Case #: UEC-2015-W-003
Released: March 27, 2015

SARAH BRENNER, Complainant

v.

STEVIN GEORGE, Respondent

Appearances:
Sarah Brenner, pro se
Stevin George, pro se

Heard Before: BECKER, Election Director (ex officio), KOZIARA, Backup Election Director (ex officio), REESE, DICKSTEIN, and GEORGE, Commissioners.

Commissioner LAWTON did not participate in the consideration of this complaint.

FINAL OPINION & ORDER

Commissioner REESE delivers the opinion of an undivided Commission.

This matter comes before the University Elections Commission ("the Commission") on the complaint of Complainant, Sarah Brenner ("Complainant"), against the above captioned Respondent for violations of Article VI of the CSG Compiled Code ("the Election Code"). Complainant alleges that Respondents sent a campaign-related email to a listserv that he did not own 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). The complaint was filed with the Election Director on March 23, 2015. Respondents were advised of the complaint on the same day and given twenty-four hours time to file a response. Respondent filed his reply brief on March 24, 2015 and sent an additional email purporting to be a reply later that same day. The second email was withdrawn at hearing. A hearing on this matter was held on March 25, 2015.
Preliminarily, the Petitioner presented sufficient evidence to prove, and the Respondent did not contest, that the listserv in question—EFGH 1L Section 2014-2015, which a review of MCommunity records shows has 86 members, and bears the email address “efgh20142015@umich.edu”—exists, and that Respondent is not the owner of said list serve. The Commission therefore FINDS both of these facts proven beyond a reasonable doubt.

I

The first question before the Commission is whether or not Complainant has proven beyond a reasonable doubt that Respondent sent the email at issue in the case sub judice. We conclude that she has.

We have interpreted the beyond a reasonable doubt standard contained in the Election Code to mean that “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.” Keeney v. Garthus, UEC-2014-W-009, 2 (March 13, 2014). We employ that standard again today.

At hearing, the Complainant presented the Commission with a copy of the email sent by the Respondent to “efgh20142015@umich.edu” [hereinafter “the EFGH listserv”]. Respondent contends that, because this email was presented to the Commission in the form of a Microsoft Word document, it could have been falsified by the Complainant. The Commission does not find this argument persuasive. We credit the testimony of the Complainant that she received the email in question from a member of Respondent’s law school section, and only transferred it to a Word document—rather than simply printing the email—so as to maintain her source’s anonymity. That being said, the Commission is concerned by the anonymity of the source and by the fact that the original email, in its original format, was not submitted for its review. Accordingly, were there not additional evidence in this case, we would not be able to say that we are convinced, beyond a reasonable doubt, that the email in question was sent. We would prefer that future

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1 We note for the record that Respondent did not object to the admission of this document on hearsay grounds under Rule 5(C)(4) of the UEC Rules of Procedure.

2 Her source was concerned that, because Respondent and the source are in all of the same law school classes, tension and hard feelings would develop between them if the source’s identity was revealed.
Complainants submit evidence of an impermissible email by providing a screen shot, providing the email in HTML format, or providing the source code of the email in future cases.

Unfortunately for Respondent, however, there was additional evidence in this case.

Complainant also submitted two admissions made by the Respondent.\(^3\) The first is the reply brief submitted by the Respondent to the Commission [hereinafter “the Reply”], which states: “I maintain that I did send an email on Monday to members of my law school section. I maintain that I did not own the group as defined my [sic] mcommunity.umich.edu.” The second admission is in the form of a Facebook post [hereinafter “the Facebook admission”] from Respondent’s profile, stating: “Yesterday afternoon, I emailed my big section encouraging them to vote (possibly for me) in the upcoming CSG election.”

Respondent does not object to the authenticity of either of these admissions. Instead he contends, somewhat bafflingly, that they do not mean what they say. Employing a literalist, textual approach to an email he wrote himself, Respondent suggests that he never said he emailed a “listserv” only that he sent an email to his Section. He also asserted at one point that there was no evidence that email was campaign related. These arguments defy all logic. First, the Facebook admission clearly states that the email was designed to encourage his section to vote, and in particular to vote for him. Second, the Reply contains a clear statement, directly following a sentence admitting to emailing the Section, that Respondent does not own the EFGH listserv. The clear import is that the listserv was used to send the email in question here.\(^4\)

In short, the Commission refuses to engage in the use of techniques of statutory interpretation to interpret a document that was never intended to be a legal text. The meaning of the admissions is obvious, they are unambiguous, and the Commission will give them their clear import. Therefore, based on these admissions and the email evidence discussed above, the Commission FINDS that Complainant has proven beyond any reasonable doubt—to an extent “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

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\(^3\) Respondent did not object to the admission of either, but it is worth noting that (even if he had) they would have been admissible as the statement of a party opponent under Rule 5(C)(4)(b) of the UEC Rules of Procedure.

\(^4\) It is also notable that Respondent never actually denied sending the email throughout all of these verbal gymnastics, but we will return to that in Section III.
their own affairs,” Keeney v. Garthus, UEC-2014-W-009, 2 (March 13, 2014)—that Respondent sent a campaign email to the EFGH listserv.\(^5\)

II

The next question before the Commission is whether the sending of that email violates the Election Code. We conclude that it does.

A.

Respondent primarily relies on an argument that because § (B)(7)(e)(iv) prohibits the sending of “emails” by a candidate to a listserv he/she does not own, a single email is permissible under the code. This argument flies in the face of the implied understanding underlying every precedent issued by this Commission, see e.g. Richards v. Defend Affirmative Action Party et al., UEC-2014-W-041 (March 29, 2014), and the Central Student Judiciary, see e.g. Mandell et al. v. University Elections Commission, F-11-02 (CSJ December 6, 2011), Tylus et al. v. University Elections Commission, W-12-01 (CSJ Winter 2012). But, since no judicial body on this campus has squarely entertained this question, we treat it as a matter of first impression (though other decisions do bear on the resolution of the question).

That being said, Respondent’s argument fails as a matter of simple statutory interpretation. As Justice Antonin Scalia and Bryan A. Garner explain in their leading treatise on statutory interpretation: “In the absence of a contrary indication, the masculine includes the feminine (and vice versa) and the singular includes the plural (and vice versa).” Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 129 (2012). The absurdity of a contrary conclusion is best illustrated by several hypotheticals:

- Consider a statute that says, “No person shall kill other people.” Adopting Respondent’s philosophy, a person breaks no law so long as they limit the scope of their murderous rage to a single person.

- Similarly, consider a statute that says, “No person shall use firearms on another human being.” Would it be perfectly legal for a person to shoot someone so long as they refrained from imitating Yosemite Sam? One would hope not.

\(^5\) Note that the Commission already found above that Respondent does not own that listserv. *Infra* at 2.
It is true that Scalia and Garner acknowledge that this principle does not seem quite as logical as the idea that the singular includes the plural, and that if the language is especially murky the Rule of Lenity may require in criminal cases an interpretation similar to that proposed by the Respondent. *Id.* at 130. But this is not such a case.

First, concluding a single email was permissible here would be absurd—though, admittedly, less so than the hypotheticals proposed above. Under Respondent’s reading, Candidate A who sends a single email to a listserv containing 15,000 individuals would escape liability, but Candidate B who sent an email to two listservs each containing 20 people would not. More absurd still is the idea that the Assembly, which explicitly directed the UEC to assess violations “per recipient” (in contrast to per click of the send button), intended the UEC to count emails by a completely different standard. And most absurd of all, is that the Assembly, endeavoring to prevent the use of listservs to send spam emails to students, thought that one spam email (no matter how many students it reached) was fine. Even if it were not the usual rule that the plural includes the singular in statutory construction—and we are inclined to trust Justice Scalia and the editor of Black’s Law Dictionary on that point—we would be bound by the rule that statutes should not be construed in such a way as to render their meaning absurd. Scalia & Garner, *supra* at 234–39 (citing *Grey v. Pearson*, [1857] H.L. Cas. 61, 106).

Moreover, this would not be the only time that the Election Code uses the plural in situations where it clearly intends to include the singular. For instance, in § (B)(3)(d) the code requires any application for candidacy to contain the “signatures . . . of every candidate named in the application.” One suspects that that (A) the Assembly intended that this provision would apply to applications submitted by at-large candidates, and (B) most candidates don’t possess a library of signatures from which they can chose from. Ergo, even if

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6. We have previously acknowledged that the Rule of Lenity applies to interpretations of the Election Code. See *Fernandez v. The For UM Party*, UEC-2014-W-042 (April 1, 2014).

7. A possibility that anyone familiar with the SAMADHI email fiasco from this past February would know is not an idle one.

8. Even Respondent contends that an interpretation that reached this result would be invalid; contrary to his apparent belief, he has asserted just such an interpretation.

9. Despite the fact that Scalia and Garner advise against doing so for precisely the reason this case illustrates. Scalia & Garner, *supra*, at 131.
there is only one candidate on an application, and that candidate only has one signature, he/she has to sign the application. Moreover, § (B)(6)(b) permits the UEC to assess “demerits” (plural) to “candidates” (also plural) or “parties” (still plural), and yet the Election Code clearly contemplates that the UEC may assess one demerit (singular), see §(B)(7)(d) (setting the minimum penalty for minor infractions at one), to a candidate (also singular), see §(B)(8)(d) (“If the UEC determines that a candidate has violated a campaign rule and decides to assess demerits against that candidate, the UEC shall only assess penalties against that specific candidate” (emphasis added), or a party (still singular), see § (B)(8)(a) (“The UEC shall hear cases involving the alleged violation of any campaign rule, and shall meet to determine whether demerits should be assessed against any candidate(s) or party(ies).” (emphasis added)). Thus, concluding that “emails” includes “email,” is not only logical, it wouldn’t be inconsistent with the rest of the Election Code.

Moreover, we have previously declined to demand of the Assembly, made up of students of many different backgrounds and fields of study, works of perfect legal craftsmanship. Fernandez, UEC-2014-W-042 at 5. We are no more inclined to do so now than then. We therefore HOLD that the sending, by a candidate or party, of a single campaign-related email to a listserv that that candidate or party does not own, is a violation of the election code.

**B.**

Even setting aside the analysis set forth in Section II.A, Respondent sent more than one email in this case. The entire purpose of a listserv is to function as an email multiplying device; it saves the sender the necessity of sending the same email (individually) to every person on the listserv, or of typing each of their addresses into the recipient line. Since, as discussed above, we are counting violations per recipient, it is preposterous to think the Assembly intended the number of emails to be counted by a different metric. We therefore FIND that Respondent sent, not one, but 86 emails in this case. He therefore violated the Election Code even under his own interpretation of the statute.

**III**

Having found, beyond a reasonable doubt, that Respondent did violate the Election Code by sending an email to a listserv that he does not own, we turn finally to the assessment of demerits. The Election Code classifies a violation of §(B)(7)(e)(iv) as a major infraction, warranting the assessment of three to four
demerits per violation. §(B)(7)(e). Moreover, §(B)(7)(e)(iv) states that candidates commit one violation of the
Election Code for every recipient of an improper campaign email. Respondent therefore committed eighty-six
(86) Election Code violations in this case.

The Commission is empowered to reduce this penalty or issue a warning if we find mitigating
circumstances, §(B)(8)(c)(ii) and (iii); however, the Central Student Judiciary has explained that those
circumstances must be related to the violation itself and not merely a desire to avoid disqualification of a
candidate, Parikh, W-12-01 at 6–7. We FIND no such mitigating circumstances here.

Accordingly, the Commission may assess either three or four demerits per violation in this case. We
conclude that Respondent’s lack of good faith in addressing this matter warrant the assessment of four
demerits. This determination is based on the following FINDINGS:

1. The Respondent possessed the best evidence as to whether or not he sent this email: namely, he could
have allowed the Commission to view his “Sent Mail” folder in order to demonstrate that the email
was not sent at the time in question. Despite being asked if he would do so by a Commissioner, he
declined.

2. The Respondent submitted a reply brief to this Commission clearly admitting that he had sent the
email, and then engaged in a crabbed interpretation of that brief in order to escape its inevitable
consequences. Despite his attempts to show that the two admissions discussed above did not mean
what they say, at no point was he willing to definitively say that he did not send these emails or
testify to that effect.

The Commission finds this behavior worthy of sanction. We therefore conclude that four demerits per
violation would be the appropriate sanction in this case.

The Commission emphasizes that these findings were NOT used to determine guilt or innocence in
this matter. The Election Code clearly places the burden solely on the Complainant to prove guilt, and the fact
that Respondent did not prove his innocence is completely irrelevant to that determination. Sentencing,
however, is not so limited and the Commission is free to consider all the relevant circumstances.

The Commission also emphasizes that it does not mean to impose any sort of evidentiary burden on
Respondents in future cases: namely, we do not hold that a Respondent faces increased sanction where he or
she presents no evidence. We do, however, HOLD that where a Respondent evinces a clear desire to obstruct
the orderly pursuit of justice by tactics that evince a willful intent to take advantage of the procedural rules of
the Commission in order to frustrate its purpose, the Commission does have the power to consider that
behavior as an aggravating circumstance at the sentencing phase.

For the reasons stated above, we find the Respondent, STEVIN GEORGE, to be GUILTY of
86 violations of § (B)(7)(e)(iv) of the Election Code.

It is therefore ORDERED that three hundred and forty-four (344) demerits be assessed against
Respondent, STEVIN GEORGE, for a violation of § (B)(7)(e)(iv) of the Election Code. Respondent
GEORGE’s demerits totaling more than five, he is no longer eligible for election.

Accordingly, it is FURTHER ORDERED that, pursuant to §(B)(6)(d) of the Election Code,
Respondent, STEVIN GEORGE, be disqualified as a candidate for any and all CSG positions in the
Winter 2015 CSG Election Cycle and that all votes cast for him are therefore to be considered NULL and VOID.

*It is so ordered.*