

# DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

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Citation: *Elgaweesh v Verghese*, 2024-03-13

**BETWEEN:**

**FARAH ELGHAWEESH**

Applicant

- and -

**JACOB VERGHESE**

Respondent

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## SECTION 3.1(c) DECISION BYLAW 1500

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<b>Panel Members:</b>	<b>Sarah Rhydderch, Chief Tribune (Chair) Navneet Chand, Associate Chief Tribune Hiba Khan, Tribune</b>
<b>Hearing Date:</b>	<b>March 13, 2024</b>
<b>Witnesses for the Applicant:</b>	<b>Abdul Abbasi Asha Jama</b>
<b>Witnesses for the Respondent:</b>	<b>N/A</b>

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## **The reasons of the unanimous Board are delivered by S. Rhydderch:**

### **FACTS**

[1] Farah Elgaweesh (“Ms. Elgaweesh”), a candidate running for the position of VP Academic, posted several social media posts to her personal Instagram account’s story during her campaign. Subsequently, Ms. Elgaweesh was contacted by the Chief Returning Officer (CRO), Jacob Verghese, who informed her that these posts constituted unsolicited campaign materials and instructed her to remove them. Following this communication, Ms. Elgaweesh was issued a \$160 fine for contravening the rules laid out in the candidate’s Nomination Package, which resulted in her exceeding her campaign budget and subsequently being disqualified from the race.

[2] Ms. Elgaweesh has appealed this decision on the grounds that her social media posts did not violate the rules. Alternatively, she argues that even if they did, the imposed fine was excessive and constituted extreme punishment, which does not align with the principles outlined in Bylaw 320.17.

[3] Ms. Elgaweesh seeks a declaration that the social media posts did not constitute a violation of the rules and retraction of her disqualification from the Students' Union Executive election, Vice President Academic race.

### **ISSUES**

[4] The issues before this Board are as follows:

1. *Did any of Ms. Elgaweesh’s social media posts contravene the rules set out in the Nomination Package?*
2. *If so, what is the appropriate fine?*

### **ANALYSIS**

[5] Ms. Elgaweesh’s case presents several key points that warrant careful consideration.

[6] Firstly, it's crucial to assess whether her social media posts indeed constituted unsolicited campaigning materials. The contention here lies in the interpretation of Ms. Elgaweesh’s posts as requesting individuals to advocate on behalf of her campaign. While Ms. Elgaweesh had seven approved posts, which were pre-approved as per the campaign regulations, the issue arose with seven additional posts that were deemed to contravene the bylaws. These posts were apparently not pre-approved and were considered to exceed the boundaries of permissible campaigning.

[7] Ms. Elgaweesh contests the characterization of her posts as unsolicited campaigning materials, asserting that she was unaware of any breach of the bylaws and had not been previously notified or warned about the potential violations. She maintains that her intent was not to contravene the bylaws and argues that the fine imposed was disproportionate, particularly considering the absence of a prior warning or opportunity to rectify the alleged breaches.

[8] Moreover, Ms. Elgaweesh raises concerns regarding procedural fairness, highlighting the lack of communication and engagement from the Chief Returning Officer (CRO). The decision to issue a fine and subsequently disqualify her from the race without affording her the opportunity for a discussion or explanation appears to raise questions about procedural fairness and due process.

[9] Additionally, Ms. Elgaweesh points to inconsistencies in the application of fines, citing a precedent where a candidate was fined a lesser amount for a similar infraction. She argues that the fine imposed on her was excessive, especially considering the mitigating circumstances and the lack of intent to gain an unfair advantage.

[10] Furthermore, Ms. Elgaweesh contends that the CRO's assertion regarding candidates not being disqualified for budget overspending contradicts the bylaws, suggesting a deviation from established procedures.

[11] In summary, the analysis of Ms. Elgaweesh's case necessitates a thorough examination of the interpretation of the bylaws, the application of fines, procedural fairness, and consistency in decision-making. These factors will be crucial in determining the validity of Ms. Elgaweesh's appeal and the appropriate course of action to be taken.

**Issue 1: Did any of Ms. Elgaweesh's social media posts contravene the rules set out in the Nomination Package?**

*Post 1 (page 5 of Respondent's Application)*

[12] The first post in question does not constitute unsolicited campaign materials based on the following considerations.

[13] The post directly links to content that was already accessible to all Instagram users. It does not introduce any new campaign material but rather directs users to an existing post. This suggests that the content was not solicited by individuals but rather was part of the general content available on the platform. The post does not directly mention Ms. Elgaweesh or her candidacy unless users engage with the content further. Without explicit reference to Ms. Elgaweesh or her campaign, it is less likely to be perceived as soliciting support for her

candidacy. The post does not explicitly state or encourage users to vote for Ms. Elgaweesh or support her campaign. Instead, it appears to be a general sharing of content without any overt campaign messaging or calls to action.

[14] Therefore, no fine is warranted for Post 1.

*Post 2 (Page 6 of Respondent's Application)*

[15] Based on the aforementioned factors, we hold that Post 2 did constitute unsolicited campaign materials. It directly mentions Ms. Elgaweesh's candidacy and appears to encourage users to vote for Ms. Elgaweesh or support her campaign. As such, a charge is warranted.

*Post 3 (Page 7 of Respondent's Application)*

[16] Post 3 constituted unsolicited campaign materials. In this post, Ms. Elgaweesh requests that her followers "repost [her] content hard". As well, she requests that all her followers spread the message and tell others to vote for her. As such, a charge is warranted for Post 3.

*Post 4 (Page 8 of Respondent's Application)*

[17] Ms. Elgaweesh argued at the Hearing that some of her posts, including this one, were not intended to advertise for her campaign, but rather were intended to show support for her friends who assisted her in the race. Showing support for one's friends can be done without advertising that you are running for a specific position. We believe that the inclusion of Ms. Elgaweesh's position as well as the specific dates for voting mean this constitutes unsolicited campaign material. A fine is thus warranted.

*Post 5 (Page 9 of Respondent's Application)*

[18] Asking your followers to vote for you constitutes unsolicited campaign materials. As such, a fine is warranted.

*Post 6 (Page 10 of Respondent's Application)*

[19] As above, Ms. Elgaweesh requests that her followers vote for her and provides the QR code to access the voting sheet. As such, a fine is warranted.

*Post 7 (Page 11 of Respondent's Application)*

[20] Ms. Elgaweesh uses the words “Please vote for me” to inform viewers of her story that they can vote for her without having to vote for anyone else. It goes without saying that this constitutes unsolicited campaign materials and warrants a fine.

[21] To conclude, posts 2 to 7 (inclusive) all constitute unsolicited campaign materials and violate the rules set out in the candidate’ Nomination Package.

**Issue 2: What is the appropriate fine for unsolicited campaign materials in the form of an Instagram story?**

[22] As established in the Nomination Package, the Counter-Balancing fine for unsolicited campaign materials is: \$10+ \$0.10 for each individual reached. Ms. Elgaweesh testified that she had approximately 384 Instagram followers on her private Instagram account at the time of posting these stories. As such, we will multiply the potential reach of 384 followers by \$0.10 to deduce that the fine for individuals reached per post totals \$38.40. As there were six unapproved posts which constitute unsolicited campaign materials, there is a base fine of \$60. Combined with the reach, the total for the fine should be \$98.40.

**DISPOSITION**

[23] The issues before this Board, and the answers to those issues, are as follows:

1. *Did any of Ms. Elgaweesh’s social media posts contravene the rules set out in the Nomination Package?*
2. *If so, what is the appropriate fine?*

[24] We have established that posts 2 to 7 (inclusive) constituted unsolicited campaign materials. By adhering to the Counter-Balancing fine established in the candidate’s Nomination Package, the appropriate charge for Ms. Elgaweesh is \$98.40.

*Application dismissed.*