

THE ALL-CAMPUS JUDICIAL COUNCIL OF THE UNIVERSITY OF ROCHESTER STUDENTS' ASSOCIATION

Ilana Kaplan-Shain

Appeal of

Atul Gulati and Lonny Mallach v. SA Senate

[March 21, 2003]

PER CURIAM.

Steve Duszlak and, Alex Voetsch on behalf of Ilana Kaplan-Shain, Students' Association Senators, appeal the judgment of the All-Campus Judicial Council in the matter of *Atul Gulati and Lonny Mallach v. SA Senate*. The Senators presented new evidence and argued that the previous ruling that the spring 2003 SA Senate elections must be redone should be reversed.

I

The new evidence presented:

In *Gulati*, evidence was brought forth that Abhishek Shah, a person who attempted to vote in the elections, was an eligible voter who was wrongfully prevented from voting: In the appeal, it was stated that Mr. Shah could not be proven to be an eligible voter. The election committee inquired to various administrative departments including the Bursar, Registrar and SA office as to his constitutional eligibility. as a voter in the election. They believed the evidence they found was conclusive and determined he was ineligible, thus no wrong was done by preventing him from voting.

In our original opinion, we decided that there was no valid backup for the online voting system because not all errors could be addressed before the close of the election. Mr. Duszlak asserts that the Wilson Commons' voting booth was a sufficient backup to address all voting system problems that occurred during the spring 2003 election because: 1) no official complaints were filed to the Senate during the election regarding errors which could not be addressed; 2) the new evidence indicates that Abhishek Shah was not an eligible voter; and 3) the registrar's list. was reasonably accurate. Therefore, the Senate asserted that although there was a great potential for error, the validity of the spring 2003 elections was not compromised.

II

The Council's opinion in *Gulati* is that the system itself is unconstitutional, as it does not *guarantee* every student the ability to vote. Nancy Speck, the University registrar, explained in an email that the registrar's list is fallible, however Senate has assumed that Mr. Shah was ineligible based on his absence from the registrar's list. We believe that the evidence provided did not-conclusively prove nor disprove Mr. Shah's eligibility as a voter.

A voting system that guarantees everyone the right to vote must guarantee everyone the ability vote, even when errors occur. If an error occurs - such as an eligible voter not appearing in the

database of eligible voters - a system must be in place to allow those voters to prove their eligibility and vote. Mr. Shah did not have such an opportunity because votes cannot be added after the election closes. Thus, if any student's eligibility were brought into question during the election and were not proven until after the election's conclusion, his or her vote could not have been counted since the current bylaws only allow votes via the online voting system.

Therefore, while the Senate's backup plan did address some of the errors that initially prevented some students from voting, it failed to address all the errors described above. Regardless whether actual evidence of errors was presented, we find, based on a preponderance of the evidence provided in this case, that the system was unconstitutional because the potential for unjustly preventing eligible voters from voting was so great. The new evidence fails to establish that the system did not prevent eligible voters from voting. We uphold our original opinion. The spring 2003 election must be held again.

It is so ordered.