

2016 Election Supervisory Board

In Res. Kallen Dimitroff and Jesse Guadiana

ESB Resolution: 2016-007

Election Supervisory Board Vice Chair Zachary Long delivered the majority opinion of the board:

“In the matter of Kallen Dimitroff and Jesse Guadiana, candidates for Student Government Executive Alliance during the 2016 campaign season, the Election Supervisory Board heard one complaint regarding a count of alleged deceptive campaigning.”

Whereas, Pursuant to Title II, Chapter IV, Section 4.11, the Election Supervisory Board conducted a hearing on February 29th, 2016, to ascertain the facts of the complaint brought forward by Kiefer Odell and members of the University Democrats (petitioners collectively referred to as “Members of University Democrats” through the remainder of this opinion for the sake of simplicity), students of the University; and

Whereas, Title III, Chapter IV, Section 4.12 states: “*DECEPTIVE OR MISLEADING CAMPAIGNING. Candidates shall refrain from knowingly deceptive campaign activities, including any act or statement reasonably calculated to injure or compromise the rights or interests of any students, faculty member, or administrator.*” and,

Whereas, Title III, Chapter IV, Section 4.12 limits itself to cases of intentional deceit; and,

Whereas, The application of the above statement requires intent by the candidate (and/or his/her agents and workers) to deceive students, faculty, or administrators, as evidenced by the terms “knowingly deceptive” and “reasonably calculated”; and,

Whereas, The 2016 University Democrats’ Student Government endorsement form, transcribed by agent Walker Fountain of the Dimitroff-Guadiana campaign, contained information conflicting with Kallen Dimitroff’s 2015 University Democrats’ Student Government endorsement form (when she was running for University-wide Representative); and,

Whereas, Members of the University Democrats discovered Dimitroff’s statement regarding having voted in previous primaries to be untrue, and believed the inconsistency to have been intended to deceive Members of University Democrats in order to secure an endorsement from the organization; and,

Whereas, Kallen Dimitroff did not deny the inconsistency, but claimed the 2016 statement had been a communications error from her team; and,

Whereas, Members of University Democrats (1) did not present evidence in support of the belief that Dimitroff's submission had been an *intentional* miscommunication of her voting history, (2) offered only evidence that Dimitroff had indeed miscommunicated, and (3) conjectured as to the intent; and,

Whereas, Mere motive for malicious wrongdoing is not sufficient to prove actual malicious wrongdoing; and,

Whereas, Title II, Chapter IV, Section 4.11 (v) states: "*The complaining party shall bear the burden of proof.*" and,

Whereas, The complaining party did not meet the burden of proof to show that Dimitroff's inaccurate statements, as submitted by campaign agent, Walker Fountain, were "knowingly deceptive" or "reasonably calculated" to mislead, by either party (Dimitroff to intentionally mislead Members of University Democrats through false statements to Fountain, or Fountain to intentionally mislead Members of University Democrats on Dimitroff's behalf); therefore, let it be,

Resolved, That the complaint brought by Mr. Odell et. al. against the Dimitroff-Guadiana campaign is dismissed; and, therefore, be it further,

Resolved, That any adversely-affected party has the right to appeal this decision pursuant to Title II, Chapter V, Section 5.1 of the Election Code, which states: "*APPEAL OF ESB DECISION. Any party adversely affected by a decision of the Election Supervisory Board may file an appeal with the entity with appellate jurisdiction within twenty-four (24) after the adverse decision is announced, unless the Election Supervisory Board's decision takes place during a voting period.*"

In conclusion, the Election Supervisory Board submits its resolution on Tuesday, March 1, 2016 with the majority of board members who were present at the hearing.

Zachary Long, Vice Chair

Elizabeth Roach, Member

Erin Larson, Member

Courtney May, Member

David McDonald, Member

Elizabeth Vigants, Member