

WIENER, J., delivered the opinion of the Council, in which ISEMINER, C.J., FRASER, A.C.J., and DATTA, LIN, BOWSER, APTE, and LINGE, J.J. joined. ISEMINER, C.J. filed a concurring opinion, in which DATTA, J., joined.

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

JOE CALA v. SENATE ELECTIONS COMMITTEE

[October 1, 2004]

JUSTICE WIENER delivered the opinion of the Council.

### **I**

Joe Cala, a junior, appeals the decision of the Senate Elections Committee denying him a Class of 2006 Senate seat, citing a violation of Article I, §1.G.3 of the Students' Association bylaws. The Elections Committee acknowledges that denying Joe Cala this seat does violate the bylaws but claims that under the circumstances it was the best decision that could be made.

### **II**

In the Spring 2004 Senate elections, two students, Dave Ladon and Nat Powell, were elected as the two Class of 2006 Senators from three balloted candidates, Petitioner Joe Cala being the third. At the start of the Fall 2004 semester, Nat Powell resigned from Senate, leaving a vacant Class of 2006 Senate seat.

For the Fall 2004 elections, held September 20-22, the Senate Elections Committee included the Class of 2006 Senate seat with the other available Senate seats up for general election. The availability of the seat was announced at two interest meetings held on September 8 & 9, during the Campus Activities Fair on September 10, and at a secondary election meeting on September 12.

After attending one of these meetings, Princy Thottahil, who was eligible to run for either the Class of 2006 seat or one of the two Susan B. Anthony seats, chose to run in the uncontested Class of 2006 election. She won with 73 votes. At the same time, Susan B. Anthony residents Matt Goldblatt and Hannah Geswein ran for the two Susan B. Anthony seats and won with 71 and 53 votes respectively.

The Petitioner contends that the method the Senate and Senate Elections Committee followed to fill the Class of 2006 seat was invalid on the basis of Article I, §1.G.3 of the Students' Association bylaws which reads:

3. Vacant seats shall be filled by the person who received the next highest number of votes in the Senator's election.

- a. If that person is unable or unwilling to accept the seat, the vacancy shall be filled by the election or appointment from the representative board of that constituency.
- b. If no such board exists, a new election shall be held at the earliest time of convenience.

As the third highest vote-getter in the Spring 2004 Senate elections, the Petitioner should have been offered the Class of 2006 Senate seat before it was made available as part of a new election. After learning that the Class of 2006 Senate seat was vacant and on the Fall 2004 election ballot, the Petitioner notified the Elections Committee Chair of the violation the evening of September 21, the second day of the elections.

At the conclusion of the elections, the Committee acknowledged the violation of the bylaws in regards to the Petitioner, but determined that Ms. Thottahil should keep the Class of 2006 Senate seat. The Committee reasoned that denying Ms. Thottahil the position would violate her right to have run in a different election, as Ms. Thottahil's participation in the Class of 2006 race kept her from participating in the Susan B. Anthony race for which she was also eligible.

The Election Committee Chair excused the failure of the Senate and the Elections Committee to contact the Petitioner by explaining that in the process of transitioning from one year's Senate to the next there is often a breakdown in communication. The resulting loss of information makes it difficult for the new Senate to continue unfinished business from the previous year. In this instance, he claims, the new Senate and Elections Committee had no record of the Petitioner being the third highest vote-getter from the previous year and thus the next in line for the seat. Without this information, they took appropriate measures to fill the seat by election.

### III

Here the Council holds that even in the absence of easily accessible information, the Election Committee or the Senate had a responsibility to investigate the status of open Senate seats before making them available for election, and to notify any parties with rights to those seats of their availability. The Council considers it *fundamental* to the integrity of the system that the Senate work vigorously and proactively to comply with the requirements of its election bylaws. We believe this sort of negligence in administering the rules opens the door for potentially biased elections.

We agree with the Election Committee Chair that the deterioration of communication within Senate from year to year is a serious obstacle to the smooth administration of the Senate's duties. However, we do not accept this as an excuse for the haphazard adherence to election bylaws demonstrated here.

The Senate is hereby strongly advised to improve its election records, namely, to have some. Subsequent to all future elections, *a historical record* of the certified results should be made, minimally in paper form, including the names of all candidates, winners, and runner-ups and the number of votes received by each. Copies of this document should be forwarded to the new Elections Committee Chair and Speaker of the Senate when a transition occurs. The Council also encourages the Senate to seek other ways to improve its transitioning process as it sees fit.

The Council holds that:

- ❖ The Class of 2006 Senate seat belongs to the Petitioner, in accordance with the bylaws. Thus from the time of this decision, the two Class of 2006 Senators are Dave Ladon and Joe Cala.
- ❖ Ms. Thottahil should not be denied the right to run for a position for which she is eligible as a result of the erroneous proceedings of the Elections Committee.

Therefore, the Council orders the Senate to hold a new election for the two Susan B. Anthony Senate seats, pursuant with the bylaws. The ballots shall include the names of the two candidates from the original election, Matt Goldblatt and Hannah Geswein, with Ms. Thottahil's name added. No other names will be added to the ballots, although write-ins will still be permitted. One week shall be allowed for campaigning before the elections.

The Council does not wish to deprive the Susan B. Anthony residences of representation or the Senate of two Senators during the two to three week interim period. Therefore, as Mr. Goldblatt and Ms. Geswein won in a fair election, they will keep their seats as the current Susan B. Anthony Senators until the new elections are complete. The final results of these elections should be announced no later than 5pm, October 22.

It is so ordered.

CHIEF JUSTICE ISEMINGER, with whom JUSTICE DATTA joins, *concurring*

This case has extreme importance for the University of Rochester's Student Association and its recognized groups beyond the determination of the occupants of Senate seats and the re-running of part of an election. Several key parts of internal governmental accountability are clearly missing and if unchecked could result in even more serious problems for students and groups that the government serves.

The root of the problem heard by the Council is a fundamental lack of structural components in the Student Association to ensure that records and proceedings are maintained and passed on from one governmental administration to the next. As the majority understands, ignorance of a previous year's initiatives, actions, and proceedings *is not* a legitimate excuse or defense for the violation of

bylaws or constitutional rights in this case or in any subsequent case. It is the obligation of both a predecessor and successor of an elected position to review all pertinent information before leaving or entering a position to better ensure that the constituent's representation and service to these constituents can be as effective as possible. In fact, there currently exist specific clauses within the bylaws that attempt to provide for smoother transitions. Namely, Article I, §2.C.4 .C concerning Committee Chair selection states:

“Elections for Chairs shall be held in the period between March and April so that the incumbent chair can help orient the incoming chair with the position until the last committee meeting of the academic year where the new chair takes over.”

Ironically, the time aspect of this bylaw was not followed for the selection of the current Committee Chairs, but, this is a violation that is not in question here. The aim of this bylaw is to help new leaders utilize their predecessors to better their ability to serve the students. This intent is right on point – knowledge of what has and hasn't worked in the past facilitates growth and better governing.

It is inexcusable in this instance that the Student Association has no physical record for the spring 2004 election cycle. This lack of records could easily result in numerous allegations of election fraud, inaccuracy, or claim to positions that could neither be proved nor disproved. I have slight reservations in this case to award the petitioner the Class of 2006 Senate seat due to a lack of physical evidence proving his claims. However, because the Election Committee does not contest this claim and because all participants pledge their honesty during the judicial proceedings my concerns are lessened. I believe that finding with the Petitioner not only corrects a current wrong, but also will compel institutional change ensuring the passing of information, experiences, and knowledge which needs to occur. Such change would have prevented the violations of the Elections Committee in this instance.

In addition, it is apparent from the case presented by the Respondent and their witnesses that there is the necessity for review of the bylaws to make sure they are clear, specific, and easily understandable. Several instances during the hearing highlighted the fact that individuals are not clear on what bylaws govern them. One such instance dealt with who had the interpretative authority during the execution of the election bylaws.

Title V, §2.2.a.2 of the Election bylaws states as an administrating duty of the committee that it “make decisions about the election process within the confines of the Constitution and these bylaws.” This is where the interpretative authority lies during the elections rather than with the Speaker of the Senate as argued by the Respondent citing Article I, §1.C.7 of the bylaws, “The Speaker shall have final judgment in interpreting the SA Constitution and By-laws when conflicting interests arise...” because the bylaw goes on to state “...at Senate meetings unless overruled by a 2/3 vote of a quorum of the Senate.” Mistakes such as this occur from a lack of a thorough proactive (in this instance pre-election) examination of the bylaws. It is imperative that leaders of the student association and leaders of groups within the student association understand the bylaws that govern them so that accountability can occur, but, more importantly, so that individual student and group rights are not infringed up on or violated.

However, in order for the understanding of bylaws to occur one must first know what bylaws exist for their respective committee or role. The majority opinion recognizes the lack of any information about the spring 2004 elections does not excuse the bylaw violation that infringed upon the petitioner's rights. Again, while the majority is correct in this understanding they neglect, in my view, to emphasize how the general ignorance of bylaws demonstrated here is completely unacceptable. It is the duty of *all* elected leaders, committee chairs, and *every member* of a committee to know the bylaws that apply to them. Only when the rules that govern us are known can they be understood and implemented correctly.