

The Student Body Supreme Court of Indiana University

Willke v. Indiana University Student Association Congress, et al.
Docket Number 02-01 (2002)

Chief Justice Clifford and Associate Justices Riley and Geller delivered the opinion of the Court.

I.

Petitioner, Mr. Dietrich Willke, a member of the Indiana University Student Association Congress, filed a Petition for Judicial Review to the Student Body Supreme Court of Indiana University requesting the interpretation of the Indiana University Student Association Constitution, Article II, Section 1 and the applicability, if any, of the Indiana University Student Association Constitution, Article II, Section 7 in the matter at bar. Specifically, petitioner asked for a clarification of the requirements for students to hold a seat in the Indiana University Student Association Congress and the procedure for the removal of a congressional member for failure to meet these requirements. Petitioner named thirteen individual respondents, all members of the Indiana University Student Association Congress who he believed proper representation may be an issue, the cause of this petition. Respondents were enjoined in suit by the Student Body Supreme Court of Indiana University into a single action, as their individual circumstances were substantial similar.

The Student Body Supreme Court of Indiana University granted the Petition for Judicial Review.

II.

The Court holds that the Indiana University Student Association Constitution, Article II, Section 1 requires that any member of the Indiana University Student Association Congress must be a member of the constituency that they represent prior to the first congressional meeting of the fall term immediately following his or her election through the end of his or her term, or, in the event of an appointment to a vacant congressional seat, from the time of the administration of the Oath of Office to the member through the end of his or her term. The Court deems this requirement necessary to ensure the equitable representation of each constituency's interests in the legislative process of student self-governance. Furthermore, this requirement is identical to method that the Indiana University Student Association Congress has historically followed and practiced independently, absent of any previous clarification. The Court recognizes that, due to the particular nature of the University Division of Indiana University, insofar as congressional representatives of this constituency are unable to control their transfer to a different division of the university, a unique encumbrance is placed upon this particular group. However, in order to ensure proper congressional representation of each

constituency, the Court cannot allow a special exemption for this particular group, as there is no statutory specification that differentiates this constituency from the rest of the constituencies of the Indiana University Student Association Congress in this matter. Having determined that Indiana University Student Association Constitution, Article II, Section 1 is applicable, the Court now addresses the procedural administration of this requirement.

III.

The Court holds that Indiana University Student Association Constitution, Article II, Section 7, subsection (b) controls the procedural administration of the “constituency clause” of the Indiana University Student Association Constitution, Article II, Section 1. In order to protect the privacy of confidential student records, protected under *The Family Educational Rights and Privacy Act* (FERPA) (20 U.S.C. § 1232g; 34 CFR 99), the Court mandates that a petition filed before the Indiana University Student Association Congress under Indiana University Student Association Constitution, Article II, Section 7, subsection (b) must include an affidavit from the current advisor(s) of the Indiana University administration to the student government stating that a congressional representative is not a member of the constituency named in the inquiry. *The Family Educational Rights and Privacy Act* (FERPA) [20 U.S.C. § 1232g; 34 CFR 99], under which jurisdiction the Indiana University Student Association falls, states that “The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student’s education records...” [20 U.S.C. § 1232g; 34 CFR 99.30]; as such, Indiana University administrators are the only individuals who have the authority to ascertain a congressional member’s status as a member of a particular constituency. Therefore, this certified affidavit, containing only the limited information that is necessary to establish a representative’s membership within the constituency named in the inquiry, ensures the factual legitimacy of a claim filed under the Indiana University Student Association Constitution, Article II, Section 7, subsection (b) concerning information unavailable to the Indiana University Student Body Congress by mandate of federal law, while also preventing capricious action by the Indiana University Student Association Congress against a congressional member, either properly elected or appointed, from representing their proper constituency, in violation of his or her rights to due process and to the privacy of confidential records.

IV.

This interpretation of the Indiana University Student Association Constitution, Article II, Section 1 and its corollary procedure under the Indiana University Student Association Constitution, Article II, Section 7, subsection (b) protects the sovereignty of the Indiana University Student Association Congress from undue Indiana University administrative interference in regards to internal representation and removal procedures while ensuring the necessary preservation of the student body’s privacy interests and the due process requirements of the Indiana University Student Association Constitution.

The Court finds no further substantial lacking in the current procedures for the removal of a member of the Indiana University Student Association Congress that necessitates the utilization of a separate administrative procedure for the case at bar independent of Indiana University Student Association Constitution, Article II, Section 7, subsection (b). The Indiana University Student Association Congress shall control its membership and its procedures in a manner not inconsistent with this decision.

It is so ordered.

Joining in the opinion are Associate Justices Dumas, Bennett, and McVicker.

The Opinion of Associate Justices Carter, Brown, and Mindel, concurring in part and dissenting in part:

We concur with the majority's interpretation that the Indiana University Student Association Constitution Article II, Section 1 requirements for eligibility are to ensure the equitable representation of each constituency's interests in the legislative process of student self-governance.

We contest the majority opinion of the Student Body Supreme Court of Indiana University regarding their interpretation of the procedural administration, as found in the Indiana University Student Constitution, Article II, Section 7, of the constituency clause of the Indiana University Student Association Constitution, Article II, Section 1. This dissent is based upon the concern that *The Family Educational Rights and Privacy Act* (FERPA) (20 U.S.C. § 1232g; 34 CFR 99) mandates that only Indiana University administrators have the authority to examine confidential student records and thereby determine a congressional candidate or congressional member's status in a constituency as it relates to academic affairs, including the student's membership in a particular college, such as the College of Arts and Sciences. The majority opinion places an unacceptable burden of proof upon congressional members to ensure the legitimacy of the congressional body. Their interpretation of Article II, Section 7 will in effect require congressional members to monitor information to which they have no access.

Therefore, we recommend that the Indiana University Student Association Faculty Advisor periodically verify that each Congressional member is a member of the constituency they were elected and sworn to represent. This may be done at the same time the faculty advisor is required to verify all congressional members are not in violation of the academic requirement that congressional members not be in placed on academic probation. If the Advisor finds a Congressional member representing a constituency to which they do not belong, they should be automatically notified and removed from their seat. This process can occur independently of a Congressional petition for removal. We do not believe this recommendation to the faculty advisor violates the sovereignty of the Indiana University Student Association Congress over its

internal procedures, as it does not remove the ability of congressional members to file a petition at will.

Therefore, we respectively dissent from the majority opinion on this issue alone.

Justice Buckley took no part in the decision.