

**ELECTION PROCEDURES COMMITTEE**

**APPEAL PANEL DECISION**

**IN THE APPEAL OF THE DECISION OF THE RETURNING OFFICER**

**APPELLANT:** ██████████ Student Candidate

**RESPONDENT:** Jennifer Webster, Returning Officer

**HEARING DATE:** March 12, 2024

**DECISION:** The appeal is granted in part. The Returning Officer’s findings are affirmed, but the penalty imposed on the Appellant is modified as outlined below.

**REASONS:**

Background

This appeal concerns the decision of the Returning Officer dated March 8, 2024, which found that the Appellant, a Student Candidate, engaged in prohibited activity during the 2024 Board of Governors Election on March 5, 2024, contrary to the Board of Governors Election Policies and Procedures (the “**Election Rules**”).

The Appeal Panel has carefully considered the following, which form the basis of its decision:

- Appellant’s Appeal dated March 11, 2024;
- Decision of the Returning Officer dated March 8, 2024 (the “**RO Decision**”);
- The Election Rules; and
- Submissions of the Appellant and Respondent at the hearing convened for this matter on March 12, 2024.

For the reasons outlined below, the appeal is granted in part.

## Whether the Appellant Engaged in Prohibited Conduct during the Voting Period

The first aspect of the Appellant's appeal relates to the Returning Officer's determination that the Appellant engaged in prohibited conduct under section 8.5 of the Election Rules.

The Appellant maintains that the Returning Officer and the two individuals who submitted the underlying complaint (the "**Complainants**") incorrectly characterized the Appellant's conduct on March 5, 2024, as "observing" or "assisting" voters, and the intention behind the Appellant's conduct. The Appellant maintained that their use of a digital QR code was to make campaign information more accessible and also in an environmentally sustainable way. The Appellant explained that the QR code provided links to the online voting platform, information about the election and candidates, a way for student voters to provide feedback, and the Appellant's social media account.

With respect to the Appellant's discussions with student voters surrounding the sharing of the QR code, the Appellant stated that they explained the function of the Board of Governors, the importance of voicing student concerns and voting, and responded to inquiries from students when asked why they should vote for the Appellant. When some students subsequently asked the Appellant why their vote was not being completed through the online voting platform, the Appellant explained to them that there were three student seats available in the election, that they should additionally consider other candidates to vote for, and cast the requisite number of votes to complete their vote accordingly. The Appellant stated that he stood at a comfortable distance from students that he shared the QR code with and did not further engage students who were not receptive.

Based on the Appeal Panel's careful review of the appeal materials and the submissions of the parties at the hearing, the Appeal Panel upholds the Returning Officer's finding that the Appellant engaged in prohibited conduct by observing voters and assisting voters in the casting of their vote.

While the Appeal Panel accepts that the Appellant may not have *intended* to monitor, influence, or interfere with the decision of voters, when the totality of the circumstances, voting context, and the *effect* of the Appellant's conduct are considered, the Appellant engaged in prohibited conduct within the meaning of the Election Rules.

We note that under section 8.5 of the Election Rules, “voters are entitled to cast their ballots in secret.” Further, the prohibition against assisting and observing voters on certain conduct during the voting period as outlined in section 8.5 is for the purpose of “ensuring that ballots are cast in a manner that upholds the democratic process.”

On the Appellant’s own evidence, the Appellant engaged student voters, shared a QR code that facilitated access to the online platform and shared information about the election and the Appellant’s candidacy. After sharing the QR code, the Appellant acknowledged engaging in discussions with student voters as outlined above, including, notably, responding to their inquiries about why they should vote for the Appellant and why their vote was not being completed through the online voting platform upon accessing it through the QR code.

Given the nature of the Appellant’s discussions with and proximity to student voters after having facilitated their access to the online voting platform, the Appellant’s conduct undermined ballot secrecy, voter privacy, and the integrity of the environment in which the democratic process was underway. It did so to a non-trivial degree.

### The Penalty

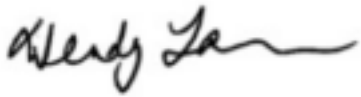
The second aspect of the Appellant’s appeal relates to the proportionality of the penalty imposed by the Returning Officer under section 8.7 of the Election Rules. Specifically, the Returning Officer subtracted all votes cast for the Appellant on March 5, 2024, or 25% of the total vote count for the Appellant over the four-day voting period during the election.

As noted above, the Appellant’s prohibited conduct was non-trivial given the electoral context.

In the circumstances of this case, the Appeal Panel is mindful that the disallowance of votes impacts not only the Appellant but also those individuals who voted for the Appellant absent any improper interaction. The Appeal Panel is also mindful that the evidence that the Appellant engaged in prohibited conduct is specific to a two-hour time frame on March 5, 2024. The Appeal Panel accordingly rejected the RO’s finding in the absence of evidence, that a stronger penalty is required due to the Appellant potentially engaging in prohibited conduct on other voting days during the election. Further, the Appeal Panel accepts the Appellant’s submissions about the positive intention behind the use of the QR code, notwithstanding that the totality of the Appellant’s conduct amounted to interference with the democratic process, as outlined above.

Having considered the appeal materials and the submissions made concerning the penalty applied by the Returning Officer, the Appeal Panel grants this aspect of the appeal. The penalty imposed on the Appellant is modified such that the number of votes to be removed from the total votes cast for the Appellant during the election is reduced to 12.5 percent.

DATED as of the 21st day of March, 2024



Wendy Lawrence, Chair

APPEAL PANEL: Wendy Lawrence, Jennifer MacInnis (Secretary), Olivia McIntosh

OTHERS IN ATTENDANCE:

██████████ Appellant  
Jennifer Webster, Returning Officer  
Katherine Tatsiou, Board Secretariat  
Spiros Vavougios, Board Secretariat