

2016 Election Supervisory Board

In Res. Kevin Helgren and Binna Kim

ESB Resolution: 2016-008

Election Supervisory Board Vice Chair Zach Long and Members Courtney May and Kyle Mason delivered the majority opinion of the board:

“In the matter of Kevin Helgren and Binna Kim, candidates for Student Government Executive Alliance during the 2016 campaign season, the Election Supervisory Board heard one complaint regarding a count about falsifying a financial disclosure.”

- Whereas, Pursuant to Title II, Chapter IV, Section 4.11, the Election Supervisory Board conducted a hearing on March 1st, 2016, to ascertain the facts of the complaint brought forward by Tanner Long, a student of the University; and
- Whereas, Kevin Helgren and Binna Kim, candidates for Student Government Executive Alliance, were issued a Class A violation of \$59.50 on February 18, 2016, as stated in ESB Res. 2016-003; and,
- Whereas, ESB Res. 2016-003 is the **only additional resolution** being considered in regards to the decision rendered in ESB Res. 2016-008; and,
- Whereas, The central issue considered was whether the Helgren-Kim campaign falsified financial disclosures and violated the Student Government Election Code by failing to disclose the fine of \$59.50 levied in ESB Res. 2016-003 on their second financial disclosure; and,
- Whereas, Title III, Chapter III, Section 3.19 of the Election Code states: “*RECORD KEEPING. Each candidate in any Student Government election must keep accurate and up-to-date records of all campaign receipts and **expenditures***” and,
- Whereas, Title III, Chapter III, Section 3.22 (c) of the Election Code states: “*All expenses must be included in the financial disclosure report*” and,
- Whereas, Title III, Chapter IV, Section 4.4 of the Election Code states: “*TOTAL EXPENDITURES. Total expenditures shall include all campaign expenditures and **fin**es issued by the Election Supervisory Board and or Supreme Court.*” and;
- Whereas, ESB Res. 2016-003 was delivered on February 18th, 2016 and the second financial disclosure was not due until February 26th, 2016; and,
- Whereas, The Helgren-Kim campaign had an ample period of six days (144 hours) to acknowledge the fine in their second financial disclosure, but still failed to disclose; and,
- Whereas, Tanner Long, the complainant, informed the Election Supervisory Board of the Helgren-Kim campaign's omission; and,

Whereas, Upon further review of the disclosures, the Board found that the Helgren-Kim campaign only included one banner at a cost of \$12, with no indication of the fine levied by the Election Supervisory Board on their second financial disclosure; and,

Whereas, During the hearing, the Helgren-Kim campaign provided no compelling explanation as to why the fine was excluded in their second financial disclosure; and,

Whereas, The Helgren-Kim campaign made no effort to submit an amended financial disclosure to the Board, upon receipt of the complaint; and,

Whereas, Though not required, this action would have demonstrated their recognition of original failure to disclose the fine; and,

Whereas, ESB Res. 2015-004 states: “*That the Rotnofstky-Mandalapu is required to report this expense, as well as the resultant 10% fine on their next financial disclosures, or be subject to further sanctions by the ESB*” and,

Whereas, This precedent, found in ESB Res. 2015-004, outlines that fines must be listed on the financial disclosure following the imposition of a fine by the Election Supervisory Board; and,

Whereas, During the hearing, the Helgren-Kim campaign repeatedly stated the simplicity required to accurately update their financial disclosures, yet still failed to do so; and,

Whereas, The Helgren-Kim campaign claimed that there was no malcontent in this action and were keeping track of the fine on a personal document, outside of financial disclosures; and,

Whereas, The Helgren-Kim campaign stated their intent to account for the fine in their private financial planning in order to avoid exceeding the Executive Alliance campaign spending limit of \$1,023; and,

Whereas, The Election Supervisory Board cannot take into account the intent of the respondents but only their demonstrable actions; and,

Whereas, In Gardner v. the ESB (Docket Number 2012SE-005), the ruling states: “*Chair Nimmer asked the Gardner and Guevara campaign to explain why they had failed to expense a 10% fine which they had previously incurred for failing to accurately expense certain campaign supplies, and why they had further failed to accurately correct these inaccurate expenses as adjusted by order of the ESB. **Petitioners characterized this error as a mistake, and stated that the omission was not intentional.***” and,

Whereas, The Helgren-Kim campaign used this same line of reasoning in their failure to disclose the fine of \$59.50 levied by the ESB; and,

Whereas, Gardner v. the ESB further states: “*Petitioners argue that the ESB erred substantively in failing to correctly consider their intent (or lack thereof) with respect to the omissions in their financial disclosure.*” and,

- Whereas, The appellate court in Gardner v. the ESB upheld the ruling that intent of the petitioners is not a consideration in assessing the infraction, as language of intent was edited out of the code in years prior due to the incredibly high standard and burden of proof required to prove the intent of candidates; and,
- Whereas, Additionally, the Helgren-Kim campaign's failure to report the fine on the second financial disclosure amounts to gross negligence because of the egregious failure to report within the six day period and failure to amend their financial disclosure after the complaint was filed; and,
- Whereas, Per the Supreme Court's ruling in Odell, et. al. v. Dimitroff-Guadiana (delivered March 1st, 2016), Chief Justice Stone states: "*Because Student President Body President and Vice President are jobs which pay money, have offices, and manage a staff, we treat **any misrepresentation** in an effort to seek the jobs **as misrepresentation on a resume.***" and,
- Whereas, Chief Justice further states: "*Gross negligence is not an acceptable defense for the resume inaccuracy, so any harm is unduly created.*" and,
- Whereas, Inaccurate descriptions of voting records and inaccurate financial disclosures both amount in these cases to misrepresentation in the pursuit of a job, though the election code explicitly indicates that the latter is punishable by disqualification, as it is a blatant disregard for the rules, while the former is not addressed by the code; and,
- Whereas, Title III, Chapter III, Section 3.28 of the Election Code states: "*DISQUALIFICATION. Failure to file accurate financial disclosure statements by the deadlines listed in this section, or falsification of financial statements, shall allow for disqualification of the candidate(s) or executive alliance(s) by the Election Supervisory Board.*" and,
- Whereas, In the Gardner v. the ESB case referenced earlier in this resolution, it states: "*The ESB argued that a finding of gross negligence committed, as evidenced by repeated or especially careless violation, should govern.*" and,
- Whereas, Per this line of reasoning, gross negligence for not reporting accurate financial disclosures cannot be used as an acceptable line of defense and is therefore punishable to the fullest of the Election Code, as was in Docket Number 2012SE-005, where a Class D violation was upheld over the Gardner-Guevara; and,
- Whereas, Falsification of financial disclosures gives an unfair advantage to the Helgren-Kim campaign, as it inadvertently leads voters and other candidates to believe that the campaign has more financial flexibility than they actually do, regardless of whether they personally acknowledged the fine and intended not to exceed their spending limit; and,
- Whereas, Further, for clarification, noted by Mr. Kevin Helgren, he presented an anonymous set of messages that outlined a conversation between David Engleman, Chair of the Election Supervisory Board, and Melysa Barth, which was also submitted as evidence by Chairman Engleman:

Melysa Barth: *Do fines not show up on financial disclosures?*

David Engleman: *We track them but they aren't something candidates submit*

David Engleman: *I may add a column for them at the end of the spreadsheet*

Melysa Barth: *gotcha - just because I thought it said in the election code that if you spend more than 20% over you were automatically disqualified; and,*

- Whereas, A petition for review to a previous Election Supervisory Board (Docket Number 2012SE-005) states: *"this clause does not state or imply that the decision of the assigned representative is final or binding on the ESB. To state otherwise would remove any responsibility for self policing from the candidates should the ESB representative make any error."* and,
- Whereas, Chairman Engleman's opinion on the matter is simply the thoughts of the Chair himself about the Election Code pertaining to this matter, as Chairman Engleman was recused from this case, and none of the opinion he expressed is binding to this case, as it was further reviewed by the entirety of the Board; and therefore, let it be,
- Resolved, That the Election Supervisory Board has determined that the Helgren-Kim campaign failed to comply with Title III, Chapter IV, Section 4.4 of the Student Government Election Code by failing to report issued by the Election Supervisory Board in ESB Res. 2016-003; and therefore, be it further,
- Resolved, That this failure to comply with the Election Code shall result in a **Class C violation of a forty-eight (48) hour moratorium** of the Helgren-Kim campaign **that shall go into effect on March 2, 2016 at 8:00 a.m. and a fine of \$205.00**; and therefore, be it further,
- Resolved, This moratorium entails the same as that delivered in Chief Justice Stone's opinion, including: no West Mall/public space campaigning, no public campaign appearances or campaign events, no distribution of campaign materials, no new social media posts may be made by campaign staff during the moratorium, unless they are objectively neutral posts that merely share articles or discuss multiple candidates without judgment, no encouragements for students to vote UNLESS the encouragement is completely neutral with regard to whom to vote for. Profile pictures associated with the Campaign would make material non-neutral. Articles associated with the campaign would do the same; and therefore, be it further,
- Resolved, In pursuit of the moratorium, the Helgren-Kim **has until 2:00 p.m. on March 2, 2016** to suspend the campaign Facebook page and the campaign website, and will not participate in any one-on-one solicitation of votes; and therefore, be it further,
- Resolved, Additionally, the Helgren-Kim campaign **has until 8:00 a.m. on March 3, 2016** to remove all existing physical signage and publicity materials for the campaign; and therefore, be it further,
- Resolved, That the respondents, Kevin Helgren and Binna Kim, have 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 Wednesday, March 2, 2016 with the majority of board members who were present at the hearing.

Zachary Long, Vice Chair

Sofia Aranha, Secretary

Kyle Mason, Member

Courtney May, Member

Matt Gmitro, Member

Elizabeth Vigants, Member

Erin Larson, Alternate Member