STEWEN RICHARDS, Complainant

v.

DEFEND AFFIRMATIVE ACTION PARTY, and

REYNA ASADIZOUFAN, Respondents

Appearances:
Pratik Ghosh, Counsel for Complainant
Bestey Fisher, Counsel for Respondents

Heard Before REESE, NICHOLS, and FOX, Commissioners.
Commissioner LE did not participate in the consideration of this complaint.

FINAL OPINION & ORDER

Commissioner NICHOLS delivers the opinion of the Commission in which REESE and FOX join.

This matter comes before the University Elections Commission (“the Commission”) on the complaint of Complainant, STEVEN RICHARDS (Mr. Richards), against the above captioned Respondents for violations of Article VI of the CSG Compiled Code (“the Election Code”). Complainant alleges that Respondents’ campaign volunteer sent an email to a listserv not owned by said volunteer or Respondents in violation of §B(7)(e)(iv) of the Election Code, which provides:

iv. Inappropriate and Irresponsible Use of Email Privileges Prohibited. No candidate may send campaign related emails to any person who is not a registered student at the University of Michigan. No demerits shall be issued if an owner sends an email to a group or email list that contains less than 10% non-students. Furthermore, no candidate may send campaign emails to groups or email lists that the sender does not own, as defined by “mcommunity.umich.edu.” Candidates and campaign volunteers are prohibited from harvesting student email addresses for campaign purposes. Violations shall be assessed as one per recipient.

CSG Complied Code, art. VI § (B)(7)(e)(iv). Mr. Richard’s complaint was filed with the Election Director on March 25, 2014. Respondents were advised of the complaint on the same day and given twenty-four hours time to file a response. Respondents filed their reply brief through counsel on March 27, 2014 at 11:59 am.
I

Petitioner alleges that on Monday, March 24, 2014, Cassandra Muro (Ms. Muro), purportedly as a campaign volunteer acting within the scope of coordination with Respondents, sent an email to

ssw.msw@umich.edu in violation § (B)(7)(e)(iv). To succeed on his claim, Complainant would have to prove the following elements beyond a reasonable doubt:

1. On Monday, March 24, 2014, Ms. Muro sent an email to the ssw.msw.@@umich.edu list;
2. Neither Cassandra Muro nor Respondent Asadizoudefani are owners of ssw.msw@umich.edu as listed on mcommunity.umich.edu;
3. Ms. Muro’s email was a “campaign email;” and, because Complainant asks us to assess demerits against Respondents for the actions of Ms. Muro, a non-candidate,
4. Ms. Muro was acting on Respondent Asadizoudefani’s and/or Respondent DAAP’s behalf as a campaign volunteer within the scope of campaign coordination with Respondents.

We FIND that Complainant has proven the first three elements beyond a reasonable doubt. We additionally noted that these elements were uncontested at the hearing and in the parties’ written submissions. However, all four elements must be proven beyond a reasonable doubt for the complaint to succeed. CSG Compiled Code art. VI, § (C)(4). Liability rests on a determination of the scope of coordination, and we turn to an analysis of this element now.

The Election Code allows for candidates/parties to be held vicariously liable for violations of the election code committed by campaign volunteers if the conduct of the volunteer was within the scope of campaign coordination. The Code specifically provides:

e. Violations by a non-Candidate. Candidates and parties are responsible for educating their volunteers about the Election Code and the Campaign Rules.
   i. The UEC must first determine if the non-candidate violated the Election Code.
   ii. The UEC must determine if the non-candidate worked with or at the request of a candidate or party.
   iii. The UEC must determine if the Election Code violation occurred within the "scope of the coordination." The "scope of the coordination" shall be defined as what the candidate or party requested the non-candidate to contribute to the campaign.
   iv. If the UEC finds that all three factors set forth above were met, the UEC must assess full demerits against the respective candidate(s) or party that coordinated with the non-candidate.
CSG Complied Code, art. VI § (B)(8)(e). At the hearing, Complainant provided no evidence that directly shows Respondents requested Ms. Muro to send this email as required by § (B)(8)(e)(ii). Without an original request to conduct campaign activities on behalf of a candidate/party, no conduct can be deemed to satisfy § (B)(8)(e)(iii) because the “scope of coordination” is defined in terms of what the candidate/party requested of the non-candidate.

The evidence provided by Complainant could only lead to nothing more than an inference that Ms. Muro’s acting in coordination with Respondents when she sent the email. But this cannot survive the exacting standard of proof beyond a reasonable doubt. In fact, the evidence provided at the ultimately fails to dispel the viability of several equally plausible inferences. Complainants primarily relies upon two pieces of evidence to advance their claim:

1) Ms. Muro and Respondent Asadizoudefani are good friends.

2) Complainant and Respondent DAAP’s campaign manager engaged in a conversation after the Complaint had been filed that revealed the manager’s belief that all student should be free to utilize email lists in and unrestricted fashion.

Admittedly, a reasonable person could infer that Ms. Muro was coordinating with Respondents from these facts alone. However, it is equally as plausible that Ms. Muro, as someone who lacked experience with the CSG electoral process, took it upon herself to assist her friend without prior authorization from her friend. Taking stock campaign language from DAAP’s website, Ms. Muro may have thought she was aiding her friend’s campaign by informing other students of her friend’s candidacy. In a case before the UEC, “a petitioner bears the burden of producing evidence sufficient to evoke in a majority of the commissioners an abiding conviction of the Respondent’s guilt, such as they would be willing to act upon it in the most significant of their own affairs” before any fact is proved beyond a reasonable doubt. *Keeney v. Garthus*, UEC-2014-W-009, 2 (March 13, 2014). Because a reasonable person could come to both of these equally plausible inferences, the evidence offered by Complainant does not establish coordination beyond a reasonable doubt. We thus FIND that Complainant has not shown the fourth element of the claim beyond a reasonable doubt.
We do not foreclose the possibility that circumstantial evidence such as that relied upon by Complainant, when combined with other forms of proof, could establish a violation under § (B)(8)(e) without providing direct evidence of requested coordination. However, because of the burden of proof set out in the § (C)(4) of the Election Code, these cases will be exceptional. We therefore find the Respondents, REYNA ASADIZOUDEFANI and DAAP, NOT GUILTY of a violation of § (B)(7)(e)(iv) of the Election Code. As a result, neither demerits nor vote reduction shall be assessed against the Respondents.

This opinion should not in any way be read to diminish Complainant’s concerns over electoral fairness. We commend both parties for their efforts to campaign within the bounds of the Election Code, but the Code, like any statute, is an imperfect human innovation that could never provide a remedy to all injustices that arise in the course of the electoral process. It may well be unfair when a candidate’s friend, without any proven request by the candidate, sends out a campaign email that would otherwise run afoul of the Code. However, the Code simply does not provide a remedy for this injustice. As faithful executors of the Code, our duties and the powers to carry them out are similarly limited.

We therefore find the Respondents, REYNA ASADIZOUDEFANI and DAAP, NOT GUILTY of a violation of § (B)(7)(e)(iv) of the Election Code. As a result, neither demerits nor any reduction of weighted votes shall be assessed against these Respondents.

*It is so ordered.*