

SCHOOL OF LAW  
THE UNIVERSITY OF TEXAS AT AUSTIN

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**RE: ESB Resolution 2016-001 & Helgren-Kim**

Dear Ms. Kim, Mr. Helgren, Mr. Long, and Ms. Larson:

On March 10, 2016 a hearing was held in the appeal of ESB Resolution 2016-001 in the Student Services Building (SSB) on the University of Texas campus in Austin, Texas. The appeal was brought by Kevin Helgren and Binna Kim, candidates for Student Government Executive Alliance. The appeal was brought pursuant to Title II, Chapter V, Section 5.1 of the Election Code. However, due to irregularities in the hearing before the Student Government Supreme Court, the appeal was re-heard by Jeana Lungwitz, a hearing officer for student discipline cases and clinical professor at the University of Texas School of Law.

**History**

A complaint was filed claiming that a member of the Helgren-Kim campaign had begun campaigning prior to the sanctioned campaign period by sending a Facebook message to an individual stating in relevant part: “. . . So as you may know, a dear friend of mine, Kevin Helgren, is running a campaign for student body president with Binna Kim as his VP! We would love to have your support, could I have your email address so we can send you a bit more info about our goals?” Helgren-Kim did not dispute that one of their agents sent the message. The person receiving the message was not a personal friend of anyone on the campaign, but he had been in a class with one of the agents of the Helgren-Kim campaign. The ESB found that this message violated Title II, Chapter VIII, Section 8.2 of the Election Code as an attempt to solicit support prior to the sanctioned campaign period. The ESB found this was a Class B violation and imposed a thirty-six (36) hour moratorium of the Helgren-Kim campaign.

**Appeal**

Helgren-Kim appealed the decision of the ESB claiming that the Election Code allows the personal individual recruitment by a candidate of individual team members before the sanctioned campaign period begins. Further, the person who filed the original complaint

appeared at the hearing on the appeal effectively withdrawing the original complaint, although that was not the complainant's position at the hearing in front of the ESB.

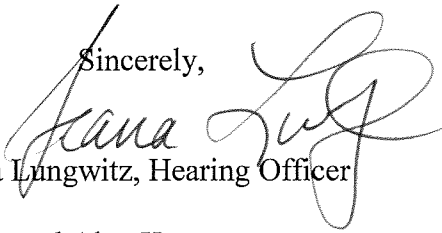
## **Decision**

After hearing argument, I affirm the decision of the ESB. Although the Election Code does provide for personal individual recruitment by a candidate of individual team members before the sanctioned campaign period begins, Title II, Chapter II, Section 2.3 specifically includes in the definition of "campaign" and "campaigning" activities or statements "that have or are intended to have the effect of soliciting . . . support . . . for a candidate or elective office. Campaigning should only occur during the official campaign period as defined by the code." Helgren-Kim argued that they reached out to this individual in hopes that he would work on their campaign, however the language used in their message was "support." Considering the fact that the person receiving the message was the complainant and interpreted this as soliciting his support or his vote, and the fact that the code provision defining campaigning actually uses the word "support," the ESB did not err in drawing this conclusion.

The fact that the complainant appeared at the hearing on appeal effectively withdrawing his complaint, although compelling, does not change the outcome of this appeal. Perhaps it would have had the complainant appeared to say that he had new information that the message was not sent by an agent of the Helgren-Kim campaign; however, the facts regarding the content of the message and who sent it are undisputed. At the level of appeal, the case is not between the complainant and the campaign, the appeal is between the ESB and Helgren-Kim. The issue on appeal is whether the Facebook message sent by the Helgren-Kim campaign to the complainant violated the Election Code. Allowing a complainant to withdraw a complaint at the level of appeal without new factual information could set an unhealthy precedent, permitting undue pressure to be put on complainants in the future. While there was no evidence that undue pressure had been put on this complainant that is not the issue in this appeal.

By affirming the ESB's decision, I affirm the Class B violation of a thirty-six (36) hour moratorium of the Helgren-Kim campaign that shall go into effect on the date campaigning begins. This moratorium includes: no West Mall/public space campaigning, no public campaign appearances or campaign events, no distribution of campaign materials, no new social media posts unless they are objectively neutral posts, no encouragement for students to vote unless the encouragement is completely neutral. Profile pictures associated with a campaign would make material non-neutral. Articles associated with the campaign are non-neutral.

Sincerely,

  
Jeana Lungwitz, Hearing Officer

Cc: Dean Soncia Reagins-Lilly and Alex Kappus