

2014 Election Supervisory Board

In Res Villarreal-Wilkey

February 27th, 2014

Members Mallory Foutch and Robert Toto delivered the opinion of the Board:

In the matter of David Villarreal and Brian Wilkey, executive alliance for the Graduate Student Assembly (GSA) during the 2014 campaign season, heard on one count of violation of the University Regulations clause of the GSA Code.

Whereas the University Regulations clause of Graduate Student Assembly Code Title II Section 1.11 reads:

1.11 UNIVERSITY REGULATIONS. All candidates, and their agents and workers, and the Election Supervisory Board shall be responsible for following all applicable University regulations.

The 2014 Election Supervisory Board found Villarreal and Wilkey to be in violation of the above mentioned clause as a direct consequence of violating Section 11-404 of the UT Institutional Rules on Student Services and Activities, where these Institutional Rules fall under the purview of “University Regulations,” which the above mentioned clause requires GSA candidates to follow. Section 11-404 of the Institutional Rules reads:

(a) Notwithstanding any action taken on account of the violation by civil authorities or agencies charged with the enforcement of criminal laws, the dean of students may initiate disciplinary proceedings under subchapter 11-500 against a student who

*(17) engages in an inappropriate or disproportionate use of an information technology resource owned or controlled by the University of Texas System or uses an information technology resource for an illegal, threatening, or intentionally destructive purpose; prohibited conduct includes, but is not limited to, circumventing system or network security, committing copyright infringement, **transmitting unsolicited e-mail**, sharing a University-issued password, falsifying an e-mail header, and using resources for personal financial gain or profit;*

The ESB found the accused to be in violation of the above rule because a worker for the Villarreal/Wilkey executive alliance campaign, as clearly evidenced by emails presented by the plaintiff during the hearing, was guilty of “transmitting unsolicited e-mail.” The worker, though ignorant that her actions were in direct violation of the Election Code, was found to be the source of mass emails sent to multiple, substantial academic listservs within Graduate Departments. To qualify the justification for considering this act of mass emailing to be a violation, the ESB cites Advisory Opinion 2 of the 2014 Election Supervisory Board. Advisory Opinion 2 reads:

1. The use of Blackboard, Canvas, or academic platform's emailing capabilities may not be used by any person for the benefit of a candidate or candidates.

It is necessary to note that Title II, Section 1.06 of the GSA Election Code reads:

CANDIDATE REFERENCES INCLUDE WORKERS. References to candidates shall be construed to apply to their agents and workers as well.

Therefore, as described by Title II, Section 1.06, the worker in question is indeed subject to GSA Election Code rules, legitimizing that this violation has the potential to incur punishment upon the campaign of the Villarreal/Wilkey executive alliance. In other words, a worker or agent cannot act outside of the jurisdiction of the Election Code; the violation is legitimate.

Before addressing the issue of ignorance, we must first define how the worker in violation of the Institutional Rules is, in fact, considered a worker by definition. This clarification is required, considering that the worker in question was not officially listed as a worker by the Villarreal/Wilkey executive alliance. During the hearing, the accused party attempted to elude culpability of the violation of the Institutional Rules with regard to emails, on the grounds that the source of the email was not an official worker. The accused party claimed that the mass email was an unfortunate instance that occurred outside of their control. In defending this, the accused party claimed that "friends" found out about the campaign and wanted to help. Consequently, the accused party informed those "friends" on how to "get the word out." The writer of the email was highly informed on the Villarreal/Wilkey campaign, quoting specific information describing the executive alliance, indicating that this "friend" was thoroughly informed on how to "get the word out."

Title II, Section 2.07 of the GSA Election Code defines a worker as "*any person that contributes time, effort, or services for the purpose of supporting or furthering a candidacy, where the candidate or agent has knowledge of said contributions.*"

The ESB considered each stipulation of the above definition to determine that the worker who was the source of the mass email, was, in fact, a worker by definition. The worker contributed "time" and "effort" by drafting and sending the email whose clear purpose was "supporting or furthering" the candidacy of Villarreal/Wilkey where the worker undoubtedly received information and or instruction from the candidates or agent, meaning that the candidate or agent must have had "knowledge of said contributions" and intent.

In addressing the issue of ignorance, Title II, Section 1.08 of the GSA Election Code explains that "*ignorance of this code shall not be an acceptable defense in response to any offense committed in any election under this code; either by the candidates themselves, their agents or **workers**, or the election regulatory bodies, as defined by this code.*"

While the worker who acted as the source of the email acted in ignorance of the rules outlined by the GSA Election Code, the worker remains guilty of committing a legitimate defense as defined by Title II, Section 1.08 above.

Considering that a legitimate offense occurred by a legitimate worker of the Villarreal/Wilkey campaign team, the ESB finds it necessary to meet this apparent violation with an appropriate punitive response. The ESB determines that this violation warrants a Class B remedy, which results in a moratorium of campaigning.

In order to clarify that a legitimate offense committed by a worker is to be incurred by the candidates with which the worker is involved, the ESB cites Title II, Section 4.17, which reads:

*CONSEQUENCES OF A CLASS B OR CLASS VIOLATION. If, after a hearing, the Election Supervisory Board finds a candidate, **or a candidate's agents or workers**, has committed a Class B or Class C violation, the ESB may restrict the candidate or the candidate's agents or workers from engaging in some or all campaign activities for some or all of the remainder of the campaign. If an order is issued covering only part of the remaining campaign period, it shall take effect within 24 hours so that after its termination, the candidate will have an opportunity to resume campaigning during the days immediately prior to and including the election days.*

In this case, where the ESB determines a Class B violation on account of the worker's actions, as legitimized above, the executive alliance David Villarreal and Brian Wilkey for the GSA elections must cease *all* campaigning activities beginning at 12:00pm on Thursday, February 27, 2014 until 5:00pm on that same day, at which point the election period will be concluded. Not only must the executive alliance of Villarreal/Wilkey cease all planned campaigning activities during the stated time frame, but these candidates must also remove and take down all campaign materials currently in circulation and must attempt to do so, to the best of their ability, before 12:00pm on Thursday, February 27, 2014.

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