

The Student Body Supreme Court of Indiana University

The Steel Election Ticket v. The Kirkwood Election Ticket

Complaints were filed in the 2002 Indiana University Student Association Elections against the Kirkwood Election Ticket to the Indiana University Student Association Elections Commission claiming improper use of electronic mail resources and voter fraud. The Elections Commission found the Kirkwood Election Ticket in violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603 regarding electronic mail use and assessed a nine percent (9%) fine of the applicable spending limit against the party. In addition, the Indiana University Student Association Election Commission ruled the Kirkwood Election Ticket to be in violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601 regarding voter intimidation and coercion and assessed an eighteen percent (18%) fine of the applicable spending limit against the party. The Steel Election Ticket filed an appeal of the Indiana University Student Association Election Commission decision to the Student Body Supreme Court. The Supreme Court issued a writ of certiorari.

Justices Clifford and Riley delivered the opinion of the Court.

Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603 states “Misuse under UITS e-mail guidelines or other unreasonable use of e-mail for campaigning or ticket forming purposes shall be a violation of this code and ground for contestment.” The Election Commission ruled that failure blind carbon copy an electronic mail directed to a large number of recipients is deemed unreasonable based on University Information Technology Services guidelines, and therefore the Kirkwood Election Ticket was in violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603. We agree with the Election Commission that the Kirkwood Election Ticket committed a violation of this statute. However, we disagree with the Election Commission’s reasoning, as University Information Technology Services advises, but does not specifically require, blind carbon copying to be used in large electronic mail lists. We conclude that the Kirkwood Election Ticket’s actions constitute a violation of the “unreasonable use” clause, rather than the “UITS clause” of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603.

Having established that a violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603 has occurred, we now turn to the assessment of penalties. Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 703 states that “upon determination that a ticket, group of executive candidates, or individual candidates has improperly used e-mail, the Elections Commission shall impose a monetary fine, as outlines in Section 701.” Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 701, subsection (d) states: “All monetary fines are subject to the following scale. The first monetary penalty assessed will be equal to five (5) percent of the applicable spending limit. Each subsequent monetary penalty assessed will increase by a rate of two percent per penalty, with the second assessment equal to seven (7) percent of the appropriate spending limit, and the third assessment equal to nine (9) percent of the applicable spending limit, etc.” Therefore, in order for the Court to properly adhere to the guidelines set forth in this statute, we must first determine the number of Election Code violations that have occurred.

The Election Commission determined that the Kirkwood Election Ticket committed a single violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603. We feel compelled to defer to the Election Commission for the determination of what constitutes a mass electronic mail that would be a case of “unreasonable use”. The Election Commission continued and made its determination of the number of violations based on the total number of electronic mail messages sent in one (1) specific occurrence. This Court rejects the “specific occurrence” method used by the Election Commission. Instead, the proper method to be used regarding Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 701 in determining the number of violations under Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section

603 is obtained by focusing on the number of separate electronic mail lists used by the violator. The record clearly shows that at least four (4) separate electronic mail lists were utilized by the Kirkwood Election Ticket to target individual schools. As we cannot judicially offer more remedy than that which is requested by the parties to the suit, we therefore hold the Kirkwood Election Ticket liable for four (4) separate violations of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603.

We recognize that the potential exists for a party to distribute a single electronic mail message in which all of the members of the university are recipients, and, under the precedence set forth by this decision, it is conceivable that an Election Commission could find the party liable for only one (1) violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603. We find this possibility to be a matter of great concern for the university's election process. However, this Court's reverence for the "separation of powers" doctrine, and its respect for the Congress of the Indiana University Student Association, prevents us from infringing upon the duties of the legislative body by, in essence, creating judicial statutory law. We therefore must entrust the legislative representatives to address this issue within the Indiana University Student Association Elections Code to which we are all bound.

Having established that the Kirkwood Election Ticket has committed four (4) separate violations of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603, we now address the actual amount of the penalty assessed pursuant to Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 701, subsection (d). The Election Commission erred in its interpretation of this section in assessing a nine percent (9%) penalty against the Kirkwood Election Ticket. Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 701, subsection (d) explicitly orders increasingly severe penalties to be assessed for multiple violations of the Indiana University Student Association Election Code by a single party. As the intent of mandatory fines is deterrence, it makes logical sense that, as the number of violations increases, so too does the overall severity of the fine. The correct reading of Indiana University Student Association Elections Code, IUSA Bylaws, Title VII, Section 701, subsection (d) requires the Election Commission to examine each individual violation as a separate entity and therefore mandates a cumulative assessment of penalties. We determine that the correct assessment against the Kirkwood Election Ticket for their four (4) violations of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 603 shall be a five percent (5%) fine for the first violation, a seven percent (7%) fine for the second violation, a nine percent (9%) fine for the third violation, and an eleven percent (11%) fine for the fourth violation, resulting in a total of a thirty-two percent (32%) penalty of the applicable spending limit.

The Court now addresses the claim of voter fraud and intimidation against the Kirkwood Election Ticket. We concur with the application of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 602 by the Election Commission, as nothing in the record shows that "[the] potential for fraud actually occurred" in this case.

Having found no evidence to support the allegations against the Kirkwood Election Ticket that Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 602 was violated, the Court moves to an examination of the penalties assessed against the party by the Election Commission for voter intimidation, pursuant to Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601.

Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601 states that "This Title is not an exclusive list, and the Elections Commission shall have the authority to determine whether an act is in violation of this Code." We agree that this clause grants the Election Commission the authority to create other reasonable violations of the Indiana University Student Association Election Code, including, but not limited to, voter intimidation.

However, this Court disagrees with the Elections Commission in its determination that the Kirkwood Election Ticket is in violation of voter intimidation under Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601 in this matter. The Election Commission failed to create an adequate standard of *mens rea* for this particular violation when they proposed that voter intimidation could be obtained under a strict liability standard. A standard of recklessness is the proper *mens rea* requirement for a violation of Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601 in regards to voter intimidation. Although we agree that the document in the record that references a "VOTETRACKER SYSTEM" had "the

potential for voter confusion” and was “misleading”, the Kirkwood Election Ticket was only negligent in providing this document to members of their internal staff. Testimony was heard that the Kirkwood Election Ticket intended for this information to be distributed to only its staff, and the Steel Election Ticket did not contest this assertion to the Court. As such, we conclude that the Kirkwood Election Ticket exercised the due diligence necessary to prohibit this action from crossing the *mens rea* threshold into recklessness.

However, the questions remains of whether an election ticket can be held responsible for the actions of its staff, and therefore be liable by proxy. This Court concludes it can. We now turn to the application of this premise to the case at bar.

The Kirkwood Election Ticket must accept responsibility for the fact that the document referencing the “VOTETRACKER SYSTEM” was accessible to the general student population. This action necessitates a determination of negligence on behalf of the Kirkwood Election Ticket. No evidence, however, was presented in this case that can be construed to cause this action to cross the *mens rea* threshold into recklessness. The Court is in want of proof that any individual was the victim of actual voter intimidation by the actions of the Kirkwood Election Ticket’s staff.

Having concluded the *mens rea* requirement for voter intimidation under Indiana University Student Association Elections Code, IUSA Bylaws, Title VI, Section 601 has not been met in this case, this Court hereby vacates the decision and penalty assessed by the Election Commission.

It is so ordered.

Joining in the opinion are the Chief Justice Cioffi, Justice Geller, Justice Dumas, and Justice Buckley.

Justice Mindel, concurring in part and dissenting in part

I concur with many aspects of the Majority’s reasoning in this case. I do, however, disagree with the standard of *mens rea* used to determine liability for the offense of voter intimidation (EC §601). All of the members of the Court concurred on the fact that Kirkwood did not intentionally release potentially misleading documents for distribution on campus. Because there was no intent to commit such an act, some aspect of liability should rightfully be removed. I find, however, that removing all responsibility for this act for lack of malicious intent or recklessness is incorrect. I believe that a standard of negligence should be used to determine whether a sanction should be delivered to the party in question. It is reasonable to assume that Kirkwood was negligent in distributing the letter(s) in question. By doing nothing to prevent these materials from being displayed publicly, they may be responsible for misleading or intimidating voters, though unintentionally. Unintentionally violating portions of the Elections Code does not negate the fact that those violations occurred.

In addition, I think that it should be the responsibility of the Court (and IUSA in general) to uphold the integrity of the election process and, if possible, ensure that voter intimidation will never occur, intentionally or unintentionally. I believe that it would have been appropriate to find Kirkwood in violation of EC §601, and for these reasons could not in good conscience vote with the Majority in this case.

Accordingly, I respectfully dissent.

Justice Pittman, Justice Heard, Justice Balash, and Justice Aquila took no part in the decision.