENCE:

Witnesses: Christian Hurnendez Hunter, Austin Busch-Estrada, Joseph Sais, Jenn Galinato. Furthermore, multiple exhibits of digital evidence will be emailed to the Vice President of Student Affairs, Edward Mills, Appellate Council Chair, Bill Micriss, and ASI Executive Director Sandra Gallardo. The pdf of the appeal will also be shared with the VPSA, Appellate Council, and ASI Executive Director.