

# Student Union Judiciary

## *Groman v. Union Secretary Brandzel*

October 4, 2000

In the case of *Groman v. Union Secretary Brandzel*, we, the Union Judiciary, find unanimously for the defendant, Union Secretary Benjamin Brandzel '03.

David Groman '04, one of two candidates in the final election for Rosenthal Quad Senator, charged Secretary Brandzel and his Elections Commissioners with doing "a poor job handling this election," in that the method they used in running the election "was completely flawed and unorganized." Mr. Groman levied various and sundry specific charges of flawed handling and general disorganization, but the Court granted certiorari on the basis of one of these charges; namely, that there existed the opportunity, and therefore the possibility, that some students had cast ballots for residential quads in which they did not reside. Mr. Groman contends that this alleged possibility constitutes an unfair election. He seeks redress in the form of a Court ruling declaring the final elections for all residential quad and off-campus senator positions, held on Monday September 25, 2000, null and void.

There was only one contested fact in this case, and that was whether, and for what period of time, voting students, during the day of the September 25 election, had the opportunity to fraudulently cast ballots for candidates from residence quadrangles in which the voter did not reside. Plaintiff argued that this opportunity was created by virtue of the alleged fact that the persons running the elections table during the noon hour on the day of the final election, Senators Jonathan Sclarsic '03 and Peter Novak '03, failed to verify the residences of the voting students by the procedure established and required by Secretary Brandzel, and rather took voters 'at their word.' The means for verifying the residences of voters, which Secretary Brandzel specified and, by his own admission, required, was a cross checking of student identification cards against an official University computer registry of student residences. As a finding of fact, the Court finds that at a minimum, between the hours of 12:00 p.m. and 12:30 p.m., voter residences were not verified by any means, and that this did indeed create the possibility that a potentially significant number of ballots were fraudulently cast in the manner stated above.

Plaintiff, represented by Senator Owusu Ananeh-Firempong II, argued that the possibility of the existence of fraudulent votes warranted a re-running of all residential senate elections. Plaintiff argued that the potential for fraudulent votes violated the "spirit," "integrity," "fairness," and "honesty" of the entire elections process, thereby invalidating the results. Plaintiff further argued that, since the elections of North Quad had been tainted by the established fact that two students had fraudulently voted in that election, this provided further evidence of the potential for the same to have occurred in the other elections. Plaintiff finally argued that the burden of proof, insofar as establishing that a fair election was carried out, lies with the Elections Commissioners, and that the Elections Commissioners, in order to not be overruled by the Court, are therefore required to refute, with evidence or other proof, the charges levied by the plaintiff.

Defendant, represented by Mr. Storey Clayton '02, argued that the burden of proof lies with the plaintiff, and that, barring any evidence of fraud, there is no cause to overrule the ruling of

Secretary Brandzel and his Elections Commissioners that this had been a fair election. Defendant further argued that, since there exists unavoidable potential for fraud in any election, for instance by voters conspiring to swap ballots, there is and must always be a presumption of trust placed in the actions of the voters that they will not attempt to defraud election processes; that these normal risks constitute a realm of “acceptable risk,” and that the presently identified potential for fraudulent votes cast in this round of residential senate elections falls within that penumbra of “acceptable risk.”

The Court is unmoved by Plaintiff’s arguments that the burden of proof lies with Secretary Brandzel and his Elections Commissioners. We have long held otherwise. Section 7 of Article IX of our Union Constitution states “...*The Elections Commissioner(s) shall establish additional rules and guidelines as necessary for an election campaign in accordance with the Constitution and By-Laws. These rules and guidelines shall be binding over all Union members and all Union Organizations.*” ... “*The Elections Commissioner(s) shall be empowered to resolve any and all election disputes. Such decisions may be appealed to the Union Judiciary.*” ... “*The Secretary shall certify the results of all elections no more than five academic days after the final election.*” The American Heritage Dictionary defines “certify” as: “**1. a.** To confirm formally as true, accurate, or genuine, esp. in writing. **b.** To guarantee as meeting a standard.” Our Constitution explicitly indicates that it is the unique responsibility of the Elections Commissioners to ensure that a true, accurate, and genuine process takes place in each round of elections, and to guarantee that each of said elections meet the standard of fairness and veracity.

The Constitution does indicate that decisions of the Elections Commissioners may be appealed. This Court has reversed several elections in the past few years, and so a look at the reasoning behind each such ruling is warranted. In *Maymen v. Elections Commissioners, 2000*, this Court reaffirmed the unique responsibility of the Elections Commissioners in ensuring a fair elections process. “*We the majority feel that [Article IX, Section 7, Letter D] gives implicit power to the Elections Commissioners to set any rules that they deem necessary to ensure a fair elections’ process, as long as these rules remain constitutional.*” “*...the Elections Commissioners were within their right to establish a threshold of legitimacy for write-in candidates. However, because the threshold was not created and defined to all candidates before the elections’ process began, we believe that write-in candidates were unfairly impacted by not knowing what they needed to do in order to receive official candidacy status.*” This Court, while reaffirming the role of the Elections Commissioners in determining what ‘fair’ is, also erected a specific test of harm. The reason this Court chose to overrule the decision of the Elections Commissioners was because we ruled that certain candidates were unfairly negatively impacted in a way which the other candidates in the election were not. Thus, one test which any motion to overrule the Elections Commissioners must meet, is that it can be proven to have caused specific harm to one or more candidates not suffered by fellow candidates.

In *Schapira v. Peck, 1999*, the Court reaffirmed the specific harm test by throwing out a charge by Mr. Schapira, a losing candidate for Rosenthal Quad Senator, that the entire elections process was unfair because it had been poorly publicized. “*In response to the first claim, we recognize that there was a lack of publicity and notification on the part of the Elections Commissioners during the recent elections. However, the disadvantage here was [uniformly] imposed on all candidates. This finding is in agreement with the finding of the Union Judiciary in the case of Abbett v. Elections Commissioners, where the Union Judiciary held that in such a case, there was no cause for elections to be run again.*”

In *Schakow v. Elections Commissioners, 1997*, the only other case in recent times in which this Court reversed the ruling of the Elections Commissioners and re-ran an election, Michael

Schakow '01 brought charges against the Elections Commissioners stating that he had been unfairly disqualified from the election for Senator from the freshman class of 2001 Senate, and should therefore be reinstated, and that this necessitated re-running the election which had already taken place. Mr. Schakow had been disqualified when the Elections Commissioners ruled that he had violated a clause in the Candidates' Rules of Conduct. This Court chose to accept the Candidates' Rules of Conduct document as a legally enforceable contract, and subsequently ruled that Mr. Schakow had not, in fact, violated it. In this case, specific harm was found to have been caused to one candidate, Mr. Schakow, by being unfairly disqualified. It was for this reason that we reversed the ruling of the Elections Commissioners and re-ran the election.

This Court thus erects at least one test which must be satisfied in the affirmative before we will take the drastic step of overruling decisions of the Elections Commissioners and re-run an election. The specific present harm test holds that in order for an election to be re-run on the grounds of unfairness, the plaintiff must prove, by any means satisfactory to the Court, that he or a number of candidates suffered a specific harm which unfairly negatively impacted their candidacy, and that this harm was not likewise suffered by all other candidates in that election.

Mr. Groman has not met the specific present harm test.

The Court is similarly unmoved by the defendant's arguments that there must be a presumption of trust placed in the actions of the voters such that they will not attempt to defraud the elections. We do accept that in any election there is the potential for fraud, and that there is a realm of "acceptable risk." But we decry any notion that the persons running the election ought lie down like sheep and simply accept that; nor ought they themselves create additional risk. We find that there is a strong requirement to vigilantly guard against such potential for fraud. However, we maintain and reaffirm our finding that this responsibility lies uniquely with the Elections Commissioners. The only presumption of trust which is to be placed, then, is a presumption of trust in the decisions of the Elections Commissioners. It is they who are specifically charged in our Constitution with ensuring a fair, accurate, and genuine elections process, and so it is they who must toe the line between "acceptable risk" and apparent fraud. This Court rejects the notion that we are in any better position than the Elections Commissioners to determine what 'fair' is, with respect to elections proceedings. We therefore place several strict requirements upon any plaintiff wishing to have us overrule the Union Secretary and his Elections Commissioners by nulling and voiding an election. First and foremost, the specific present harm test must be satisfied. Second, the plaintiff must prove that either the Union Constitution, By-Laws, or Candidates' Rules of Conduct were violated in some way, and that this unfairly negatively impacted them per the specific present harm test. Finally, we strongly affirm that the burden of proof lies solely with the plaintiff, and that all decisions of the Elections Commissioners, and all certified elections, are fair until proven otherwise.

It is so ordered.

Delivered: Justice Michael Schakow '01

Concurring: Chief Justice Leah R. Sciabarrasi  
Justice Ari Rabin-Havt '01  
Justice Shari Silverman '02  
Justice Noah L. Browne '03