BRANDEIS UNIVERSITY UNDERGRADUATE STUDENT UNION UNION JUDICIARY

IN RE ARONIN

[January 31, 2010]

CHIEF JUSTICE JUDAH MARANS delivered the opinion for a unanimous Court.

The question before us is whether Respondent, Student Union Secretary Diana Aronin, is "guilty of such breach of constitutional duty as was specified by the Senate" in its vote to impeach her. If we find any of her defense's three principal arguments to be valid, she shall remain in office; otherwise, she "shall be removed" (Student Union Constitution, art. X, § 2, cl. 5). We disagree with Respondent's first argument, find the second to be prima facie valid yet ultimately critically uninvolved and fundamentally flawed, and expressly reject the third.

I

On May 2, 2009, in accordance with the procedures governing the process of amending the Constitution as set forth in article XII of that document, then-Student Union Senator John Freed "registered" an amendment proposal with Secretary Aronin (§ 1). Aronin then "validated" the proposal (§ 2), which called for the creation of the position of Midyear Senator, and on May 3 it was "present[ed]" to the Senate (§ 4). The Constitution requires the Secretary next to "announce to all members of the Union and all Union media a description" of the amendment proposal and subsequently to put it up for a referendum vote "within fifteen academic days after the presentation… to the Senate" (§ 5). On December 6, 2009, almost a full semester after the "presentation," Aronin had still neither announced the description of the proposal nor put it to a vote. That night, the Student Union Senate voted unanimously to impeach her.

Pursuant to art. X, § 2, cl. 4, this Court held a trial, on January 24, 2009, to try Aronin "for such breach of constitutional duties as were levied" in the Senate's motion to impeach her. The impeachment vote, Senate Resolution F09-3, charged her with "fail[ing] to uphold the office of Secretary and the Constitution" by "withhold[ing] the information of [the Midyear Senator] amendment to the student body and the Senate as a whole" and consequently not putting the amendment proposal to a vote, and thereby "violating Article XII, Section 5."

Respondent does not dispute any of these facts, but calls attention to three additional considerations that, she argues, show how the Secretary's duties of art. XII actually did not apply to the present case. First, she asserts that the amendment proposal's presentation took place at an improper time; second, she points out that one of the steps of the amendment process was completed by an individual who was no longer an undergraduate at Brandeis University; finally, she claims that she acted appropriately by following the directions given to her by Student Union President Andrew Hogan.

II

Art. XII, § 4 states: "At the next regularly scheduled Senate meeting following validation, there shall [b]e a presentation to the Senate by the sponsors of the proposed amendment." The "validation" took place on May 2, 2009, and the Senate next met the following day. The "presentation" did indeed take place at the May 3, 2009 meeting. However, Respondent maintains that this May 3 meeting was not the "next *regularly scheduled* Senate meeting following validation" (emphasis added by Respondent in her brief). She references the Student Union Bylaws, which state that "meetings of the Senate shall be held at least once every ten academic days during the *Spring and Fall Semesters*" (art. V, § 2; emphasis added by Respondent in her brief). She asserts that finals period is not part of the "Spring and Fall Semesters" and since the May 3 meeting took place during finals, it should not be considered a "Senate meeting." Because, Respondent writes, "the sponsors failed to present the proposal at the Senate meeting on August 30, 2009" – the meeting that she asserts was actually the "next regu-

larly scheduled" – the proposal became "null and void." As presented, this is not a strong argument.

Respondent cites a University of Michigan Calendar Survey and an e-mail from Ms. Ashley Skipwith of the Department of Community Living to prove that finals are not considered part of the semester. These sources are inconclusive, and the accompanying explanation expounded by Respondent is incomplete. The Calendar Survey explains in an endnote that its creators simply decided not to use finals days when forming their own count. It does not decisively say that these days are not actually and officially a part of Brandeis semester count. Respondent then quotes the e-mail from Skipwith to show that students must "vacate the residence halls within 24 hours of their last final." This can hardly be regarded as an official document authorized to define the exact count of a semester. Respondent reasons that because during finals period Senators may have already left campus, there should be no meetings during that period since those Senators will not be able to attend. The rules of quorum as per Roberts Rules of Order (Student Union Bylaws, art. 5, § 1), and not what have become four dramatized words in (§ 2), govern these restrictions on Senate meetings.

Even if we hold that the finals period is not part of the "Spring and Fall Semesters" referred to in the Bylaws, meetings held during finals may be constitutional nevertheless. The requirement to hold meetings during the "Spring and Fall Semesters" does not state that this is the *only* time the Senate may meet. Rather, it specifies the times during which the Senate *must* meet. That Senate meetings must "be held at least once every ten academic days during the Spring and Fall Semesters" is meant to identify a lower limit and not to impose an upper one. The use of the words "at least" makes this clear indeed. It seems that this Bylaw was passed to ensure that Senators convene enough times to fulfill their duties, and not to prevent them from doing so by placing a ceiling on how often they can legally assemble. This Bylaw is nothing other than a requirement for Senators to do their jobs.

III

We now turn to Respondent's second defense, which argues that since Freed was no longer an undergraduate when he submitted the

"argument FOR the amendment," that "argument" was void; and since Aronin could not present an amendment without a legitimate "argument," it would have been unconstitutional for her to put it to the vote. On a technical level this is, at first glance, persuasive. However, stepping back to view this line of reasoning holistically, in the context of all other facts of the case, leads us to assume a broader perspective revealing that not only would it have been reasonable to consider Freed's "argument" valid, but also Respondent's overall defense is markedly partial and actually self-contradictory.

A

The Constitution does *not* explicitly require the sponsor of an amendment to be an undergraduate at Brandeis University. It may be "ludicrous" indeed – as Claimant himself admitted – to allow *any* of the world's approximate 6.8 billion individuals to submit an amendment to the constitution of our school's student government. But Freed does not have to fall into one of just two categories: either the category of Brandeis undergraduates or that of those who are not Brandeis undergraduates. His case is one of a legal gray area; he belongs in a third category, one where he is neither the "currently registered, degree-seeking undergraduate student" nor in the same category as an undergraduate enrolled at another university, the prime minister of a foreign country, or a random teenager from halfway around the globe. For he *had* been a "currently registered, degree-seeking undergraduate student" at our school, and when he e-mailed Aronin he had only *recently* graduated. There is a meaningful distinction between everyone in the world who did not attend Brandeis and an individual who was an undergraduate here a short time ago, let alone a Senator at the school who had just finished his term.

Moreover, it is not even as if he initiated this whole project after graduation. He had begun the amendment process while he was still a "currently registered" undergraduate. It was only the last step of supplying the argument that he completed soon after. Simply because an individual's status changes in the middle of a process does not mean that we automatically allow the latter state to define the entire operation.

B

Several steps must be taken for an amendment referendum to take place. Some of these steps are principal, essential to the very idea of our amendment process; others are more administrative, seeming to serve organizational purposes. For example, a proposed amendment must "be signed by at least ten Union Senators or by fifteen percent of the Union" because of the underlying assumption that a significant degree of approval should exist before attempting to pass an amendment (Const., art. XII, § 2, cl. 1). Similarly, the fact that in order to pass it needs a two-thirds vote by the student body highlights how there should be strong support and compelling reason to change the Union's highest document (§ 8). On the other hand, the requirement for students to include their class year and telephone number when signing the proposal is not quite a manifestation of an ideological and fundamental aspect of the amendment process as it is simply an administrative manner (§ 2, cl. 2).

By the time Freed graduated he had already accomplished the principal steps that an amendment's sponsor must undertake, including drafting the amendment, acquiring the necessary signatures from the student population, and presenting the proposal to the Senate. He was indisputably a legitimate sponsor when the bulk of preparation was completed. E-mailing to the Secretary a few sentences in support of a proposal is, for the sponsor, a comparatively elementary step. It feels disingenuous to dwell so much on the second word of art. XII, § 6 just to be able to allege that Freed, after all he had done, was an inappropriate sponsor and that he thereby invalidated an amendment for which he had constitutionally accomplished all core and fundamental requirements.

C

It is true that, like Aronin, Freed missed a deadline. However, there are fundamental distinctions that reveal Freed's doings to be reasonable and Aronin's to be unjustified. Aronin was required to "announce to all members of the Union and all Union media a description of the amendment" within seven (7) days after its presentation to the Senate (art. XII, § 5). She did not. Freed was required to submit the argument within thirteen (13) days after the presenta-

tion[1], which he too did not. But when Aronin failed to announce the amendment on time, Freed's timeline became ambiguous, subject to two interpretations: either he needed to submit the argument after the thirteen (13) days or he needed to submit it six (6) days after Aronin's announcement[2]. According to the second interpretation, Aronin had not been waiting for Freed to submit the argument, but rather he was actually waiting on her. It was her failure to act on time, and not his, that caused the initial confusion regarding this entire case to ensue. It is perfectly reasonable for Freed to think that it was Constitutional to send her the argument only once she did her part to set the amendment process in motion, i.e. announce the proposal in order to put it to a vote, indeed a vote whose occurrence in the first place happens to be the very point of submitting the argument. Is it really fair for us to dismiss Freed's submission as unconstitutional because of a situation thrust upon him due to failure to act properly by the Secretary? We think not.

Even if we render Freed's actions negligent, there is still little comparison between his and Aronin's actions. While Freed made his submission just several academic days overdue, Aronin was not only a full semester late, but also she has not even yet started, nor does she plan to start, fulfilling the relevant duties of art. XII. We find meaningful the distinction espoused by Claimant between being reasonably late, and being explicitly and unconstitutionally late; and we certainly recognize the distinction between fulfilling a responsibility tardily and not fulfilling it at all.

D

Respondent's second argument is fundamentally at odds with a major premise of her entire defense. She asks that, due to the unique nature of the present situation, she be given leeway when judging her actions. Respondent explains, "Because the timeline for the amendment proposal spanned two academic years…, Secretary Aronin had concerns regarding if and when the proposed amendment should be presented to the Student Union" (Respondent's brief). She states that the episode in question occurred dur-

[1] 48 hours (§ 6) before the 15 days.
[2] That is, 13 days minus 7 days.

ing something of a hazy, "transitional" period whose rules were unclear how to apply. That may be all nice and good, but if the present situation warrants a lenient application of the rules, then that lenience is to be applied to Freed as well. According to Respondent's approach, which asks us to consider understandingly the strains of this awkwardly timed situation, Freed too should be given considered leeway in allowing him to submit the argument when he did. Respondent bases her defense here on a strict and technical attitude towards Freed, the exact opposite of the approach she wants us to use when dealing with her own situation.

E

Reinforcing our analysis is the issue of Aronin's intent. In September, after Freed had graduated, Aronin willingly accepted his argument. At the time she obviously believed that he actually was a legitimate sponsor; ergo, when she did not put the proposal to a vote, it was *not* because she thought that to do so would be unconstitutional. Respondent's argument, which was evidently produced in her defense after the fact, would, had we accepted it, have retroactively transformed her unconstitutional actions through no will of her own into constitutional ones. Respondent herself admits that she did less than a superb job with "not necessarily the best communication" with Freed. Even if we were to find Aronin not guilty, it would be due to a lucky legality.

IV

Respondent claims that Aronin needed to follow President Hogan's direction not to put the amendment proposal to a vote. Respondent relies on art. III § 2, which states that the President is "ultimately responsible" both "for upholding the Constitution and By-Laws" and "for the operations of the Union Executive Office." We expressly reject this argument.

At the trial, Aronin stated that Hogan regularly tells her what to do, that he gives her "orders" and that she "has to listen" to them. But does she? Neither the Constitution, the Bylaws, nor, to the best of our knowledge, any other official document, accepted rule, or even Union convention, gives credence to such a bold claim. There is an obvious, meaningful, and crucial distinction between "ultimate responsibility" and total authority.

To be sure, certainly there is a reason that the Constitution enumerates specific duties for each position of the Executive Office. In general, all members of the Union are each required to be aware of their Constitutional responsibilities – as they so affirm when being sworn in to office – that pertain to just their office and, by extension, mindful of the responsibilities and limits of other members of the Union. Aronin overlooked the duties enumerated for her position and also erred in assuming that it was "the proper course of action and was in accordance with the Constitution" to follow Hogan's so-called "executive decision" not to put the proposal to a vote (Respondent's brief).

Aronin, as a member of the Executive Office, did not have to blindly follow Hogan simply because he is responsible for that Office. In fact, the branches of the Union need not be the only parts of our democracy to check each other; if indeed each member of the Union is to have a worthwhile and significant role, then those multiple individual members within a single branch too can serve to balance each other out. And they do this by coming together democratically so that they may honorably fulfill their responsibilities as a wholesome group, as opposed to gluing themselves together robotically in order to shruggingly deal with unwanted commitments as a dull block.

V

For the foregoing reasons, we reject all of Respondent's arguments contending that duties of art. XII do not apply to the present case. Accordingly, we find Aronin "guilty of such breach of constitutional duty as was specified by the Senate" in Resolution F09-3.[3]

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[3] Of significant note is that both Counsel acknowledged during the trial the existence of the spirit, as opposed to only letter, of constitutional responsibilities. Aronin certainly violated the spirit of her constitutional responsibilities, and to the extent that the words "constitutional duties" in art. X, § 2, cl. 4 encompass the "spirit" of those duties, she is guilty of the charges of her impeachment. However, we do not simply apply nor rely on the "spirit" standard. To do so, especially in impeachment cases in our student government, is to risk crossing a fine line between following the Rule of Law and legislating from the bench. We believe that the Judiciary must be very careful when exercising its authority to remove a peer from office.

As per art. X, § 2, cl. 5, the position of Student Union Secretary is hereby vacant. Pursuant to art. IV, § 10, President Hogan is charged with executing this ruling.

It is so ordered.