Commissioner REESE delivers the unanimous opinion of the Commission.

These matters come before the University Elections Commission (“the Commission”) on the complaints of Complainants, The Make Michigan Party (“Make Michigan”) and the Team Party (“The Team”), against the above captioned Respondents for violations of Article VI of the CSG Compiled Code (“the Election Code”). Complainant alleges that Respondents committed a campaign finance violation when members of their campaign staffs collected email addresses from other sources in violation of §B(7)(e)(iv) of the Election Code, which provides, *inter alia*:

**ii. Inappropriate and Irresponsible Use of Email Privileges Prohibited**

Candidates and campaign volunteers are prohibited from harvesting student email addresses for campaign purposes.
CSG Compiled Code, art. VI § (B)(7)(e)(iv). The complaints were filed with the Election Director on March 27, 2015. Respondents were advised of the complaint on the same day and given twenty-four hours time to file a response. The parties waived their right to have a hearing held within forty-eight (48) hours out of respect for religious observations on Sundays. A hearing on this matter was held on March 30, 2015.

Respondents elected not to file a reply brief in this matter and instead elected to rest on their arguments and submissions at hearing.

Before reaching the merits of these complaints, we address two preliminary matters. First, pursuant to UEC Rule of Procedure 7(A), the Commission FINDS that the facts, evidence, and arguments involved in these complaints are substantially similar in nature and ORDERS that these Complaints be consolidated for joint disposition. Second, the Commission has no jurisdiction to assess demerits or determine the guilt or innocence of any actors other than parties or candidates. As Mr. Loeb is neither, we have no authority enter a judgment binding on him and we therefore ORDER that Make Michigan’s Complaint as to him be DISMISSED for want of jurisdiction. Having addressed these matters, we turn now to the merits.

I

The first question before the Commission is the meaning of the word “harvest” as used in § (B)(7)(e)(iv) of the Election Code. We emphasize here the need to define this provision narrowly: an overly broad interpretation of the word “harvest” could render parties liable for a wide swath of conduct, including the collection of contact information on the Diag. Bearing this in mind, we therefore HOLD that “harvest” as used in the Election Code means the (A) unilateral gathering of emails (B) for the purpose of campaigning (C) in a manner that is either random or indiscriminate with regard to the reasonable likelihood that the owners of the gathered addresses would be supportive of the gatherer’s campaign. We explain each of prong of this test in turn.

A.

First, in order to constitute harvesting, the gathering of emails must be unilateral. To use an agricultural metaphor, which the Code’s use of the word “harvest” seems to naturally call for, stalks of wheat
do not leap into a farmer’s basket when it is presented to them; the farmer removes them from the earth without regard to their desire to stay there. Similarly, in order for an email to be “harvested” for the purposes of the Code, it must have been removed from its original context without any form of mutual understanding between the harvester and the owner of the address.

This element is necessary to differentiate the open collection of email addresses on the Diag from “harvesting.” Where an individual making a listserv for a given purpose offers membership in that listserv, and a student voluntarily accepts that offer by providing his/her email address for that purpose, no harvesting has occurred. If, however, an individual (even the same one who created the first listserv) were to come along and take some or all of the email addresses in the initial listserv to create a new and different list of email addresses without further action from the owner of the email address, this first element has been satisfied.

To return to the agricultural metaphor, if Farmer (student) A has gathered grain (email addresses) into his/her basket (listserv) and Farmer (student) B grabs some grain (email addresses) and puts them in his or her own basket (listserv), Farmer B has potentially “harvested” from Farmer A’s basket, at least as far as this first element is concerned. Likewise, if Farmer A takes some grain from the first basket and moves it to a second basket, he has also satisfied this first element.

B.

Second, the Election Code does not prohibit all harvesting, only harvesting that is conducted at the point the emails are gathered for the purpose of campaigning. CSG Compiled Code § (B)(7)(e)(iv). This is the natural reading of the harvesting provision. Of course, this opens the door for candidates to use listservs (which have the potential to be quite large) they own for campaigning, even though they were not originally intended to be used for that purpose. One wonders why a Code that appears so concerned about the potential use of listservs to spam the electorate with campaign advertisements would permit this. Perhaps the Code suspects that someone who spams his/her own listserv with campaign advertisements completely unrelated to the listserv’s purpose will not remain the owner of that listserv for long—or, at the very least, won’t have too

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1 We readily admit that our unfamiliarity with agricultural practices may cause the metaphors used throughout to depart from modern practice. Since they are used merely to clarify the reason behind our rule, however, this does not trouble us.

2 Alfred, Lord Tennyson, The Charge of the Light Brigade. Indeed, this literary reference is quite appropriate for this litigation, as the complaints here bear some resemblance to the actual charge of the light brigade. See Part III, Infra.

3 We credit President Dishell’s email statement, entered into evidence during the hearing, that the issue has not been
many members who will remain a part of such a troublesome email list. Ultimately, though, “ours is not to
reason why.”\footnote{Alfred, Lord Tennyson, \textit{The Charge of the Light Brigade}. Indeed, this literary reference is quite appropriate for this
litigation, as the complaints here bear some resemblance to the actual charge of the light brigade. \textit{See Part III, Infra}.} The Code has included this as part of its definition of the harvesting violation, and so we must
include it as one of the prongs in our test. We do note, however, that if a complainant were to prove that
despite a non-campaign-related pretense, the real reason that harvesting was conducted was for the purpose of
campaigning, the pretense would not prevent that action from satisfying this prong.

C.

Finally, the gathering of emails must be indiscriminate with respect to the reasonable likelihood that
the students whose addresses were gathered would support the gathering candidate/party. The Commission
draws a distinction between purposefully “selecting” email addresses from a list, and “harvesting” email
addresses. Thus, if Candidate A goes through a listserv in order to find the email addresses of a subset of that
listserv—such as his friends—who he/she reasonably could believe would be more likely than the average
student to support his campaign, he has not “harvested” email addresses within the meaning of the Code.

The reason for this is simple. At the risk of belaboring the agricultural origins of the word harvest,
one who “harvests” gathers the wheat and the chaff and only sorts the two out at a later point. One would not
say that a farmer “harvested” corn from a field if he or she picked from the available crop several ears that
looked particularly delectable. In a similar way, when a candidate selects from a list of email addresses—
indeed even if she selects all of the email addresses on a particular list—because they belong to individuals
who seem particularly likely to support her campaign, she has not “harvested” email addresses within the
meaning of the Code. To hold otherwise would be to say that Candidate B is guilty of harvesting for perusing
a class listserv in order to look up the email addresses of her friends (presumably most people do not
memorize their friends’ unique names). We decline to read the Code so broadly. Where, however, a candidate
or party copies all (or most or even a random sampling) of the email addresses on a listserv whose purpose or
membership gives she/it no reason to believe that the owners of the gathered addresses are more likely than
any other student selected at random to support her/its platform, this prong of the “harvesting” test is satisfied.
II

Neither Make Michigan nor The Team suggest that Respondents themselves committed an offense; thus we must employ a three-part test to determine whether or not Respondents may be held liable under the Election Code’s respondeat superior provisions. CSG Compiled Code, art. VI, § (B)(8)(c); Make Michigan v. The Team III, UEC-2015-W-006 (March 29, 2015). First, we must decide whether or not the Complainants have proven beyond a reasonable doubt—by providing “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)—that the non-candidates implicated in the instant complaints committed violations of the Election Code under the three-prong harvesting test set out above. We conclude that they have not.

A.

We turn first to the complaint against the campaign manager of the Team. We have little difficulty concluding that the gathering at issue in this case was unilateral. The evidence clearly demonstrates that the current members and alumni of the LSHP were not consulted before their email addresses were gathered into the listserv used to send the email at issue. Accordingly, the Commission FINDS that Make Michigan has satisfied, beyond any reasonable doubt, the first prong—unilateral gathering of emails—of our test.

But, it appears clear to the Commission that Mr. Loeb originally gathered the email addresses into a new listserv for the purpose of advertising for an LSHP event, and not for a campaign purpose. Mr. Loeb did not then take the email addresses from the LSHP listserv in order to create a new listserv for Mr. Abudaram to use to send out a campaign email. Thus, the Commission FINDS that only one gathering occurred and that that gathering was not for a campaign purpose. Make Michigan has therefore failed to establish that Mr. Loeb’s actions satisfy the second prong of our “harvesting” test. That being said, the Commission does have significant concerns about the ability of a member of the Team to create a listserv as large as this one for one purpose, and then re-task that listserv for campaign purposes. As we discussed in Part I.B, supra, however, this is a consequence of the Code’s insistence on purpose, and we have no power to change or ignore this element.
Notwithstanding Make Michigan’s failure to satisfy prong two of our analysis, we do FIND, beyond any reasonable doubt, that Mr. Loeb’s actions do satisfy the third prong of the harvesting standard we articulate today. There was no evidence, and based on the evidence presented, there could be no evidence, that Mr. Loeb had any reason to believe that the owners of the email addresses he gathered into the LSHP listserv would have been more likely than any other randomly selected student on campus to support the Team. Thus, his gathering was indiscriminate with regard to reasonable likelihood of support and would satisfy the final prong of our test.

In sum, since Make Michigan’s evidence has failed to satisfy the second prong of our harvesting standard, despite having satisfied the first and third prongs, we FIND that the conduct of Mr. Loeb would not have amounted to a violation of the Code if committed by a candidate.

B.

Next, we consider the complaint against the campaign manager of Make Michigan. As with the complaint against the Team, we have little difficulty concluding that Ms. Siegel’s gathering of uniqnames from the “Crush the Calendar” UPetition that she created into an entirely new listserv was unilateral. The submission of one’s uniqname as part of the process of signing a petition via UPetition does not make pulling those uniqnames for inclusion in a listserv does not evince any sort of mutual understanding between the owners of those uniqnames—which are, of course, also the email addresses of students—and Ms. Siegel. We therefore FIND that the Team has satisfied the first prong of our test beyond any reasonable doubt.

The second prong is a closer call. Ms. Siegel claims that her motivation behind the creation of the “Crush the Calendar” listserv was to drum up support for and participation in an upcoming CSG survey to be announced by CSG President Bobby Dishell in the near future. This has at least a faint ring of credibility around it, as Ms. Siegel only received word on March 23 from President Dishell that the survey would occur. Creating listservs takes time, and so the fact that the listserv was not utilized to immediately spread the word makes some sense. The pending release of the survey might also explain the transition from Facebook—the medium Ms. Siegel originally utilized to spread the word about “Crush the Calendar”—to email. Only the most dedicated to the “Crush the Calendar” cause might be interested in hearing about ongoing negotiations
with the Regents, \(^3\) so it perhaps makes sense to utilize an “opt in” approach—by allowing people to follow the process by liking a Facebook page, rather than emailing every person who signed the UPetition. Once Ms. Siegel’s focus shifted from conveying information to actively drumming up participation, however, it makes sense that she would try as hard as possible to reach as many interested students as possible; now, emailing every UPetition signer might be the better option.

Ultimately, though, we find that petitioner bore their burden of proof on this prong as well. The first email sent with the new listserv explicitly advertised Make Michigan. Moreover, the listserv appears to have been hastily constructed following President Dishell’s revelation of the survey to Ms. Siegel on the 23rd to allow an email to be sent on the day of the election (March 25th). Moreover, the survey proposed will be sent to the entire student body, not the “Crush the Calendar” listserv, so sending out promotional materials so hastily (before the survey is even available) indicates that Ms. Siegel’s purposes were campaign-related. The evidence here is circumstantial, but the law makes no distinction between direct and circumstantial evidence, and neither does the Commission. See Make Michigan v. The Team I, UEC-2015-W-003 (March 27, 2015).

On balance, we therefore FIND, beyond any reasonable doubt, that Ms. Siegel gathered these email addresses for a campaign purpose. The Team has therefore satisfied the second prong of our harvesting test.

Whether or not there was a violation then turns on whether or not the Commission can conclude, beyond any reasonable doubt, that Ms. Siegel gathered the email addresses in question indiscriminately. In other words, can the Commission say that we have “an abiding conviction . . . such as [we] would be willing to act upon . . . in the most significant of [our] own affairs,” Garthus, UEC-2014-W-009 at 2, that Ms. Siegel could not have reasonably believed that the owners of the email addresses displayed on the “Crush the Calendar” UPetition would be more likely than any randomly selected student to support make Michigan? We cannot. Ms. Siegel’s testimony at trial evinced a firm belief that the “Crush the Calendar” initiative was an important part of Make Michigan’s platform. President Dishell, who has endorsed Make Michigan and who is likely connected to it in the minds of many voters, has taken a strong interest in this issue and spearheaded it before the Regents. Ms. Siegel came to the attention of Make Michigan because of her work on “Crush the

\(^3\) We credit President Dishell’s email statement, entered into evidence during the hearing, that the issue has not been concluded and that efforts to address the “Crush the Calendar” movement’s concerns are ongoing.
Campaign,” and began working with Mr. Dishell for the same reason. This led directly to her involvement with the current Make Michigan campaign. Given the close ties between Ms. Siegel, Make Michigan, and “Crush the Calendar” we cannot say that beyond a reasonable doubt that her gathering of the email addresses on UPetition was indiscriminate: it is possible that she possessed a reasonable belief that the signers of that petition were more likely than a randomly selected student to support Make Michigan. We therefore FIND that the Team has failed to satisfy the third prong of our harvesting test.

Since the Team’s case fails on the third prong of our test, despite satisfying the first and second prongs, we find that Ms. Siegel’s conduct would not have constituted a violation of the Election Code if she had been a candidate.

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Because we have determined that the actions of the non-candidate actors in this case would not have been violations of the Election Code if they had been performed by a candidate, we need not consider—and, thus, do not decide—whether (1) they acted with or at the request of the party, (2) whether they acted within the scope of coordination, or (3) whether any mitigating circumstances were present.

III

And so, we reach the end of another election cycle plagued by ceaseless litigation—this time threatening to subvert the democratically expressed will of the student body in one of the most closely contested elections in CSG history. The case sub judice is the perfect expression of the irrational and petty character that litigation before this Commission has taken on over the past few election cycles. Having saved these complaints, each requesting the assessment of thousands of demerits against the other party, until the end of the cycle, both sides of this dispute have achieved what can only be described as nuclear deterrence. They apparently missed the part of their high school history class where the teacher explained that the United States and Soviet Union never actually used their nuclear arsenal, however, because the parties have each brought essentially the same complaint each asking for the total disqualification of the other. It seems neither has grasped that this Commission will (and did) apply the same legal standard to both of them.
The political parties active on this campus, both past and present, have consistently and emphatically demonstrated that they can no longer be trusted with the responsibility of enforcing the Election Code.\textsuperscript{4} The level of gamesmanship that has characterized the litigation in recent cycles is antithetical to the purpose of the code and to the spirit of democracy itself. Time and again, results are delayed pending litigation that undermines the faith of the student body in their student government, calls into question the legitimacy of the government that is finally empanelled, and frequently achieves nothing meaningful.

There must be a better way.

It is our firm conviction that change is vitally necessary to preserve the legitimacy, fairness, and democratic spirit of elections on this campus. The current system reflects poorly on candidates, on parties, on the University, and upon the very notion of student government itself. We beg the Assembly to do what we cannot and create a system of rules enforcement that will truly reflect the ideals that we know its members share and inspire future generations of Michigan students to run for office and make our University better. The current system is anathema to that goal. It \textit{must} be changed.

For the reasons stated above, we find the Respondent in UEC-2015-W-007, THE TEAM PARTY, NOT GUILTY of a violation of § (B)(7)(e)(iv) of the Election Code.

Furthermore, we find the Respondent in UEC-2015-W-009, THE MAKE MICHIGAN PARTY, NOT GUILTY of a violation of § (B)(7)(e)(iv) of the Election Code.

The Complaint filed against THE TEAM PARTY and the Complaint filed against THE MAKE MICHIGAN PARTY are therefore ORDERED dismissed with prejudice.

It is FURTHER ORDERED that the Complaint filed against ANDREW LOEB be dismissed for want of jurisdiction.

\textit{It is so ordered.}

\textsuperscript{4} The Commission would like to note that it does not attribute the acrimony and gamesmanship that has plagued this cycle to the counsel appearing before us. All indications show that they have labored amially to convince their respective clients that litigation should not be the answer and that settlement would be preferable. But, even the efforts of \textit{their own representatives} have not been able to sway the parties from their apparent goal of mutually assured (and executed) destruction.