

OFFICE OF THE CHIEF RETURNING OFFICER

University of Manitoba Students' Union

Ruling Form

Ruling #	2018-001
Date and time ruling posted	Monday, February 19, 2018 at 9 AM
Deadline to appeal (48 hours from posting)	Wednesday, February 21, 2018 at 9 AM
Concerning Complaint #	2018-001
Summary of the allegation	<p>“An individual who appeared to be a University of Manitoba Student posted a screenshot displaying The Manitoban’s list of Future UMSU’s slate, with the caption ‘Future UMSU is RIGHT BRUH’ to their Instagram story.</p> <p>The same individual also shared the same article from The Manitoban on Facebook, commenting “Athena Skarban, Jehan Moorthy and all of #FutureUmsu for the absolute win!”</p> <p>The comment feed includes Candidates Athena Skarban and Jehan Moorthy endorsing the post.</p> <p>The complainant also provided screenshots of the photo and comments.</p>
Summary of the parties to the complaint	Future UMSU: Athena Skarban and Jehan Moorthy
Does the CRO have jurisdiction?	Yes
Applicable Election Rules	<p><u>Election and Referendum Manual (ERM):</u> <i>ERM</i> Section I. I. d.: “Campaign” or “campaigning” is any act that has the intention of soliciting support or opposition for a particular Candidate, Slate, or Side.</p> <p><i>ERM</i> Section I. I. g.: “Campaign Materials” includes any created objects (physical or digital) that solicit support or opposition for a particular Candidate, Slate, or Side.</p>

	<p><i>ERM</i> Section V.1.g.: Prior to advertising for nominations the CRO shall prepare... a detailed description of “pre-campaigning” and a list of permitted and restricted activities.</p> <p><u>Supplementary rules on pre-campaigning:</u></p> <p><i>Supplementary Rules</i> 3.B.iv.: Candidates, Slates and Sides may, before the Campaign Period...privately discuss their intention to run as a Candidate or as a member of a Slate, or to register a Side, with friends or groups of no more than five.</p> <p><i>Supplementary Rules</i> 3. B. v.: Candidates, Slates and Sides may, before the Campaign Period... prepare Campaign Materials for distribution upon the start of the Campaign Period.</p> <p>*<i>Supplementary Rules</i> 3. D. x.: Prohibited activities shall include, but are not limited to... openly expressing an intention to run or register as a Candidate, Slate or Side through the media or in any other public forum.</p> <p>*<i>Supplementary Rules</i> 3. D. xii.: Prohibited activities shall include, but are not limited to... the distribution of any Campaign Materials or Campaigning prior to the start of the official Campaign Period.</p> <p>*<i>Supplementary Rules</i> 3. D. xiv.: Prohibited activities shall include, but are not limited to... displaying, erecting, posting (or causing to be displayed, erected or posted) physically or electronically, any Campaign Materials as defined in the Election Rules.</p> <p>*Note: on page 5 of the 2018 candidate nomination package, the supplementary rule after 3.C currently appears as Rule 3.B. This is a typo, and the rule should read “3.D”</p>
<p>Finding of facts</p>	<ol style="list-style-type: none"> 1. The Individual is a student at the University of Manitoba. 2. The Individual is Facebook friends with Jehan Moorthy and Athena Skarban. 3. The Individual is not on Future UMSU’s Volunteer List. 4. The Individual’s Facebook and Instagram post was made during the Pre-Campaign Period of the UMSU’s 2018 General Election. 5. Jehan Moorthy “liked” the Individual’s Facebook post. 6. Athena Skarban commented, “You are amazing! So thankful for your support <3” on the Individual’s Facebook post. 7. The Individual was notified by Future UMSU to take down the Instagram post. 8. The Instagram post was taken down by the Individual. 9. The Individual was notified by Future UMSU to take down the Facebook post. 10. The Facebook post was taken down by the Individual. 11. No Future UMSU members will solicit or approve the Individual as a volunteer, in order to prevent future incidents and to reaffirm Future UMSU’s deference to the <i>Supplementary Rules</i> and the <i>Election and Referendum Manual</i>.
<p>Ruling on the alleged breach</p>	<p>The <i>Election and Referendum Manual</i> prohibits pre-campaigning, and the <i>Supplementary Rules</i> provide a detailed list of specific forms of prohibited behaviour. Prohibited activities include the distribution of campaign materials prior to the campaign period, and electronically posting any campaign materials.</p>

	<p>The CRO finds that the “like” by Jehan Moorthy and the pair of comments by Athena Skarban are public discussions reaffirming their intention to run as a Candidate and occurred during the pre-campaign period. Facebook likes and comments will be visible to other U of M students, and both Future UMSU slate members and their team name are tagged in the Facebook post. Even though the post was ultimately taken down, the tagging of the individuals and their endorsement of the message meant that the post allowed Future UMSU to receive public attention during the pre-campaigning period, which allows for an unfair advantage.</p> <p>The comments by Athena Skarban and the “like” by Jehan Moorthy suggest that public displays of support for slates by non-candidates are allowed and encouraged. The candidates should have refrained from these actions, as they suggest pre-campaigning is allowed and to be rewarded with likes, thanks, and hearts. Instead, the individuals could have showed active restraint against prohibited activities (which includes pre-campaigning) by asking the individual to remove the post immediately.</p> <p>For the CRO to rule otherwise would mean public campaign posts by candidates would be punishable, while “liking” and commenting on public campaign posts by non-candidates would be permitted. This would be a flawed interpretation of the rules, and would encourage other candidates to like and comment on posts that they would not be allowed to make themselves.</p> <p>The comments were not a private discussion with a group of five or fewer people, which would be allowed under <i>Supplementary Rules</i> 3.B.iii and 3.B.iv. Comments by Athena Skarban are visible for anyone who was able to view the photo, and the “like” by Jehan Moorthy drew attention to this public demonstration of support for Future UMSU.</p> <p>Regardless of whether the individual is a formal volunteer for the slate, the Future UMSU team could have alerted the individual of the prohibited nature of public pre-campaigning. Instead, they endorsed the post. This activity falls within the scope of the <i>Supplementary Rules</i>, specifically 3.D.x, 3.D.xii, and 3.D.xiv.</p> <p>A penalty for violation of these three provisions is warranted.</p>
<p>Penalty assigned</p>	<p>5 demerits assigned to Jehan Moorthy for pre-campaigning. 5 demerits assigned to Athena Skarban for pre-campaigning.</p>