

2020 Election Supervisory Board

In Re: Unapproved Campaign Materials

ESB Resolution: 2020-002

Election Supervisory Board Chair Sergio Cavazos delivered the majority opinion of the board:

“In the matter of campaigns using unapproved campaign materials”

Whereas, Section 4.6 of the SG-Specific Election Code reads “FILED CAMPAIGN MATERIALS. A sample of all campaign materials must be filed with the Election Supervisory Board prior to its public distribution or publishing. Candidates who distribute, publish, or disseminate their campaign materials prior to approval from the Election Supervisory Board shall be appropriately sanctioned for each violation of this section,” and,

Whereas, Section 2.10 of the Campus-Wide Election Code reads as ““CAMPAIGN MATERIALS”” refers to all materials and literature of any kind concerning any candidate that have or are intended to have the effect of soliciting votes, support, or interest for a candidate or elective office but excludes any individual endorsement not approved by the candidate,” and,

Whereas, Election Supervisory Board Advisory Opinion 2020-007 reads “The 2020 Election Supervisory Board interprets campaign materials to be those publicly broadcasted or distributed materials. Candidates do not need to submit spontaneous, speech-based, or interpersonal materials” and “Candidates do need to submit those advertisements (posters, videos, banners, fliers, etc.) created for the purpose of garnering votes or support from a public audience. The focus is on printed/digital promotion (fliers, videos, etc.) curated for the campaign and “When in doubt, a candidate should refer to their Election Supervisory Board representative,” and,

Whereas, Slide 24 of the Candidate Seminar PowerPoint says “File your campaign materials: Take a picture of all your campaign signage and material before you start campaigning and send it to your ESB representative,” and,

Whereas, Pursuant to SG Supreme Court AO 2020-001 – Clarification of *Pease v. ESB*, the Election Supervisory Board made a good faith effort to determine if a publicly accessible system could be developed in time for the campus-wide elections that would allow the student body at-large to access the information necessary to submit a complaint for unapproved campaign materials; and,

Whereas, the Election Supervisory Board was advised that it would not be possible to create such a system in time for the 2020 Campus-Wide Elections; and,

Whereas, The SG Supreme Court determined that “where the ESB maintains a position of privileged information, the ESB enjoys limited sua sponte authority in accordance with the Court’s ruling in Gardner/Guevara v ESB (2012),” and,

Whereas, Section 4.13 of the Campus-Wide Election Code states “Within the ranges established by the Election Supervisory Board, the Election Supervisory Board shall select the amount of the fine or length of the suspension most appropriate to both the severity of the infraction and the intent of the violator as determined by the Election Supervisory Board,” and,

Whereas, in ESB Resolution 2019-006, “the Election Supervisory Board has voted to add a 2% fine to the Izzy-Elena campaign’s expenditures for each of the 13 unapproved promotional graphics, and a 5% fine for each of the two unapproved video promotions”; and,

Whereas, Section 4.10 (b) states that “Written opinions shall set a precedent for a time period of three election cycles for Election Supervisory Board rulings and shall guide the Election Supervisory Board in its proceedings.”; and,

Whereas, the Election Supervisory Board discovered 11 promotional graphics on the Sean & Suseth 2020 Facebook and Twitter page (@seanandsuseth) that were not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 9 promotional graphics and 2 promotional videos (for a total of 9 promotional graphics and 2 promotional videos) on the Connor & Camille 2020 (@connorcamille2020) Facebook and Twitter page (ConCam2020) that were not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 3 promotional graphics and 1 promotional video (for a total of 3 promotional graphics and 1 promotional video) on the Adam & James 2020 (@AdamJames2020) Facebook page that were not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 9 promotional graphics on the Derek Foshee website (derekfoshee.com) and Twitter page (@derekfoshee) that were not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 1 promotional graphic on the Robert Salkin Facebook page (@realRobertSalkin) that was not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 1 promotional graphic on the Peter Denham Instagram page (@peterdenham2020) that was not approved by the Election Supervisory Board; and,

Whereas, the Election Supervisory Board discovered 1 promotional graphic on the Ben Levkovich Instagram page (@believeinben) that was not approved by the Election Supervisory Board; and,

Whereas, SG Supreme Court AO 2020-001 – Clarification of *Pease v. ESB* stated that “If these conditions obtain, the ESB is not required to hold a full hearing as outlined in §4.9. However, that is not to say that the ESB cannot choose to afford candidates some of the procedural measures (fair notice and a chance to respond and present evidence) outlined in §4.9.”; and,

Whereas, the Election Supervisory Board provided fair notice to the aforementioned candidates via email of the discovered unapproved materials on February 20th and provided them with 24 hours to respond and present evidence of any error (“If this is an error and you or a representative of your campaign staff did submit material, please forward the original communication for our review by **8:00 P.M on Friday February 21st**”); and,

Whereas, none of the aforementioned candidates were able to provide the Election Supervisory Board with any exculpatory evidence showing that these materials had been submitted for approval; and,

Whereas, the Election Supervisory Board has voted each of these infractions of Section 4.6 of the SG-Specific Election Code to be a Class A violation; and,

Whereas, pursuant to ESB Resolution 2019-006, the Election Supervisory Board has voted to add a 2% fine to the listed campaign’s expenditures for each of the unapproved promotional graphics and a 5% fine for each of the unapproved video promotions; and, therefore be it,

Resolved, That the following candidates are hereby fined with the listed reductions in budget spending for the duration of the 2020 campus election cycle:

Candidate Name	Candidate for	Reduction in Spending
Sean Tucker & Suseth Muñoz	Student Government Executive Alliance	Cumulative Reduction of 22% 11 graphics (2% each)
Connor Alexander & Camille Johnson	Student Government Executive Alliance	Cumulative Reduction of 28% 9 graphics (2% each) 2 videos (5% each)
Adam Bergman & James Comerford	Student Government Executive Alliance	Cumulative Reduction of 11% 3 graphics (2% each)

		1 video (5% each)
Derek Foshee	Communication	Cumulative Reduction of 18% 9 graphics (2% each)
Robert Salkin	Natural Science	Cumulative Reduction of 2% 1 graphic (2% each)
Peter Denham	University-Wide Representative	Cumulative Reduction of 2% 1 graphic (2% each)
Ben Levkovich	University-Wide Representative	Cumulative Reduction of 2% 1 graphic (2% each)

Resolved, That any adversely affected party has the right to appeal this decision pursuant to Section 5.1 of the Campus-Wide Election Code, which reads, “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) hours 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 Friday, February 21, 2020, with the majority of board members who were present at the meeting.

Affirmative Votes:

Sergio Cavazos (Chair)
Nicholas Eastwood (Vice Chair)
Devika Manish Kumar (Secretary)
Jessica Zhang
Katherine Birch
Jenny Ainsworth
Hyun Jung
Chris Brooke
Molly Comeaux