ASASU Supreme Court

Advisory Opinion 2023-21: Review of Campaign Conduct Violation

Chief Justice Zoe Averill, Advisory Opinion of the Court

Joined by Associate Justices Madeline Jaskowiak, Piper Welch, Loren Avila, and David Wang

Decision Finalized on Wednesday April 5, 2023

Decision Filed on Wednesday April 5, 2023

A. Fact Summary

On April 3, 2023 an appeal was filed with the purpose of contesting the results of the Election as announced by the ASASU Elections Commission on April 3, 2023 at 12:00 pm. The Elections commission ruled that the winner of the Tempe Presidential race, as determined by the implementation of ranked choice voting, was the Berryman ticket. The results were communicated as follows:

Executive Ticket w/ Disqualification (Disqualified Ticket Second Preference Votes Lifted to First Pref)

President –**Hannah Berryman** Vice President of Services –**Sophie Chez** Vice President of Policy –**Abby Oldham**	2651 Votes (52.49%)

President –**Morgann Kelly** Vice President of Services –**Harry Rogers** Vice President of Policy –**Victoria Yusupova**	2399 Votes (47.50%)

The elections commission, given the disqualification of the Nethers ticket, implemented ranked choice voting to distribute second choice votes from the ballots listing Nethers as first choice. The plaintiff argues that the implementation of ranked choice voting by the elections commission is incorrect given the fact that after disqualification of the Nethers ticket, the plaintiff received an over 50% majority vote, therefore winning the election outright. The percentages are as follows:

Vote count without Nethers disqualification:
● Nethers Ticket: 2598 Votes (51.44%)
● Kelly Ticket: 1631 Votes (32.29%)
● Berryman Ticket: 821 Votes (16.25%)

Vote count after disqualification of the Nethers Ticket:
● Kelly Ticket: 1631 Votes
● Berryman Ticket: 821 Votes
● Total: 2452 Votes

Percentages after the disqualification of the Nethers Ticket:
● Kelly Ticket: 66.52% of Votes
● Berryman Ticket: 33.48% of Votes

Percentages after the disqualification of the Nethers Ticket and the implementation of ranked choice voting:
● Kelly Ticket: 2399 Votes (47.50%)
● Berryman Ticket: 2651 Votes (52.49%)

__The essential question being considered by the court is whether or not the Elections Commission incorrectly implemented ranked choice voting to determine the election results after the disqualification of the Nethers ticket.__

B. Jurisdiction

According to Rule 10 of the Supreme Court Rules, the Supreme Court maintains the responsibility of hearing appeals from the elections department. Additionally under Rule 13 of the Supreme Court, it is the responsibility that for all elections related cases, within two (2) business days from the Court's receipt of an Answer, the Court, by majority vote, shall issue one of the following decisions:

A) A Decision of Dismissal of the Petition - for reasons including, but not limited to
    i. Lack of standing;
    ii. Failure to state a claim;
    iii. Not ripe for adjudication; and/or
    iv. The issue(s) involved can not be fairly addressed by the Court.
B) Decision of Summary Judgment - to the Petitioner, Defendant, or DGB based upon the overwhelming success of one of the parties on the merits of the case as put forth in the filed documents. USG - Supreme Court 8 Rules and Procedures Updated and Effective on October 17, 2020
C) The scheduling of Oral Proceedings - to take place no more than twenty-one (21) days from.the initial Petition filing date.

Therefore, in accordance with Rule 10 and Rule 13 the Court maintains the jurisdiction to hear all appeals from the elections department and make a decision.

C. Holding of the Court

It is the holding of the court that the Elections Commission incorrectly implemented ranked choice voting to determine the election results, and that the Kelly ticket received a majority vote percentage.

The USG Elections Code states:

"4-2.6 Executive Ticket races shall be conducted using the following ranked choice voting system
(adapted from Ballotpedia):
● Voters rank the candidates by preference on their ballots.
● If a candidate wins an outright majority of first-preference votes (i.e., 50 percent plus one), they will be declared the winner.
● If, on the other hand, no candidates win an outright majority of first-preference votes, the candidate with the fewest first-preference votes is eliminated.
● All first-preference votes for the failed candidate are eliminated, lifting the second-preference choices indicated on those ballots.
● The Elections Commissioner shall conduct a new tally to determine whether any candidate has won an outright majority of the adjusted voters.
● This process of eliminating the ticket with the fewest votes and recounting all ballots shall continue until one ticket receives a majority of the valid votes in a round.
● If a tie occurs, after proceeding through the above process, the Elections Department shall call a run-off election."

As defined by the USG Elections Code, if a candidate wins an outright majority of first-preference votes, they will be declared the winner. Given the fact that the Nethers ticket was disqualified, the elections commission must turn to the raw data determined from the general election. The raw data is as follows:

Vote count without Nethers disqualification:
● Nethers Ticket: 2598 Votes (51.44%)
● Kelly Ticket: 1631 Votes (32.29%)
● Berryman Ticket: 821 Votes (16.25%)

Vote count after disqualification of the Nethers Ticket:
● Kelly Ticket: 1631 Votes
● Berryman Ticket: 821 Votes
● Total: 2452 Votes

Percentages after the disqualification of the Nethers Ticket:
● Kelly Ticket: 66.52% of Votes
● Berryman Ticket: 33.48% of Votes

Ranked choice voting is an incredibly complex system of voting and can often be misinterpreted by those unfamiliar with this system of voting. It is ONLY evoked when a candidate receives a plurality vote, that is, no one candidate receives over 50% of a majority vote. If a candidate wins a majority of first-preference votes, he or she is declared the winner, plain and simple. It is only when no candidate wins a majority of first-preference votes that ranked choice voting comes into

play. Within this system, the candidate with the fewest first-preference votes is eliminated. First-preference votes cast for the failed candidate are eliminated, lifting the next-preference choices indicated on those ballots. A new tally is conducted to determine whether any candidate has won a majority of the adjusted votes. The process is repeated until a candidate wins an outright majority.

Given the fact that after the disqualification of the Nethers ticket Kelly received 66.52% of the vote, Kelly should automatically be declared the winner. The implementation of ranked choice voting and consideration of next-preference choices was incorrect in this case. The disqualification of a candidate does not constitute grounds for implementation of next-preference choices.

SIGNED BY THE ASASU SUPREME COURT

April 5, 2023 at 1:05 AM