IN THE

UNIVERSITY ELECTIONS COMMISSION

No. UEC-2016-W-001

IN RE PETITION OF JOSEPH AMBROSE, Petitioner

Advisory Opinion

[February 11, 2016]

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

Opinion of the Commission

COMMISSIONER CELENTINO delivers the opinion of the Commission, which is unanimous as to Parts I and II and in which BENNETT, BROWN, REAVES, and ROSENTHAL, Commissioners, join as to Parts III and IV.

The Commission is called upon to issue an Advisory Opinion regarding the application of the Election Code provisions regarding attendance at the Mandatory Candidates’ Meeting. Election Code §§ B(6), (7)(e)(iv), (8)(c), (8)(c)(iii). For the reasons below, we hold that the Election Code unambiguously provides that any failure to attend the Mandatory Candidates’ Meeting results in a violation of § B(7)(e)(iv). Furthermore, while § B(8)(c)(iii) grants this Commission the power to deviate from the
usual sanction of “1 to 2 demerits” and instead issue a “warning,” we are not inclined to do so under the circumstances presented by this Petition.

I.

Petitioner served as an LSA Representative from March 2015 to January 2016. Petition for Advisory Opinion at 1. In January 2016, Petitioner’s seat was vacated when he moved to Washington D.C. to intern as part of the Michigan at Washington program. Id. Petitioner is still a full-time student at the University of Michigan. Id. Petitioner will be unable to attend the Mandatory Candidates’ Meeting for the Winter 2016 election cycle as a result of his participation in the Michigan at Washington program and has asked this Commission to “excuse [his] absence” at the meeting.

Petitioner’s request requires this Commission to address two questions. First, does a failure to attend the Mandatory Candidates’ Meeting due to participation in an internship or study abroad program endorsed by the University of Michigan constitute a violation of Election Code § B(7)(e)(iv)? Second, if § B(7)(e)(iv) is violated, should the Commission assess the “1 to 2 demerits” provided for in § B(7)(e) or exercise its discretionary power to issue a “warning” under § B(8)(c)(iii)?

II.

The Commission unanimously holds that a failure to attend the Mandatory Candidates’ Meeting for any reason
results in a violation of § B(7)(e)(iv). On this point, the Election Code speaks in unequivocal terms:

**Not Attending a Mandatory Candidates' Meeting.** Candidates wishing to be placed on the ballot and having submitted a complete candidacy application on time *that fails to attend a mandatory candidates' meeting shall be in violation of this rule*. Candidates may not be found to be in violation of this rule more than once per election cycle. Election Code, § (B)(7)(e)(iv) (second emphasis added).

The Code lists no exceptions and provides no qualifications to its imperative that a candidate who fails to attend the meeting “shall be in violation.” In the face of such unambiguous language, we are compelled to find that *any* failure to attend the Mandatory Candidates' Meeting violates § B(7)(e)(iv).

III.

This Petition further requires us to determine the appropriate *sanction* when a candidate's admitted failure to attend the Mandatory Candidates’ Meeting—and the resulting violation of § B(7)(e)(iv)—is due to his or her participation in an internship or study abroad program endorsed by the University of Michigan.

The Election Code provides the sanction for failing to attend the Mandatory Candidates Meeting:
“Minor Infractions. Any violation shall result in the assessment of 1 to 2 demerits.” Election Code § B(7)(e) (emphasis in original). And “each demerit assessed includes a penalty revoking of 3% of the guilty candidate[s] . . . total weighted votes.” Id. at § B(6)(c).

Our decision to assess the demerits provided for by § B(7)(e) is informed by the unequivocal terms with which § B(7)(e)(iv) makes attendance at the Mandatory Candidates’ Meeting mandatory. We must enforce § B(7)(e) with equal precision. This Commission sits for the purpose of finding facts in election disputes and resolving ambiguous portions of the Election Code; it is not a general appellate tribunal for candidates who find the Code’s requirements too onerous, and who wish to challenge the Code’s provisions as “unfair.” Those pleas are properly addressed to the Central Student Government (CSG) Assembly.

Indeed, we are sympathetic to the Petitioner’s contention that “[i]t would be unfair to penalize a candidate who is studying abroad because it would deter future candidates who are studying abroad from participating in the election.” Request for Advisory Opinion Request at 1. And CSG could rationally conclude that students who intern or study abroad should be able
skip the Mandatory Candidates’ Meeting without penalty.¹ But that is a decision for CSG to make.

While it is true that the Election Code contemplates that this Commission can, in its discretion, issue a “warning” rather than assess demerits, Election Code § B(8)(c)(iii), we believe that the Assembly intended for this Commission to exercise that discretion narrowly, and only in truly exceptional circumstances. We will not outline the precise circumstances that would warrant exception from the demerit sanction provided for in § B(7)(e), but we note that the Commission’s past decisions regarding emergency medical treatment seem to be more appropriate subjects of this Commission’s power to carve de facto exceptions into §§ B(7)(e) and B(7)(e)(iv)’s requirements.

In contrast, exceptions for student activities—like study abroad or internships—that are a predictable component of many Michigan students’ experiences

¹ We note that at least two CSG meetings for the members of the Assembly elected during this cycle will be held during the Winter 2016 semester. Since Petitioner and others similarly situated will miss these meetings, the Code’s current penalties may, in fact, demonstrate that CSG wants to discourage students who intern or study abroad the year before—and who consequently will miss these meetings—from running. We do not rely on CSG’s possible purposes in enacting § B(7)(e)(iv), however; the text speaks clearly enough.
should be written into the Election Code itself,\textsuperscript{2} rather than subject to ad hoc\textsuperscript{3} exceptions by this Commission. We are confident that if CSG wishes to express its commitment to internships, study abroad, or other similar programs, it will do so by amending the Election Code to provide for a specific exception to § B(7)(e)(iv). But it is CSG, and not this Commission, that is entitled to express such a policy preference.

IV.

Finally, it is important to stress what this Advisory Opinion does not decide. We do not decide the number of demerits that this Commission would assess under the circumstances presented in Petitioner’s petition; we simply hold that some assessment is proper. We do not decide the conditions under which this Commission would

\textsuperscript{2} Indeed, given the popularity of internships and study abroad programs, it seems likely that the Assembly knew of the potential for conflict. At a minimum, if the Assembly had wanted to create more flexibility for students in such programs, it could have expressly said so.

\textsuperscript{3} It is worth noting that Commissioners are elected for one-semester terms and are not bound by the precedents of previous Commissions. Rule 5.06(b) &Rule 6.02(b), UEC Rules of Practice & Procedure. It thus seems possible—if not likely—that the Commission’s receptiveness to internships and study abroad programs as excuses for not attending the Mandatory Candidates’ Meeting could fluctuate from semester to semester.
exercise its discretionary power to issue warnings, rather than demerits, though we certainly perceive this power to be a limited one.

We sincerely hope that the Assembly, as a body of democratically elected representatives of the University of Michigan student body, will amend the Election Code to include any exceptions to attendance of the Mandatory Candidates’ Meeting that it sees fit. If and when it does so, this Commission will enforce that policy.

Dissent

ELECTION DIRECTOR REESE (ex officio) delivers an opinion dissenting in part, in which PODRYGULA, Backup Election Director, ANDREWS, and COLELLA, Commissioners, join.

We join the majority in its conclusion that failure to attend a mandatory candidates meeting—regardless of the reason—constitutes a violation of the Election Code. Ante at 2–3. But we cannot join the majority’s cramped interpretation of the Commission’s powers to deviate downward from the sentencing guidelines provided in the Code and to issue warnings in lieu of demerits.

I.

The majority, while conceding that the power to deviate downward or issue a warning, is explicit in the text of the Code, asserts that it “believe[s] that the Assembly intended for this Commission to exercise that
discretion narrowly, and only in truly exceptional circumstances.” Ante at 5. There is no basis in the Code for such a limitation.

Indeed, the provisions granting these powers to the Commission are phrased broadly and expansively:

“The UEC may assess demerits below the guidelines specified in this article if it finds sufficient cause to do so given by mitigating factors.” Election Code, § (B)(8)(c)(ii).

“The UEC may find a candidate or party in violation of the campaign rules but nonetheless assess no demerits against the candidate or party.” Election Code § (B)(8)(c)(iii).

And it is clear that the Assembly did consider what limitations it wished to place on these powers, because it wrote them into the text of the Code. Both of the provisions cited go on to bar the Commission from exercising these powers without explaining its reasons in writing. Election Code, §§ (B)(8)(c)(ii), (B)(8)(c)(iii). And the provision regarding downward departures prohibits the Commission from exercising its power to mete out sentences below the guidelines unless it finds that there are “mitigating factors” supporting that decision. Election Code, § (B)(8)(c)(ii). The majority seems to have forgotten the traditional rule of statutory construction that “the expression of one thing implies the exclusion of others” not listed—or expressio unius est exclusio alterius for those fond of the Latin. SCALIA & GARNER, READING LAW:
THE INTERPRETATION OF LEGAL TEXTS 107 (2012). Thus, the Assembly’s efforts to list the limits it wished to place on this Commission’s powers should prevent the Commission from adding new limitations to the list.

And the majority cannot hold the line it draws in the sand even for the duration of one opinion, since it goes on to suggest that things like illness—and presumably academic commitments and work schedules—might justify the use of the Commissions mitigation powers. Ante at 5. Those, too, would seem to be obvious reasons why a candidate might not be able to attend a mandatory candidates’ meeting. But the majority finds no need to adopt a “clear statement rule” and ask the Assembly to amend the Code in order to exercise its discretion in those cases. Perhaps the reason that the Assembly did not expressly provide for mitigation in those circumstances is that they, like studying abroad, are so plainly mitigating circumstances that the Assembly felt that no reasonable Commission could believe that they did not fall within the capacious language of § (B)(8)(c)(ii) and § (B)(8)(c)(iii). How disappointed they must be today.

II.

We would begin with the unremarkable proposition that, by giving the Commission the discretion to depart downward from sentencing guidelines and issue warnings, the Assembly intended that the Commission would use that discretion to dull the sting of the Code’s sentencing guidelines where they strike too harshly.
As the Student General Counsel suggests in his brief *amicus curiae* and the majority acknowledges, *ante* at 2 n. 2, study abroad programs are an important part of undergraduate education for an increasing number of Michigan students. Indeed, for some programs, studying abroad is one of the requirements students must fulfill in order to obtain a degree. Just as much as classes or athletic events that are officially sanctioned by the University, study abroad programs are different in kind from the meetings of ordinary student organizations. They are part of a student’s academic life on campus that should be respected and privileged by the law above and beyond club commitments and weekly student organization meetings. After all, the petitioner here would have to miss university-mandated time commitments to attend this semester’s meeting just as much as a student on campus who had a class or practice scheduled for 8:00 pm.

Moreover, we should not discourage students who pursue study abroad opportunities from participating in CSG. The knowledge and perspectives students bring back from their experiences outside the United States provide a valuable perspective in the Assembly. And we should not penalize them for putting their academic requirements or career goals ahead of their ability to attend a mandatory candidates meeting. College is, after all, not forever.

In short, we find the reasons for issuing a warning rather than demerits to those students—like petitioner—who
cannot attend the mandatory candidates’ meeting to be as compelling as the reasons that have led this Commission to issue warnings to students who were absent due to classes, work, or illness in the past. The majority’s refusal to reach the same conclusion is not principled judicial restraint. It is a refusal to give the Code its plainest and intended import.

We therefore respectfully dissent.