

IN THE UNIVERSITY OF SOUTH CAROLINA STUDENT GOVERNMENT  
CONSTITUTIONAL COUNCIL

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Alesha Brown,  
Appellant

v.

Student Government Elections Commission,  
Respondent

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Opinion No. 2008-CC-001

Heard February 20, 2008 – Filed February 19, 2008

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**AFFIRMED**

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Per Curiam

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On February 20, 2008, the Student Government Constitutional Council convened to hear case 2008-CC-001, the matter of Ms. Alesha Brown v. Student Government Elections Commission. The purpose of this hearing was to determine whether the Elections Commission erred in its

decision on February 18, 2008 to find the appellant, Ms. Brown, guilty of elections fraud and issuing the subsequent sanctions.

On February 18, 2008, the Student Government Elections Commission convened to hear the alleged election fraud violation against Ms. Brown. The initial complaint contended that Ms. Brown and her campaign, on February 18, 2008, distributed flyers displaying her campaign logo on the front and a handwritten number on the back. According to testimony from the original hearing, recipients of these flyers were told that following the election, a number would be posted to Ms. Brown's website and that the person possessing the flyer with the posted number would win a cellular phone. After conducting an official hearing, the Elections Commission determined that Ms. Brown had committed election fraud as defined by election code 410.05B and that punitive action was necessary. In accordance with election code 410.20, the Elections Commission assessed Ms. Brown 4 out of 5 infraction points and restricted her privileges to campaign on Greene Street between the hours of 10:00 am and 3:00 pm on February 19, 2008.

Ms. Brown, herein referred to as the appellant, has appealed the decision of the Elections Commission, herein referred to as the respondent, to the Constitutional Council on the basis that the respondent erred in its finding her guilty of election fraud and hence the subsequent sanctions. The appellant questions the Commission's interpretation of election code 410.05B. In the appellant's brief, it is argued that other candidates' use of promotional materials, such as candy and koozies, equally constitutes election fraud. Additionally, the appellant's brief argues that the sanctions issued by the respondent were not fitting for the violation. During the oral

arguments, the appellant argued that the respondent's interpretation of the terms "promise" and "article of value" were incorrect.

Election code 410.05 defines election fraud as:

*"any willful act, deed, or conspiracy that violates the integrity of the electoral process during the voting period."*

Election code 410.05B defines one of five circumstances under which one can be found guilty of election fraud as:

*"Procuring, by the payment, delivery, or promise of money or other article of value, another to vote for or against any particular candidate or measure at any election or accepting such procurements."*

In analyzing the original intent of this code, this court defines "procuring" as making an attempt to gain votes. The main argument of the appellant surrounded the definition of "promise" as used in code 410.05B. The appellant argued that the contractual definition of a promise involves a reciprocal exchange between two parties (in this case, a candidate and voter). It is the opinion of this court that the intent of the term "promise," as used in this code, is to prohibit promises regarding articles of value from candidate to voter and does not require any reciprocating action from the voter. According to the appellant's argument, a promise would require the candidate to verify that the voter voted in favor of that candidate before fulfilling the promised obligation. However, acknowledging that this verification is frequently impossible (and in and of itself a violation of election code 410.05E), the intent of this code is to define promise as an express

assurance on which expectation can be based. Upon receiving a numbered flyer and explanation of its purpose as a raffle ticket, it can be inferred that a reasonable voter would have been assured of the expectation to potentially receive the prize of the raffle, a cellular phone. In the spirit of this election code, this assured expectation constitutes a promise on behalf of the candidate, and therefore meets the requirements of election fraud as defined in election code 410.05B.

In its deliberation, the Elections Commission considered the definition of the term “promise”. After extensive deliberation, the Elections Commission concluded that the actions of the appellant and the accompanying raffle ticket constituted a promise of a chance to acquire an item of substantial value, therefore meeting the standard for election fraud as defined by election code 410.05B. This court has found no compelling reason to overturn the ruling of the Elections Commission on the basis of misinterpretation of the term “promise”.

The second component of the appellant’s argument concerns the definition of the term “article of value”. In the appellant’s brief, it was argued that the value of the phone should be considered divided amongst each person receiving a numbered flyer. While the chance of winning the phone could be considered equally shared amongst the flyer recipients, each individual has the expectation of the full value of the phone. Additionally, one person would actually receive the full value of the phone. In their deliberation, the Elections Commission distinguished between promotional items and articles of value based on the potential resale value of the cell phone to the recipient. Therefore, the Elections Commission concluded that the cell phone be considered an article of value. This court has found no reason to disagree.

The final component of the appellant's appeal concerns the sanctions imposed by the Elections Commission, which the appellant argues are not fitting for the violation at hand. Election code 410.20 states:

*“The Elections Commission will not impose a penalty exceeding the amount of the filing fee and/or disqualification of the candidate...”*

During deliberation, the Elections Commission discussed the possibility of disqualifying the appellant, as permitted by election code 410.20. As an alternative, the Elections Commission decided to impose four (4) of five (5) possible infraction points and to restrict the appellant's campaign activity on Greene Street between the hours of 10:00 am and 3:00 pm on February 19, 2008. The timeframe for the restricted campaign activity was chosen to correlate with the time period the appellant was distributing the flyers in question, approximately from 10:00 am to 2:46 pm on February 18, 2008, as presented in testimony to the Elections Commission. The sole responsibility for imposing election related sanctions rests with the Elections Commission. The respondent argues that these sanctions are a lesser penalty than disqualification, are appropriate for the violation at hand, and therefore within the parameters of election code 410.20. This court finds no reason to disagree with the original judgment.

In summation, although the appellant presented a valid argument concerning the interpretation of the term “promise” in election code 410.05B, this court has found that the term “promise” is defined as an express assurance on which expectation can be based without any reciprocal action from the voter. Furthermore, regarding the question of what constitutes an “article of value”, this court has found that the cell phone meets this definition. Having considered the previous

questions, the appellant's actions did indeed constitute election fraud and therefore the sanctions imposed by the Elections Commission are reasonable and appropriate.

This ruling does not compromise the previously published election results certified by the Elections Commission on February 19, 2008. As such, there will be a run-off election for the presidential race as determined by the Elections Commission.

**It is the majority decision of this court to uphold the decision and sanctions of the Elections Commission in their entirety.**

**It is so ordered.**

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Cassidy M. Evans  
Chief Justice

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Brooke A. Mulenex  
Associate Justice

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Christopher E. Gainey  
Associate Justice

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Ben Ortiz-Colon

Associate Justice