

*In Res Madison Gardener/ Antonio Guevara (ESB / SG 2012 – 004)*

Chair Eric D. Nimmer delivered the opinion of the Board:

In the matter of Madison Gardner and Antonio Guevara, candidates for University of Texas Student Government (UTSG) President and Vice-President 2012-2013, heard on one count of associating with another campus wide candidate, the Board has found the named party fully culpable.

According to Title III Subchapter A clause 3.02 of the Student Government Election Code, “candidates in the election must campaign separately, without endorsements from fellow candidates. No association between candidates of any kind will be tolerated, with the exception of the executive alliance.” The Gardner/Guevara campaign did not contest the allegation that the infraction had been committed.

Title III Article III Subchapter A reads as follows:

*3.02 Only the Presidential and Vice Presidential candidates that compose an executive alliance are allowed to participate in campaigning together, all other candidates in the election must campaign separately, without endorsements from any fellow candidate. No association between candidates of any kind will be tolerated, with the exception of the executive alliance. Candidates found in violation of this rule can be subject to immediate disqualification.*

In accordance with the Board’s interpretation of this code the punitive prescription as described in the code is qualified. Meaning that, although the code prescribes “immediate disqualification”, that clause is qualified by the word “can”; therefore, a violation of the stated code does not mandate a disqualification.

The defending party tacitly acknowledged the above interpretation and thus proceeded to articulate mitigating factors to the Board by way of discussing procedure, intent and practicality. The Board has carefully considered both rationales and has concluded as follows:

In response to the procedure questions posed, the Board has come to the decisions that the complaint was filed in a reasonable amount of time since the violation had been occurring from the release of the materials onward and that it is not the burden of this Board to verify that every individual depicted in every material released by a candidate(s) is permitted to be present. The Board also found this fact to warrant the dismissal of a reasonable claim to intent.

The accused party had demonstrated no known effort – as warranted by the current display of the multiple images and other media – to remove or distort said images or media even after being made aware of the violation. Furthermore, the defending party admittedly knew about the violation before the complaint had even been filed, but still failed to attempt to rectify the matter in any tangible way. Lastly, it is of the opinion of the Board that even though it is claimed to have been difficult to completely rectify the damage done or alter the materials published, the lack any substantial action being taken to remove the then still controlled content dismisses the defense's claim.

Whereas, the mitigating factors presented were found to be insufficient and the severity of the infraction clearly expressed in the code apparent, the Board has deemed a Class D judgment appropriate. This punishment shall entail the immediate disqualification of Madison Gardner and Antonio Guevara, candidates for University of Texas Student Government (UTSG) President and Vice-President 2012-2013.

Eric Nimmer – Chair, Election Supervisory Board

Truc Nguyen – Vice-Chair, Election Supervisory Board

Robert Toto – Secretary, Election Supervisory Board

Blake Baker – Member, Election Supervisory Board

Rick Lewis – Member, Election Supervisory Board

Ryan Lutz – Member, Election Supervisory Board

Charles E. Maddox – Chair Emeritus, Election Supervisory Board

Cody Permenter – Member, Election Supervisory Board

Ady Wetegrove – Member, Election Supervisory Board