BACKGROUND AND ARGUMENTS

This formal appeal was first filed by the USG presidential ticket comprised of Rachel Udabe and Rebecca Harbeck (also referred to as the ‘Rachel and Rebecca team’) on January 30th, 2017, in response to the verdict and sanctions issued by the Elections Commission on January 29th, 2017 regarding campaign misconduct on the part of Austin Dunn and Morgan Monahan and their campaign staff (also referred to as the ‘Austin-Morgan team’). On January 31st, Daniel Million and Timothy Vorhoff (also referred to as the ‘Million-Vorhoff team’) filed an appeal regarding the same misconduct, for which the Elections Commission had held a separate hearing on January 29th. Having considered the evidence and testimony from both cases, the Elections Commission saw fit to impose a two-day (48 hour) suspension of digital campaigning upon the Austin-Morgan team.

The Council derived its authority to hear this appellate case in accordance with USG Bylaws VII.4.B.1-4 and Articles XI.N and XI.N.1 of the USG Elections Code. Considering the similarities of the appeals made by the Million-Vorhoff ticket and the Rachel and Rebecca ticket, this Council saw fit to collectively deem all four candidates as PETITIONERS and the Austin-Morgan team as RESPONDENTS.

1 As opposed to the ‘Udabe-Harbeck team’, these petitioners are referred to as such as a consequence of their campaign moniker, stylized as ‘Rachel & Rebecca’. The same logic was applied for the Austin-Morgan and Million-Vorhoff teams.
In prior hearings, evidence was brought to light that revealed the creation of a Facebook group at 11:03 AM on January 25th, 2017, approximately 32 hours in advance of the conclusion of the ‘Preparation Period’ established in the 2016-2017 USG Elections Code. According to testimony from the Petitioners, this group grew to include approximately 360 individuals. Screenshot evidence presented to both the Elections Commission and this Council additionally reveal several posts and comments made in this Group by the Respondents, as well as their campaign manager, Paul Breslin. These indicated to members of the Group that the Group was intended to be kept ‘secret’ until 7 PM the following day (the conclusion of the Preparation period); another indicated that the group was to be used for the purposes of coordination and campaign strategizing; yet another indicated that members ought to ‘add anyone [they] can think of’ to the Group, noting its secret (unsearchable) nature.

In their opening remarks, the Petitioners argued that four strikes ought to be issued against the Respondents, for (1) creating the Group prior to the conclusion of the Preparation period, (2) attempting to maintain its secrecy while cognizant of the illicit nature of such activity, (3) failing to take action to terminate the continuation of illicit activity, and (4) failing to report their violation to the Elections Commission. The Petitioners specifically argued that the Respondents had violated Articles II.A.4-7, which establish the Preparation period and limit exclusively communication and the discussion of candidacy to a group of five individuals (the ‘Core Five’). In addition, the Petitioners proposed that the Respondents had violated Article 7.C in their failure to halt illicit activity and failure to report the actions to the Elections team. Based on these claims, the Petitioners further contended that the Respondents had compounded a total of approximately 700 violations, considering the addition of 360 individuals outside the Core Five to the group and the Respondents’ subsequent failure to remove them, delete the Group, or report the violations to the Elections team.

The Respondents, in turn, accepted that they were cognizant of their misconduct as it occurred, but posited that the sanctions levied upon them by the Elections Commission had been sufficient, and that justice had been rightfully served as a result of the prior hearing.
CHIEF JUSTICE Kshitij Kumar delivered the unanimous opinion of the Council, levying TWO ADDITIONAL STRIKES and TWO ADDITIONAL SANCTIONS on the Austin-Morgan campaign team in the form of two monetary fines equivalent to one thirds reimbursement, totaling two thirds of the candidates’ total campaign reimbursement. ASSOCIATE JUSTICES Charlynn Yeung, Tatiana Santos, Catherine Browne, and Kameron Hurt joined.

Contrary to the expression that ‘rules are meant to be broken’, this Council finds that violations of the Elections Code—those rules that guide the conduct of campaigns and elections, which themselves represent the cornerstones of our democratic student government—are acutely sanctionable, and cannot go without consequence. This notion is conveyed in Article VII.B of the Code, which establishes the authority of the Elections Code for all students campaigning and requires sanctions in the event that the Code is violated:

All students campaigning on behalf of a candidate must follow the campaign rules set forth in this Elections Code. All candidates are responsible for the actions of those campaigning on their behalf. Failure to adhere to the Elections Code shall result in sanctions on the candidates for whom the volunteers were campaigning, as determined by the Elections Commission.

- USG Elections Code 2016-2017, Article VII.B

Accordingly, this Council saw fit to levy two additional strikes and sanctions against the Austin-Morgan campaign team, founded upon review of testimony from both Petitioners and Respondents, arguments made by each to both the Elections Commission and this Council, the Elections Code, and the evidence provided.

Throughout this case, the critical question which arose concerned Justice and the application thereof. It was left to this Council to determine whether or not the Respondents had been adequately sanctioned in response to their misconduct, and if not, what consequence—or consequences—would render the scales balanced. The Council assessed that it was necessary to first evaluate the severity of the Respondents’ impropriety in terms of the standards violated, as well as the impact of the transgressions on the election.

In the course of this assessment, the Council determined, in concurrence with the Elections Commission, that the Austin-Morgan campaign team had been in violation of Articles II.A.4-7. The creation of the Facebook group and addition of hundreds of non-Core Five members constituted a serious violation of the Preparation period; that the Group was created only 32 hours prior to the conclusion of the Preparation period did not lessen the gravity of the violation. As posited by the Rachel and Rebecca team, this amount of time was equivalent to approximately ten percent of the total time available to the candidates for campaigning. Though the value of this premature start to the Austin-Morgan campaign was unknowable, this Council found that the sanctions applied by the Elections Commission, to suspend the Respondents’ digital campaign for 48 hours, were sufficient judicial remedy for these undisputed infractions.

However, the ruling issued by the Elections Commission failed to account for two additional violations of the Elections Code on the part of the Austin-Morgan campaign. These
violations of Article VII.C were explicitly asserted by the Petitioners during the original Elections Commission hearing, and once more in front of this Council. They were directly exhibited by the evidence submitted to both courts: the transgressions of the Respondents were not willful oversight of the Code, but rather—and more egregiously—willful violation thereof. This Council found that the Respondents transgressed despite full cognizance of the Code and its limitations, as evinced by their repeated entreaties that members of the Group maintain the secrecy of both the Group and the Respondents’ candidacy. Moreover, in spite of the Code and its stipulation that the candidates “immediately do that which is in [their] power to end the actions potentially in violation of the Elections Code,” they chose not to do so. Nor did they choose, in spite of their knowledge of the Code, to document their infractions to the Elections Commission in order to be held accountable.

Consequently, this Council found that Justice had not been served as a result of the sanctions issued by the Elections Commission, and that the Respondents’ violations had yet to be remedied in totality. While this Council assessed that disqualification of the Austin-Morgan team from the election was inappropriate (insofar as their offenses did not meet the high standard required for such a sanction), it was decided that their offenses still merited stiff sanctions. As such, this Council determined that two monetary fines ought to be imposed (made allowable by Article XI.M.1.v) on the Respondents, each worth a third of their campaign expenditure reimbursement, for a total of two-thirds of their total reimbursement.

The value of self-accountability cannot be understated, especially for those individuals seeking election to such significant positions of leadership. This Council acknowledges that to err is human, but stresses that intentional violation of rules is unbecoming of any candidate. That such violations may have been made by others—in this election cycle and perhaps those past—does not excuse the misconduct which had been brought to the Council for adjudication in this case; that willful violations may go unreported as a function of their politicization does not reduce their inherent wrongfulness. In this case, however, it is the unanimous opinion of the Council that the sanctions levied here will have justly righted and remedied the Respondents’ wrongs and serve as a keen reminder that rules are to be respected and followed—not deliberately broken.
BYLAWS REFERENCED
From the 2016-2017 version of the USG Bylaws

VII.4.B Elections Code Hearings

VII.4.B.1 Justices shall have final rule on all questions pertaining to violations of the Undergraduate Student Government Elections Code.

VII.4.B.2 The Elections Commission will be the first court to hear cases pertaining to the Elections Code.

VII.4.B.2 The Elections Commission must rule on all matters concerning the Elections Code. In the event that an appeal is made to the Judicial Council, the Elections Commission shall submit a written judgment outlining their rationale to the Judicial Council within 24 hours.

VII.4.B.3 The Judicial Council must convene within 24 hours of the submission of a complaint with a candidate as a plaintiff or a defendant during the campaign period. The Judicial Council must make a preliminary ruling within 24 hours of hearing the case.

VII.4.B.3.a The defendant in these matters must be given at least twelve hours' notice to prepare a defense, make inquiries, and produce witnesses.

VII.4.B.4 The Judicial Council must hear all elections appeals concerning disqualification.