TO: John E. Walker
Taylor Ney
Unite Party

FROM: Dr. Amy Hecht
Vice President for Student Affairs

DATE: March 26, 2018

RE: Appeals Related to Spring 2018 Student Government Association Election

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These matters have come before me as a result of appeals filed seeking review of five recent decisions of the Florida State University Supreme Court ("Supreme Court") related to the Spring 2018 Student Government Association ("SGA") election. Review has been requested by John E. Walker and others of the following decisions of the Supreme Court[1] related to various provisions of Chapter 700 of the Student Body Statutes ("SBS"), commonly referred to as the Student Body Election Code ("Election Code"):

Ney v. Unite Party
Walker v. SOE
Supervisor of Elections Payment of Fines
Walker v. Unite (Free Standing Signs)
Walker v. Unite (24 Hour Waiting Period)

On March 22, 2018, appellant John E. Walker ("Walker"), who had been an independent candidate for SGA president in the Spring 2018 election, indicated that he did not intend to seek review of any additional Supreme Court decisions; as such, Walker's five appeals are now ready for final action. The Vice President for Student Affairs has appellate jurisdiction over decisions of the Supreme Court pursuant to Rule 3.8, Supreme Court Rules of Procedure. Each of the five decisions under review are addressed individually below.

I. Ney v. Unite Party

In Ney v. Unite Party, Taylor Ney, campaign manager for the independent ticket of John E. Walker and Randy Ornstein, alleged 52 violations of the Election Code related to alleged early campaigning by the Unite Party. The Elections Commission sustained 16 of the 52 Election

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[1] The decisions of the Supreme Court are listed herein as they are identified in the Supreme Court Reporter found at http://sga.fsu.edu/reporter.shtml.

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Code Violations and assessed a fine of $11,088 against the Unite Party for the violations. Ney and the Unite Party, respectively, filed cross appeals (1) alleging error for the Elections Commission's failure to uphold the remainder of the alleged violations (Ney appeal); and (2) challenging the constitutionality under the First Amendment to the United States Constitution of the Election Code, and thus seeking to set aside completely the finding that campaign violations occurred as well as the assessed fines on the basis of that unconstitutionality (Unite Party appeal).

In response to the parties' cross appeals, the Supreme Court engaged in an extensive First Amendment analysis examining the constitutionality of the time, place, and manner restrictions imposed on campaigning by the Election Code and concluded that the Election Code is unconstitutional on the basis that it violates the right to free speech. The Supreme Court went on to hold, alternatively, that even if the Election Code were consistent with the First Amendment, the Elections Commission erred in sanctioning the Unite party. In doing so, the Supreme Court relied upon the plain language of Chapter 700, Student Body Statues, which limits the Election Code's application to the three weeks immediately preceding an election.

I find it unnecessary to decide the ultimate constitutionality of the Election Code[2] because I agree with the Supreme Court that although language of Chapter 700 falls short of what may have been intended when the Election Code was enacted, its words and their plain meaning nevertheless cannot be ignored. The Code on its face limits its applicability to a discrete time frame; I cannot modify the language or meaning of those words here.

In light of the foregoing, and a number of other shortcomings of the Election Code, I strongly urge the Student Government Association to undertake a review and comprehensive rewrite of its Chapter 700 of the Student Body Statutes to address these and other deficiencies. In doing so, I reiterate the previous request of my predecessor, Dr. Mary Coburn, who has repeatedly asked that SGA undertake such a revision. This is not a task the University administration can undertake; only the SGA can revise the Student Body Statutes. I encourage that review and stand ready to provide whatever support necessary for the SGA to undertake that process.

II. Walker v. SOE

In Walker v. SOE, Walker alleges that the Unite Party's Final Expense Statement fell short in its content of statutory requirements and that this deficiency was never adequately rectified, as contemplated by section 714.3(G)(2) of the Student Body Statutes. Unfortunately, another poorly drafted provision of the Election Code is at issue here, in this instance related to the mandatory disclosure of contributor data. Section 714.3(B)(4) of the Student Body Statutes requires submission of "[a]n itemized report containing the full name, residence, or business

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[2] The Florida State University Supreme Court is generally charged with administration of the Student Body Constitution, Statutes, and other SGA matters. It is unclear whether the Supreme Court has jurisdiction to entertain challenges brought under the United States Constitution. Regardless, it is not necessary to the resolution of Ney v. Unite to decide the constitutionality of the Election Code.

address" of each campaign contributor. Walker isn't incorrect in arguing that the result of the Supreme Court's disjunctive construction of the use of the word "or" in this serial list results in the absurd requirement that only one of the three pieces of data must be provided for the report to comply with Section 714.3(B)(4). However, I cannot rewrite the Student Body Statute deficiencies on appeal and must follow the plain language even when the drafters' intent was likely different, and therefore the Supreme Court's decision is affirmed. Again, the importance of the needed corrective work cannot be overstated.

To the extent that Walker takes issue with the form and/or means of submission of Unite's report and subsequent report, I disagree that the submission of the supplemental report was deficient and, even assuming that it was, I disagree that the alleged deficiency can constitute a violation. Significantly, "Complete Financial Expense Statement" and "Incomplete Final Expense Statement" are each defined in section 714.3(F) and (G), respectively. No mention of the form of submission is made with respect to whether a report is "complete" or "incomplete." Moreover, section 701.1(U), which does mention form of submission, gives to the Supervisor of Elections discretion. Finally, section 715.9, which defines "violations," does not refer to the form of the report or the means of submission as forming the basis for a potential violation.

III. Supervisor of Elections Payment of Fines

Given the findings of Ney v. Unite Party above upholding the Supreme Court's decision reversing the $11,088 fine, this appeal is now moot; no further action is required on appeal.

IV. Walker v. Unite (Free Standing Signs)

At issue in this appeal is whether Election Code violations involving Unite Party campaign signs undisputedly (1) placed outside of allowable areas and (2) placed without the poster's contact information were adequately and appropriately sanctioned by the Supreme Court, which consolidated the six alleged violations into a total of two violations, and imposed a total fine of $63.00 for the two violations that were upheld.

I agree with Appellant Walker's position that each election violation should have been treated individually and, as such, remand this issue to the Supreme Court for the imposition of a fine consistent with this holding.[3] See § 715.5(A), SBS ("Each occurrence, event, or time that allegedly violates the Election Code shall constitute a violation.")

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[3] To the extent that Appellants request as a remedy in each appeal that the Unite candidates be disqualified and that the second-place candidates be certified as winning the election, there has been no evidence submitted in any case that would establish that the integrity of the election, access to polling, vote count, or any other material disruption occurred that would have fundamentally affected the fairness or outcome of the election. As such, I do not award that remedy here.

V. Walker v. Unite (24 Hour Waiting Period)

Finally, in this case the issue is whether Unite Party campaign signs were utilized prior to the expiration of the 24 hour waiting period contained in section 714.1(A), Student Body Statutes. It undisputed that both Walker and the Unite Party were given verbal instructions by the Supervisor of Elections that election materials could be used immediately after approval regardless of the 24 hour statutory period. Whether the Supervisor's statements were contrary to Statute are immaterial when, as here, both sides were given the same inaccurate advice. Moreover, the record does not establish that Walker made any contemporaneous objection when he was given the same inaccurate advice. No unfair prejudice results and, as such, no remedy is in order in this appeal.

Notice of Appellate Rights: You may seek judicial review of this final University decision pursuant to Florida Rules of Appellate Procedure 9.190(b)(3), applicable to review of quasi-judicial decisions of an administrative body not subject to the Administrative Procedures Act, by filing a petition for certiorari review with the appropriate circuit court within thirty days of this final University decision. If you seek review with the court, you must also provide a copy of the petition to the following university office or official: Ms. Angela Jackson, Office of the General Counsel, 424 Westcott Building, 222 S. Copeland Street, Tallahassee, Florida 32306-1400.

cc: Danielle Acosta, Director, Student Affairs
Carolyn Egan, University General Counsel
Angela Jackson, Agency Clerk