

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

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The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Maximilian Fees

Defendant(s): Arizona State University

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

David Jordan
Arizona

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

440 Other Civil Rights

VI. Cause of Action:

42 USC § 1983

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: David R. Jordan

Date: 06/20/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**
10

11 Maximilian Soza Fees,)
12 Plaintiff,)
13 v.)
14 Arizona State University, Dr. Michael)
15 Crow, President of Arizona State)
16 University, Dr. Cassandra Aska, Dean)
17 Students of Arizona State University, Dr.)
18 Ron Hicks, Senior Associate Dean of)
19 Students of Arizona State University,)
20 Elizabeth Rosenkrantz, Executive)
21 Director, Associated Students of Arizona)
State University,)
Defendants.)

No.

**VERIFIED COMPLAINT
AND APPLICATION FOR A
PRELIMINARY AND
PERMANENT INJUNCTION**

22 For his Complaint against Defendants, Plaintiff alleges the following:
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- 1 1. This is an action asserted under the Civil Rights Act of 1871, 42 U.S.C. §
2 1983, to redress the violation of the free speech rights of the Plaintiff by the
3 Defendants. Jurisdiction is appropriate pursuant to 42 U.S.C. § 1983.

4 **I. THE PARTIES**

- 5 2. Plaintiff is a student enrolled at Arizona State University (ASU).
- 6 3. Arizona State University is a public university of the State of Arizona.
- 7 4. Dr. Michael Crow is the President of ASU. He is sued for prospective
8 injunctive relief in his official capacity.
- 9 5. Dr. Cassandra Aska is the Dean of Students of Arizona State University.
10 She is sued for prospective injunctive relief in her official capacity.
- 11 6. Dr. Ronald Hicks is a Senior Associate Dean of Students of Arizona State
12 University. He is sued for prospective injunctive relief in his official
13 capacity.
- 14 7. Elizabeth Rosenkrantz is the Executive Director of the Associated Students
15 of Arizona State University (ASASU). She is sued for prospective
16 injunctive relief in her official capacity.
- 17 8. Associated Students of Arizona State University (ASASU) is the student
18 government of ASU.
- 19 9. Defendant ASU, as a public institution of higher education, is responsible
20 for enforcing the Arizona Board of Regents policies and procedures.
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1 10. Defendants may regulate speech through the Code by imposing reasonable
2 restrictions of time, place and manner so long as such regulation does not
3 violate the First Amendment.

4 11. Defendants provide professional administrative oversight to ASASU, and,
5 among other things, have a responsibility to ensure that student First
6 Amendment Rights are not violated.

7 12. To that end, the Arizona Board of Regents has required compliance with
8 the First Amendment as follows. In Board Policy 1-124(A), the ABOR
9 states: “The primary function of Arizona’s public universities is to promote
10 the discovery, improvement, transmission and dissemination of knowledge
11 through research, teaching, discussion and debate. The universities must
12 strive to ensure the fullest degree of intellectual freedom and free
13 expression. It is not the proper role of a university to shield individuals
14 from speech protected by the First Amendment, including ideas and
15 opinions that may be unwelcome, disagreeable or deeply offensive.”
16
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19 **II. THE ELECTION**

20 13. Plaintiff was a candidate for president of the ASASU Undergraduate
21 Student Government for the Tempe campus (“ASASU USG Tempe”).
22

23 14. ASASU adopted the *Elections Code of ASU* for student elections (the
24 “Code”). This Code governs undergraduate student government elections.
25
26

1 15. Plaintiff was the successful candidate for president in the ASASU USG
2 Tempe election held on April 21, 2020. He won 344 more votes than his
3 opponent and achieved nearly a 10% margin of victory.

4 16. On election day, Natalie Jester, campaign manager for Plaintiff's opponent,
5 filed a complaint against Plaintiff alleging violations of the Code.
6

7 17. The complaint eventually was sustained by the ASASU Supreme Court,
8 and the Supreme Court disqualified Plaintiff. Plaintiff is bringing this
9 action because the enforcement of the Code by the ASASU Supreme Court,
10 and the subsequent ratification of that disqualification by the Defendants,
11 violates Plaintiff's rights under the First Amendment to the United States
12 Constitution.
13

14 18. As is stated below, the conduct of the Defendants violates the First
15 Amendment rights of students, including Plaintiff, necessitating this action.
16

17 19. The Jester complaint alleged violations of the Code. Three of these
18 complaints were sustained by the ASASU supreme court, resulting in
19 Plaintiff's disqualification. The supreme court's ruling is attached as
20 Exhibit A.
21

22 **III. PLAINTIFF WAS DISQUALIFIED FOR FREE SPEECH ON**
23 **INSTAGRAM**

24 20. Paragraph 6-4.1 of the Code provides, "Any candidate or campaign staff
25 member who intentionally destroys, removes, steals, defaces, or damages
26

1 campaign or non-campaign materials shall be disqualified or cause the
2 disqualification of their affiliated ticket to the discretion of the Elections
3 Commissioner.”

4 21. Defendants describe comments on the social media site Instagram as a
5 “campaign material”. To be clear, Plaintiff never destroyed, tampered,
6 removed or drowned out any posts or comments on Instagram. Rather, his
7 supporters added “comments” and “likes” on Instagram in an effort to
8 increase visibility of Plaintiff’s campaign in relation to the opponent.
9

10 22. The comments addressed by the Jester complaint occurred on an account
11 called “Tempebarstool”.
12

13 23. Tempebarstool is a social media account on Instagram. It is not affiliated
14 with ASU. It has approximately 77,000 followers, who comment on issues
15 of local interest. The account has no affiliation with Plaintiff, his opponent
16 or his ticket. Rather, it provided a neutral forum for students and non-
17 students to comment on issues interesting residents of the Tempe area. In
18 this sense, Tempebarstool is a public forum.
19

20 24. Supporters of both Plaintiff and his opponent commented on
21 Tempebarstool and posted “likes”. “Likes” are small graphical indications
22 that an Instagram user supports a comment.
23

24 25. Members of the Plaintiff’s campaign staff wanted students to express their
25 support by commenting and “liking” comments that promoted visible
26

1 support for the campaign. At the same time, the opponent’s ticket also
2 posted comments and “likes” for their campaign. Plaintiff and his
3 supporters hoped, for campaign purposes, that they would receive more
4 positive comments and likes than their opponents.
5

6 26. There was substantial competition from both campaigns in the comment
7 section of the “Tempebarstool” post to the point where neither campaign
8 dominated.

9 27. In this sense, the Tempebarstool account was akin to a rally. In a rally, both
10 sides organize supporters hoping that the support of these persons will be
11 more visible than the support given to their opponent. Free speech by both
12 sides is absolutely protected by the First Amendment, and the comments
13 and likes on the neutral Instagram site should receive the same protection.
14

15 28. The Tempebarstool account was very popular and received many comments
16 by Instagram users from both campaigns. Many comments from both
17 campaigns received likes. The likes were denoted by clicking on a heart
18 next to the post or the comments.
19

20 29. Plaintiff was disqualified due to the pro-Plaintiff likes and comments on
21 Instagram. In this way, Defendants punished Plaintiff for content-based
22 reasons. Plaintiff’s opponent was not punished for the comments and likes
23 of her supporters. Only pro-Plaintiff comments and likes were deemed to be
24 worthy of causing disqualification.
25
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1 30. Defendant imposed a singularly disqualifying penalty on the Plaintiff
2 based on this competitive activity on the Tempebarstool account. The post
3 was of a screenshot of one of Plaintiff's supporters encouraging someone
4 who was asking her on a date to support Plaintiff's ticket.
5

6 31. Defendant punished the Plaintiff for the speech of students and individual
7 citizens within this public forum. The Plaintiff was penalized with nine
8 infraction points, enough to disqualify the ticket, for the free expression of
9 support on the comment feed of a post about the campaign they supported.
10 This is the very nature of competitive political activity and is protected
11 speech. This violated the Plaintiff's First Amendment Rights and also the
12 rights of his supporters.
13

14 **IV. PLAINTIFF WAS DISQUALIFIED FOR FAILING TO POLICE THE**
15 **FREE SPEECH OF OTHER STUDENTS**

16 32. The ASASU supreme court also justified the disqualification of Plaintiff
17 due to his failure to engage in a prior restraint of the free speech of two
18 students, Jack Fuller and Will Owens.
19

20 33. Mr. Fuller made some off-hand comments to a teaching assistant in the
21 presence of two classmates on a Zoom call before the start of a class.
22

23 34. Mr. Fuller was a candidate on Plaintiff's ticket. He was running for Vice
24 President of Policy.
25
26

1 35. Jester alleged that Jack Fuller violated Chapter 5-3.1 of the Code. This
2 section reads as follows:

3 5-3.1 USG Elections advertising within physical classrooms is permitted.

4 A. Only candidates and registered campaign volunteers may be permitted to
5 advertise USG Elections in classrooms.

6 i. The candidate or campaign volunteer must obtain explicit permission in
7 the form of a signature from the course professor in a manner determined
8 by the elections commissioner.

9 ii. The candidate or campaign volunteer must follow the advertising
10 template for their presentation provided to them by the assistant elections
11 commissioner.

12 iii. The candidate or campaign volunteer is required to record the
13 professor's name, class prefix, and class time in a manner determined by
14 the elections commissioner.

15 B. The advertising template shall be a script, determined by the elections
16 commissioner and the assistant elections commissioners and specific to
17 each campus, that candidates and campaign volunteers must adhere to in
18 classrooms.

19 i. Each campus advertising template must be approved by a simple majority
20 of its respective USG Senate.

21 ii. The advertising template shall include, at minimum, an explanation of
22 USG elections and the dates of the voting cycle.

23 36. On election day, Nobel Laureate, Professor Edward Prescott, Teaching
24 Assistant Matthew Millington and three students were present on a Zoom
25 call prior to the start of instruction of ECN-413, Advanced Honors
26 Macroeconomics. Prior to class beginning, TA Millington asked Fuller
"How's it going?" Fuller responded: "I'm just going to keep texting people
to vote, if you want more, vote -- no I'm kidding I think technically it's
illegal to campaign in class, so I have to be careful."

1 37. In an email, TA Millington later stated that he asked Fuller how he was
2 doing before class began because he knew Fuller was stressed about the
3 campaign.

4 38. After instruction began, no other mention of the campaign occurred. In the
5 Zoom call recording, TA Millington is heard to say, “well guys...we are
6 few in numbers, so we might as well get started.” That statement was made
7 after the short discussion between Millington and Fuller.
8

9 39. Defendants disqualified Plaintiff, in part, because of a finding by ASASU’s
10 supreme court that this “casual banter” violated Chapter 5-3.1 of the Code.
11

12 40. Plaintiff contends that Defendant’s position violates his First Amendment
13 rights. College student elections are a limited public forum. A university
14 may not adopt a rule that conditions candidacy in the limited public forum
15 upon a candidate’s agreement to suppress the free speech rights of others.
16

17 41. The precedent of this case is that any exercise of free speech made by a
18 candidate will result in disqualification. Even off handed comments, or
19 statements about one’s state of being, can succeed in causing a candidate to
20 be disqualified. In the future, to avoid disqualification, a candidate will
21 have to engage in massive prior restraints of the free speech of ASU
22 students. Prudent candidates would have to police other students to ensure
23 that no student would be allowed to make any statement to anyone that
24 could possibly be construed as an “in class” statement.
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42. The ASASU supreme court also penalized Plaintiff for failing to restrain the free speech of Will Owens. Unlike Fuller, Mr. Owens was not a candidate nor was he a member of Plaintiff’s campaign staff.

43. Section 5-2 of the Code reads as follows:

5-2: CAMPAIGN STAFF ACCOUNTABILITY

5-2.1 Each candidate or ticket must provide the Elections Department with a list of their campaign staff and update this list immediately regarding any personnel changes. This Campaign Staff Roster will be maintained online, visible only to the Elections Department.

5-2.2 Any mentions of “campaign staff” in the Elections Code shall refer exclusively to those people listed on the Campaign Staff Roster.

44. Mr. Owens made a comment about his support of Plaintiff during instruction in a class Zoom call. This action was not endorsed, encouraged, requested, directed, assisted or ratified by Plaintiff. This was simply one of ASU’s tens of thousands of students making a comment about Plaintiff.

45. Again, the precedent of this case is that any exercise of free speech made by any one of the tens of thousands of students attending ASU can succeed in causing a candidate to be disqualified. In the future, to avoid disqualification, a candidate will have to engage in massive prior restraints of the free speech of ASU students. Prudent candidates would have to police every ASU speech forum to ensure that no student would be allowed

1 to make any statement to anyone that could possibly be construed as a an
2 “in class” election statement.

3 46. This violates the free speech rights of Plaintiff and all of his fellow ASU
4 students.

5
6 47. Two other complaints were dismissed by the ASASU supreme court.

7 **V. PLAINTIFF APPEALED TO ASU TO PROTEST THE FREE SPEECH**
8 **VIOLATIONS**

9 48. After the ASASU supreme court violated Plaintiff’s free speech rights, four
10 complaints were filed with the supreme court protesting their penalties as a
11 direct violation of the First Amendment. The Plaintiff sent a letter
12 requesting the Defendant immediately undertake and complete an
13 independent review to evaluate the apparent violation of First Amendment
14 rights and students’ rights to due process to ASU’s Vice President of
15 Student Services, Dr. Joanne Vogel, and the Deputy Vice President and
16 Dean of Students for the Tempe Campus, Dr. Cassandra Aska. This letter
17 was dated April 26, 2020, and is attached as Exhibit B.
18

19
20 49. In the April 26, letter, Plaintiff requested that the ASU Administration step
21 in to protect the free speech rights of students.

22
23 50. On April 27, 2020, Dr. Vogel responded to Plaintiff’s April 26, 2020 letter,
24 acknowledging a meeting between Plaintiff and Dean Aska later that day.
25
26

1 51. On April 28, 2020, Plaintiff wrote a letter to Defendant Crow, Dr. Vogel
2 and Dr. James Rund, Senior Vice President of ASU. Once again, Plaintiff
3 pleaded with the ASU Administration to step in to cure the First
4 Amendment violations described herein. This letter is attached as Exhibit
5 C.
6

7 52. Specific mention was made of Defendant Crow's November 19, 2019 letter
8 to the community supporting free speech.
9

10 53. On May 6th, Dr. Vogel confirmed the receipt of the April 28th letter and
11 responded to the Plaintiff recognizing the process set forth by Dean of
12 Student office "to review the previous and current actions to ensure the
13 decision reflects the rights afforded to you as a member of our ASU
14 Community."
15

16 54. Drs. Crow, Vogel and Rund never responded to Plaintiff's letter, thus
17 tacitly ratifying the free speech violations alleged herein.

18 55. On May 20th, the Dr. Hicks and Ms. Rosenkrantz provided guidance to the
19 ASASU supreme court in its reassessment of its initial decision to penalize
20 the Plaintiff.
21

22 56. A week later on May 27th, the supreme court reaffirmed the Plaintiff's
23 disqualification, he again wrote a letter on May 28, 2020 to Drs. Crow,
24 Vogel and Rund. He again asked them to step in to protect the free speech
25 of students. This letter is attached as Exhibit D.
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57. Drs. Crow, Vogel and Rund never responded to Plaintiff's letter, thus tacitly ratifying the free speech violations alleged herein.

58. On June 2nd, the Defendant further ratified the free speech violations by announcing that Plaintiff's opponent, who lost the election, would be inaugurated at 7:30 on June 9th, 2020.

59. On June 2nd, Plaintiff, through counsel, wrote to Mr. Jose Cardenas, the General Counsel of ASU to highlight the serious First Amendment issues in question.

60. On June 4th, Plaintiff, through counsel, asked for assurance that ASU will delay the inauguration to enable sufficient time to discuss the First Amendment violations. Defendants have refused to delay the inauguration.

61. Because ASU has refused its reasonable opportunities to delay the installation of ASASU officers and to cure the First Amendment violations alleged herein, Court action is necessary to protect First Amendment rights.

62. Plaintiff contends that he satisfies the requirements of a preliminary injunction on the facts of this case, and the Court should issue a preliminary and permanent injunction.

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests the Court

to:

- A. Issue a preliminary injunction restraining ASU from holding an inauguration for the candidates that lost the election;

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- B. Advance the final trial on the merits to be heard at the same time as the preliminary injunction hearing.
- C. Issue a judgment declaring that the disqualification of Plaintiff by Defendants violates Plaintiff’s rights under the First Amendment to the Constitution of the United States;
- D. Issue an injunction requiring the expungement of the disqualification from Plaintiff’s record;
- E. Issue a judgment declaring that Defendants requirement that all candidates, including Plaintiff, engage in prior content-based restraints of student’s free speech rights, constitutes a content-based regulation of political speech in violation of Plaintiff’s rights under the First Amendment to the Constitution of the United States;
- F. Issue preliminary and permanent injunctions prohibiting Defendants from enforcing any provision of the Code that would constitute a prior content-based restraint on free speech;
- G. Issue an injunction directing that the ASASU supreme court’s decision be overturned, and directing Plaintiff and his ticket to be installed to their rightfully elected posts;
- H. Issue a judgment awarding Plaintiff his reasonable attorney fees and costs against Defendants pursuant to 42 U.S.C. §1988 and any other applicable law; and

1 I. Issue a judgment awarding Plaintiff all other relief that is just and
2 proper under the circumstances.

3 *The Law Offices of David R. Jordan, P.C.*

4 */s/ David R. Jordan* _____

5 David R. Jordan
6 1995 State Road 602
7 PO Box 840
8 Gallup, New Mexico 87305
9 Attorney for Plaintiff
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VERIFICATION

I, Maximilian Soza Fees, under penalty of perjury, do hereby verify that the statements made in this complaint are true to the best of my knowledge, information and belief.

Dated: 6/8/20

Max Soza Fees
Maximilian Soza Fees

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

Maximilian Soza Fees

msfees@asu.edu - (602) 694-8076

April 26, 2020

Dr. Joanne Vogel, Vice President of Student Services,
Dr. Cassandra Aska, Deputy Vice President and Dean of Students, Tempe
Arizona State University
Tempe, Arizona 85821

Dean Aska and Dr. Vogel,

We formally request that the Dean of Students office take steps today to preserve student freedom of speech and protect the right of due process.

These are obviously unprecedented times and various parties have made mistakes in both procedures and processes. Mistakes can always happen, but it becomes a failure when they are not corrected.

In addition, it is our considered opinion that the Elections Department and the ASASU Supreme Court has misapplied the Elections Code and has caused harm to multiple students' freedom of speech rights and as a result, reversed a democratic election. Multiple students have already petitioned the Supreme Court in this matter.

Please note, our efforts are meant to respect the intent of Dr. Crow's November 19, 2019 letter to the community on freedom of speech. We also have researched the ABOR policy "1-124 Free Expression" on freedom of speech. In light of these documents and others, we do not understand how the Supreme Court Ruling is consistent with basic freedom of speech principles that govern Arizona State University as a public university under the First Amendment.

As a result, we have some specific questions that we also seek answers to:

- A) What steps did ASU faculty and staff take to oversee the Elections Department and Supreme Court in order to protect student speech during this election?
- B) What training do members of the Supreme Court have to fulfill their office?
- C) What advice and guidelines are given to Supreme Court members?
- D) What training do ASU faculty and staff provide members of ASASU on the topic of student rights, including both freedom of speech and due process?

The recent rulings of the ASASU Supreme Court put in jeopardy students' constitutional rights and have overturned a free and fair USG election without proper warrant. Therefore, it is important for you and other ASU colleagues to evaluate how the Election Code was interpreted and applied by the Supreme Court.

As written, the Election Code does not violate free speech, however, the Supreme Court has imposed an ex post facto speech code not grounded in the Election Code and not properly guided by fundamental free speech principles. This is an inappropriate use and function of the ASASU judicial system.

As a result, I am formally requesting the Dean of Students take the following actions:

- 1) Postpone the installation/inauguration of ASASU Officers on the Tempe campus until the recently filed Supreme Court cases have been heard and given the due process assured to them under the Student Code of Conduct.
- 2) We are requesting ASU immediately undertake and complete an independent review to evaluate the apparent violation of First Amendment rights and students' rights to due process. We raise this not only as a party, but to ensure that the ultimate result is legitimate and provides grounds for success for whichever executive ticket is declared the winner.

My campaign and I have researched the issues as best we could in the very short time since the ruling, and obviously there are extensive arguments to be made and we look forward to a forum in which we can defend our student and individual rights.

Respectfully submitted,

Maximilian Soza Fees,
B.A. Civic and Economic Thought and Leadership
Barrett, The Honors College, Arizona State University

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April 28, 2020

Dr. Michael Crow, President
Dr. James Rund, Senior Vice President
Dr. Joanne Vogel, Vice President of Student Services
Arizona State University
Tempe, Arizona 85821

Dr. Crow, Dr. Rund and Dr. Vogel,

I am a proud Sun Devil and SCETL student whose USG campaign won last week's run-off ASASU election by earning 344 more votes than my opponent and achieving a nearly 10% margin of victory.

My continued efforts to restore the election results are meant to respect the intent of Dr. Crow's November 19, 2019 letter to the community on freedom of speech. My team and I have also researched the ABOR policy "1-124 Free Expression" on freedom of speech. In light of these documents and others, we do not understand how recent ASASU Supreme Court Rulings are consistent with basic freedom of speech principles that govern Arizona State University as a public university under the First Amendment.

These are obviously unprecedented times and various parties have made mistakes in both procedures and processes. Mistakes can always happen, but it becomes a failure when they are not corrected. As a result, I believe it is necessary to inform you of a potential issue regarding a failure of oversight at Arizona State University.

In short, recent rulings of the ASASU Supreme Court put in jeopardy students' constitutional rights and have overturned a free and fair USG election without proper warrant. Therefore, it is important for the University to now take steps to prevent further mistakes by the ASASU Supreme Court and to assess what steps have been taken by the Dean of Students to protect students' First Amendment and due process rights.

Unfortunately during my meeting with Dean Aska yesterday, there were no statements made that recognized this duty and instead the comments shared restated that the student Supreme Court decision is final; and implied that the inauguration of the other ticket would move ahead.

Dean Aska gave the impression that the only authority at issue is the autonomy of student government, both elections departments, and Court, to interpret the elections code and declare violations, and consequences of those declarations. Oversight from the Dean's office appears simply to ensure that the student judgment was not utterly arbitrary, capricious or senseless.

The impression I was left with yesterday was that, for Dean Aska, ABOR policy and the First Amendment appear to be irrelevant in assessing whether the interpretation and enforcement of the code could violate national and state law and ABOR policy; it's not relevant for the election department and Supreme Court, and not for her oversight role; these are time, place, and manner regulations, presumed to be reasonable, and the autonomy of student government to interpret and enforce is not really challengeable. That may be an unfair interpretation, but the use of the word "final" about the prior ruling didn't give confidence that the ABOR issue had registered with her. Is it the ASU administration's view that undergraduate student government is governed by ABOR policy or not?

Nonetheless, the Court disqualified The Expect More ticket based on a standard that does not occur anywhere in the Elections Code and ignores the fundamental rule that every complaint must demonstrate substantial harm.

The ASASU Supreme Court, in truth, operates more as a jury that is led by a presiding judge called the Dean of Students. Like all jury's, a judge provides instructions for the proper consideration and application of the law. The judge is to assure justice and that all rights are protected.

I appeal to you today on behalf of all students because my confidence is shaken. Indeed, a Court that disregards free-speech rights of students and penalizes speech of ordinary students (not campaign staff) cannot be trusted to provide the due process expected by ABOR and assured to students under the Student Code of Conduct.

This is distressing to me personally and it convinces me that officials who participated in yesterday's call do not understand the severity of the issues at hand. It is inaccurate for any ASU official to assume that candidates and their staff somehow surrender their constitutional rights by agreeing to campaign for office. Indeed, students that enter the election process agree to the Elections Code because we have confidence that our constitutional rights and free speech, and those of our supporters, will be protected by ABOR & University.

As a result, I am requesting the University to take the following immediate actions:

- 1) Postpone the installation/inauguration of ASASU Officers on the Tempe campus until the recently filed Supreme Court cases have been heard and given the due process assured to them under the Student Code of Conduct. Note, if the Court seeks to dismiss these cases, then the due process of students will not have been adequately afforded to the students whose speech has been penalized.
- 2) Given the apparent overreach of the Supreme Court and dramatic expansion of the Election Rules ex post facto, The Expect More ticket must also be afforded the opportunity to address each of the supposed violations that the supreme court held against the campaign. The Expect More campaign must be given the opportunity to submit amended petitions to the Supreme Court that will demonstrate how the Court's interpretation of the elections code in relation to these student actions violates ABOR's free speech policy.
- 3) Undertake and complete an independent review to evaluate the apparent violation of First Amendment rights and students' rights to due process. We raise this not only as a party, but to ensure that the ultimate result is legitimate and provides grounds for success for whichever executive ticket is declared the winner.
- 4) Remove incorrect promotions from USG that suggest the 2020 election has concluded. This remains a contested election.

Respectfully submitted,

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May 28, 2020

Dr. Michael Crow, President
Dr. James Rund, Senior Vice President
Dr. Joanne Vogel, Vice President of Student Services
Arizona State University
Tempe, Arizona 85821

Dr. Crow, Dr. Rund and Dr. Vogel,

I am in receipt of the ASASU Supreme Court's decision of May 27th upholding their earlier decision in *Jester v Fees* to overturn the election results and disqualify the *Expect More* campaign.

The student process has concluded. However, the ASASU Supreme Court is not the final arbiter of the ABOR's statement on Freedoms of Speech or of due process for the students of ASU. That responsibility falls on the administration.

The ASU administration must now determine and "certify" that 2020 ASASU Elections were conducted consistent with the Arizona Board of Regents policy and did not violate the constitutional rights of students.

As a result, I am formally requesting that ASU delay the swearing-in of the officers pending the formal "certification" of the election results by the University.

Let me briefly explain the essential facts that demonstrate the serious jeopardy that ASU faces if it chooses to ignore the negligence of the staff involved with producing the misguided results of the recent student process.

Despite the opinion of the ASASU court that was apparently supervised by ASU staff without the benefit of legal expertise, no student involved with supporting the *Expect More* campaign surrendered their constitutional rights by becoming candidates. The penalties applied to my campaign, therefore, for the conduct and speech of students not named as staff and not under the control of the campaign is a direct infringement upon the First Amendment rights of all students.

As I expressed to you in my April 28th letter:

"....students that enter the election process agree to the Elections Code because we have confidence that our constitutional rights and free speech, and those of our supporters, will be protected by ABOR & University."

In addition, even if I was presumed to surrender my rights and to accept penalties for the speech of supporters, in exchange of being governed by the rules of the Elections Code, then it must also be true that actual damages as required by the Elections Code must be proven to have occurred.

Damages have never been demonstrated or proven, but somehow the Court has been given guidance that on the one hand the Elections Code is a contract that must be followed by Fees but on the other hand it Jester doesn't actually have to demonstrate actual damages. This is both arbitrary and capricious, yet it was allowed under the direct supervision of ASU staff.

Secondly, the opinion of the ASASU court that it has provided due process to me, Expect More, or the students who supported the campaign is false. Five complaints were submitted to the court on my campaign's behalf. None of them were heard and the recent decision from the court does not address the concerns as promised. Once again, ASU staff failed to adequately guide the ASASU court by allowing only "bullet points" to defend the serious freedom of speech issues in question and by denying any form of oral arguments. By any measure, this denied students the right to an adequate defense and due process of their Constitutional rights.

A review of the facts will also reveal that from the very start of the process, the Expect More ticket was denied due process and the right to be presumed innocent.

Let me be clear about the facts. At the conclusion of the vote on April 21nd, Director Rosenkrantz enabled the Elections Commission and the ASASU Supreme Court to conspire to withhold the reporting of the election results and denied a fundamental due process right to all of the students involved with our campaign. As the Court's injunction stated, the delay was unprecedented - and had never previously occurred in ASASU's election history. It was also unfair and is a tangible example of how ASU's staff enabled a rush to judgment that unjustly harmed me, the Expect More campaign, and importantly our defense over the past weeks.

Ultimately we will assert that given the negligence of the ASU Dean of Students office to provide guidance to the court as to the fundamental rights to the presumption of innocence, that all matters considered after the injunction of April 22nd shall be dismissed by the University.

Lastly, please recall that in my April 28 letter to each of you where I asked for ASU to conduct an independent review of the 2020 ASASU Elections. Now more than ever, it is vital for ASU's reputation as a campus deeply committed to protecting freedom of speech and to not certify the 2020 ASASU election without a comprehensive review by attorneys, legal scholars, or the Board of Regents.

I will remain a proud Sun Devil and SCETL student whose USG campaign won the 2020 ASASU election by achieving a nearly 10% margin of victory. As the facts reveal, at every step I have been required to defend conduct that is clearly protected by law and statute.

Ultimately, if ASU ignores this request, we will strongly assert that ASU's negligence has overturned the results of a democratic election, infringed upon the Constitutional rights of students, and also has damaged the reputations of both the individuals on our *Expect More* ticket and also of our supporters.

Sincerely,

Maximilian Soza Fees