

SCHOOL OF LAW  
THE UNIVERSITY OF TEXAS AT AUSTIN

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727 East Dean Keeton Street • Austin, Texas 78705  
(512) 232-1358 • FAX (512) 232-9171

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Binna Kim  
Bkim41@gmailcom

Kevin Helgren  
kevinhelgren@utexas.edu

Zach Long  
Zachary.long@utexas.edu

Erin Larson  
erin.larson@utexas.edu

**RE: ESB Resolution 2016-008 & 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 2016-008 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**

Kevin Helgren and Binna Kim, candidates for Student Government Executive Alliance, were issued a Class A violation of \$59.50 on February 18, 2016. Instead of being required to pay the fine, the ESB allowed Helgren-Kim to deduct the amount of the fine from their spending limit.

A complaint was filed claiming that the Helgren-Kim campaign failed to disclose the fine on their second financial disclosure that was due on February 26, 2016, and that this failure was in violation of Title III, Chapter III, Sections 3.19 and 3.22(c), and Title III, Chapter IV, Section 4.4 of the Election Code.

After a hearing, the Election Supervisory Board (ESB) resolved that there was a failure to comply with the Election Code. The penalty assessed was a forty-eight (48) hour moratorium of the Helgren-Kim campaign and a fine of \$205.00. The details of the penalty can be seen in ESB Resolution 2016-008.

**Appeal**

Helgren-Kim appealed the decision of the ESB claiming that their failure to report the fine imposed by the ESB was not a violation of the Election Code because they were not

required to pay it out of pocket, but instead were allowed to deduct it from their spending limit. They further claim that Title III, Chapter IV, Subchapter A, Section 4.4 (c) of the Election Code allows candidates to pay their fines up to forty-eight (48) hours after the announcement of the election results. Finally, Helgren-Kim claim that by not exceeding their spending limit after deducting the fine, they were in compliance with any fine assessed.

During the argument Helgren-Kim argued that the fine was too high as compared to other fines imposed by the ESB for financial disclosure violations during this election season. The ESB responded that the fines imposed on other candidates were for less egregious violations. Neither party provided any evidence on this issue.

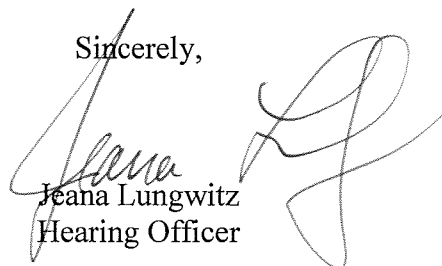
### **Decision**

After hearing argument, I affirm the decision of the ESB. The ESB is generous when it allows candidates to deduct fines imposed for violations of the Election Code from their spending limits instead of actually paying them. Nothing in the Election Code indicates that this generosity should allow candidates to hide the fact (whether intentional or not) that they were fined by not reporting it on the required financial disclosure as required by the Election Code.

The argument that candidates can *pay* fines up to forty-eight (48) hours after the election results are announced says nothing about when the fine should be *disclosed* on a financial report. Further, when candidates are allowed to deduct a fine from their spending limits, they constructively pay the fine immediately. Simply complying with a spending limit that only the candidates know is lower than the spending limits of other candidates is not enough. Nondisclosure would keep voters in the dark about a candidate's fines for violations of the Election Code – a fact which could ultimately influence votes.

By affirming the decision of the ESB, I affirm the Class C violation of a forty-eight (48) hour moratorium of the Helgren-Kim campaign and a fine of \$250.00. The moratorium shall go into effect on the day 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