IN THE

UNIVERSITY ELECTIONS COMMISSION

No. UEC-2016-W-025

JACOB PEARLMAN, in his official capacity as Student
General Counsel, Complainant

v.

LEO ZEKELMAN, Respondent

[March 11, 2016]

Appearances: JACOB PEARLMAN and NICK LOUKIDES appeared before the Commission on behalf of the Complainant. The Respondent rested on her brief and did not appear at the hearing.

Heard Before: REESE, Election Director, PODRYGULA, Backup Election Director, ANDREWS, BENNETT, BROWN, CELENTINO, COLELLA, REAVES and ROSENTHAL Commissioners

Opinion of the Commission

COMMISSIONER REAVES delivers the opinion of a unanimous Commission.

This matter comes before the University Elections Commission on the complaint of Complainant, Jacob Pearlman, against Respondent, Leo Zekelman for violations of Article VI of the CSG Compiled Code (“the Election Code”). Complainant alleges that Respondent
failed to attend the Mandatory Candidates’ Meeting held on Monday, March 7th, in violation of § B(7)(e)(iv) of the Election Code.

The complaint was filed with the Election Director on March 7, 2016. Respondent was advised of the complaint on the same day and given twenty-four hours’ time to file a response. Respondent, pro se, filed a response via email on March 9, 2016.

Respondent is a candidate for LSA representative. Respondent was unable to physically attend the March 7, 2016 Candidates’ Meeting in person, but Respondent did remotely attend via Google Hangouts for the entire duration of the meeting. See Zekelman Response, ¶ 1; Exhibits K and L. Respondent was scheduled to return to the University on a flight Sunday night, but was unable to do so due to approximately twenty-eight inches of snow that blanketed areas of California. See Exhibit M, Bryan Allegretto, 28 Inches and Counting!, SQUAW VALLEY ALPINE MEADOWS (Mar. 6, 2016), http://squawalpine.com/explore/blog/28-inches-and-counting.

I.

The facts in this case are not contested. Accordingly, we FIND the following facts proved beyond a reasonable doubt:
1. A Mandatory Candidates’ Meeting within the meaning of the Election Code was held on March 7, 2016.

2. Notice of said meeting was circulated via email at least one week prior to the meeting. All applications for candidacy distributed to potential candidates listed the date, time, and place of the meeting. Those materials also indicated that sanctions could be imposed upon any candidate for failing to appear.

3. A sign-in sheet was positioned at the entrance to the meeting, and attendees were warned multiple times that failure to sign in would likely result in the filing of a complaint against them. Respondent’s name does not appear on the sign-in sheet.

4. Respondent did not physically attend the Mandatory Candidates’ Meeting.

5. Respondent used Google Hangout to remotely observe all of the Mandatory Candidates’ Meeting.

6. Respondent filed an application for candidacy and will appear on the ballot in the upcoming election.

7. During this election cycle, Respondent has not previously been found in violation of § B(7)(e)(iv) of the Election Code.
II.

Not long ago we held that “a failure to attend the Mandatory Candidates’ Meeting for any reason results in a violation of § B(7)(e)(iv).” *In re Petition of Joseph Ambrose*, UEC-2016-W-001, at 2–3 (February 11, 2016) (hereinafter “*Ambrose Advisory Opinion*”) (emphasis in original). As we noted in *Ambrose Advisory Opinion*, “[t]he Code lists no exceptions and provides no qualifications to its imperative that a candidate who fails to attend the meeting ‘shall be in violation.’” *Id.* at 3. That holding is binding on this Commission, Rule 6.02(a), UEC Rules of Practice & Procedure, and we remain firmly committed to its rationale.

Section B(7)(e)(iv) of the Election Code states: “[A] candidate . . . that fails to attend a mandatory candidates’ meeting shall be in violation of this rule.” *Id.* Here, the inquiry is simple. Respondent failed—regardless of the reason—to attend the mandatory candidates’ meeting. Respondent is therefore in violation of § B(7)(e)(iv) of the Election Code.

III.

The Election Code provides that failing to attend the Mandatory Candidates Meeting is a “Minor Infraction” that “shall result in the assessment of 1 to 2 demerits.” Election Code § B(7)(e) (emphasis removed). “[E]ach demerit assessed includes a penalty revoking of 3% of the
guilty candidate['s] . . . total weighted votes.” *Id.* at § B(6)(c).

However, this Commission can, in its discretion, issue a “warning” rather than assess demerits. Election Code § B(8)(c)(iii). In order to issue a warning, however, the Commission must find sufficient mitigating factors to deviate from the standard sanction of demerits. In *Ambrose Advisory Opinion*, we held that “the Assembly intended for this Commission to exercise [its discretion to issue warnings] narrowly, and only in truly exceptional circumstances.” *Ambrose Advisory Opinion*, at 5.

In this opinion, we do not answer whether attendance via Google Hangout is a mitigating circumstance sufficient to issue a warning. Instead, we decide this case solely on the grounds of the “Act of God” that prevented Respondent from attending. We hold that a flight delayed due to weather, an “Act of God” that, by its very nature, is out of the control of any candidate, is a mitigating circumstance.

IV.

An “Act of God” is, “[a]n event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution; an inevitable accident.” *West’s Encyclopedia of American Law* (2d ed., 2008). Courts have recognized various events as “Acts of God,” including tornadoes, earthquakes, death, extraordinarily high winds, and floods. *Id.*; see *Skandia Ins. Co., Ltd. v. Star*
Shipping AS, 173 F. Supp. 2d 1228 (S.D. Ala., 2001) (holding that, under the “Act of God” defense, carrier and shipper were not liable for cargo damage caused by hurricane).

A defendant may be found negligent but still be exonerated from liability for an “Act of God” if it would have produced the same damage, regardless of that negligence, because the defendant’s negligence was not the proximate cause. See Glisson v. City of Mobile, 505 So.2d 315, 319 (Ala. 1987). Conversely, regardless of any amount of snow or weather, “it is certain that human negligence as a contributing cause defeats any claim to the “Act of God” immunity . . . because an “Act of God” is not only one which causes damage, but one as to which reasonable precautions and/or the exercise of reasonable care by the defendant, could not have prevented the damage from the natural event. See GILMORE AND BLACK, THE LAW OF ADMIRALTY at 163–64. Therefore, an “Act of God” insulates the Respondent from liability only if there is no contributing human negligence.

This Commission recognizes that approximately twenty-eight inches of snow, sufficient to ground an airplane, is an “Act of God.” Respondent’s failure to attend was directly and exclusively the result of an occurrence of natural causes that was completely outside of Respondent’s control.¹ No amount of foresight or

¹ It is important to note that this would not have been completely out of the Respondent’s control had Respondent booked a flight (which was eventually grounded by snow) that would have made it
reasonable exercise of caution could have prevented Respondent’s failure to attend. It was an inevitable accident that was not Respondent’s fault. Therefore, this Commission will not assess demerits. A warning is the appropriate sanction for Respondent in this case.

Respondent is therefore WARNED that the conduct addressed in this Opinion did violate the Election Code and that further violations may result in the assessment of demerits. Accordingly, neither demerits nor vote reductions are assessed against Respondent.

impossible for Respondent to attend the meeting. For example, if Respondent’s flight was scheduled to leave the airport two hours after the Mandatory Candidates’ Meeting was set to begin.