

## Regarding Mauer vs. Amann, Chief of Elections

THE CHIEF JUSTICE delivered the Opinion of the Court:

We, the Union Judiciary, in the matter of Dan Mauer vs. Alex Amann, Chief of Elections, rule 3-1 in favor of the petitioner that his claim against the Chief of Elections is ripe for review.

In the case before the bar Mr. Mauer has brought an action alleging that certain election regulations are in violation of the Constitution and ought be enjoined as such. Specifically, Mr. Mauer challenges certain rules which regulate the coordination of campaigns; he has told the Chief of Elections that he believes these regulations to be unconstitutional and has requested they be rescinded. He further avers that the Chief of Elections has refused to rescind these rules. Mr. Mauer thus claims injury in that he must labor under the burden of a rule that is in violation of the Constitution. The Chief of Elections however, has averred that Mr. Mauer lacks standing until he breaks the rule and is sanctioned for this breach. We have noted probable jurisdiction on this case and have had the benefit of briefs and the argument of council.

That a decision of the Chief of Elections can be appealed to the Union Judiciary is a simple, outright fact. It stated in Article IX section 7 clause 4 of the Brandeis University Undergraduate Student Union Constitution: “The Chief of Elections shall be empowered to resolve any and all election disputes. Such decisions may be appealed to the Union Judiciary. :” As we view this requirement the following elements must be present to confer jurisdiction: (1) Mr. Mauer must allege some election rule is violating a Constitutional right of his, (2) that an injury flows directly from this violation, (3) that he has made the Chief of Elections aware of this complaint and has requested the rule be rescinded, and (4) the Chief of Elections has directly refused. In this case, Mr. Mauer approached Mr. Amann with his complaint and was informed of the latter’s desire to

uphold Rule 5f; upon receiving this decision, Mr. Mauer approached the Union Judiciary with an appeal; thus the elements are present, we have jurisdiction over Mr. Mauer's appeal.

Mr. Amann contends that an appeal regarding an elections dispute can only be brought before the Union Judiciary after a candidate has violated a rule and been disqualified from the election. According to his logic, Mr. Mauer would have to announce his candidacy, sign the appropriate contract, and then break the conditions he knowingly accepted upon himself in order to find a forum where he could address his grievances with the elections rules. This sort of logic, while straightforward enough, does not lend itself to efficiency or justice. It produces something of a farcical catch-22 situation, a general example of which is as follows: Student A is running in an election and feels that a certain rule, due to its unconstitutional nature, impinges on his ability to run an effective campaign. If he allows himself to be subject to the rule, he suffers; and yet the only way to challenge the rule is to break it, and thus he suffers as well. Even if he then brings his grievances to trial, he might win, and he might not. The point is that whether he suffers under the rule or suffers from disqualification, what this sort of logic requires is that a Brandeis student undergo a procedural gauntlet, and waste an unspecified amount of time and effort in the process, for the sake of pursuing justice. The often quoted preamble of the Constitution stresses that the student government is meant to serve the students, and convoluted procedures, such as the one outlined above, serve no one. All we attempt to do today is allow parties to bring grievances where they anticipate injury, so they can receive the answer beforehand without hurting their ability to campaign. Bringing up these grievances without penalty is essential to making any progress in the union. By saying that one must be disqualified, or the elections certified before a suit can be brought, we create an undue burden on the entire elections process (including the voters) should

such a case be found to be fruitful for the injured party.

Having disposed of the jurisdictional issues we proceed to Mr. Mauer's actual claim. Of course, an appeal must have its merits in order to be considered; there must be some sort of legal grounds for complaint, NOT a mere dislike of the status quo. An appeal is a different procedural vehicle than certiorari and thus Silverman vs. Commissioners (2004) does not apply here and the Union Judiciary is able to give a summary ruling as to the merits of Mr. Mauer's case. The distinction is clear. Under our Constitution certiorari is discretionary; a case coming to us by this vehicle need only be heard if one of the Court permits it. An appeal however is mandatory, we issue a decision on the merits of the issue presented no matter how frivolous his claims might be. With the guaranteed right to a hearing, however, the justification of preventing summary judgement contained in Silverman is lost. No longer must the Union Judiciary "hear" the case, they must merely decide it. The Union Judiciary hereby summarily dismisses Mr. Mauers appeal, as his particular claims are devoid of merit. He argues that to utilize the ability to campaign by proxy in accordance with the rules promulgated in Election Rule 5f would be so difficult and time consuming that it would be "tantamount to impossible." As a result of this theoretical obstacle that is keeping him from campaigning to the best of his ability, Mr. Mauer claims he is suffering damages and that other candidates have an advantage over him.

Mauer additionally alleges this rule is unconstitutional as it violates the Preamble of the Constitution by being anti-democratic. This claim is directly inapposite to our precedent. We have squarely held the preamble is of no substantive force:

The Union Judiciary unanimously rejects the idea that an officer may be found guilty under the Preamble of the Constitution, and agrees with the Defense that a preamble is, in essence, an introduction. While it certainly does convey the spirit of the Constitution, as a matter of law the Preamble imposes no substantive

obligation.

See In Re Lober III, Slip. Op. at 2 (2004). Moreover, we have repeatedly emphasized that the Chief of Elections has plenary power over Election Rules, and our cases have long held that absent a directly contradicting Constitutional or By-Law provision any rule will be sustained. In discussing the power of the Secretary over Referenda it is critical to identify the source of his power. The broad power of the Secretary over elections, petitions and referenda comes from a vesting clause of vast scope. The Constitution states, that: "...the Secretary shall: Oversee and certify all Union elections, petition referenda, and amendment referenda" S.U. Const. Art. III § 5 ¶ 4. Nowhere is similar power conferred. Thus, this clause invests the Secretary with plenary power over elections and referenda, let to the ends of his actions be legitimate and not directly repugnant to the Constitution and there is no power which can restrain him. This Court most eloquently described this power in Silverman v. Commissioners, when it wrote:

Article IX of the Constitution and Article X of the Bylaws grant the Elections Commissioners broad powers in the governance of elections. The Union Judiciary does not intend to trump this constitutional mandate, as it is vital to the administration of this and future elections that the Elections Commissioners have plenary power to create and modify the Elections Rules as necessary.

Silverman v. Commissioners, at 2 (2003); Maymen v. Elections Commissioners, at 2 (2000) ("We ...feel that [Art. IX § 7 D] gives implicit power to the Elections Commissioners to set any rules they deem necessary to ensure a fair elections' process, as long as these rules remain constitutional.") In closing we reiterate the famous words of Mr. Justice Schakow in Gorman v. Brandzel, Slip. Op. at 2 (2000), "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."

Accordingly, the Judgement of Chief of Elections refusing to modify the Rules challenged  
is AFFIRMED.

It Is So Ordered.

MAUER V. AMAN

MR. JUSTICE KURTZBERG dissenting:

Why are we even discussing this case? As I read Article 9 section 7 clause 4 ("The Chief of Elections shall be empowered to resolve any and all election disputes. Such decisions may be appealed to the Union Judiciary"), we have no jurisdiction whatsoever to overrule, or even clarify by mandate an elections rule before the elections are certified. (See Election Rules 8 "The Chief of Elections is the final authority on all elections matters.") There is no harm here, no one was disqualified. This case is mute.

It seems to me, this is just another example of why the UJ is not respected as an institution, and why we receive an average of 2 cases a semester. This is also why the same people run over and over again for student union offices. Adding the UJ into the confusing maze the student elections already are (two sets of two votes?) will complicate an already complex system.

For these reasons, I dissent.