

In The  
STUDENT BODY SUPREME COURT of INDIANA UNIVERSITY

March term, 2005

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KIRKWOOD, COLLEGE & CONNECT

Petitioners

v.

INDIANA UNIVERSITY STUDENT ASSOCIATION ELECTION COMMISSION

Respondent's

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On Petition for Writ Of Certiorari

From the IUSA Election Commission

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PETITION FOR WRIT OF CERTIORARI

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Questions Addressed:

- I. Why tickets Kirkwood, College, and Connect believed that Section 403 was in effect until the Election Commission signaled otherwise.
- II. Whether the IUSA Election Commission acted improperly in suspending Section 403 of the Election Code.
- III. How by suspending Section 403 of the Election Code, the Election Commission acknowledged its existence in the 2005 Election Code.
- IV. Why the IUSA Constitution and its Bylaws including the Election Code, Section 403 must be applied and carried out in the IUSA 2005 Election.
- V. Any ambiguity concerning the application of Section 403 of the Election Code should be resolved in favor of preserving fundamental student rights.

## Summary Of Argument

This Petition does not merely involve a dispute between two campus student government tickets, nor are the issues limited to application of student government rules as interpreted by the IUSA Election Commission. Rather, this Petition involves the application of basic and fundamental rights possessed by all Indiana University students. For over 200 years, the United States has recognized the importance of constitutional rights afforded to citizens concerning the election of representatives in a fair and democratic process. Those rights are also afforded to Indiana University students through the IUSA Constitution. The duly-elected representatives of the IUSA Congress passed Section 403, which specifically provides that:

Executive candidates shall receive either forty percent (40%) of all valid votes or at least twenty percent (20%) more than the second high group of executive candidates, provided the high group of executive candidates have at least thirty percent (30%) of all valid votes cast. If no single group of executive candidates achieves at least one of these stated conditions, there shall be a run off election . . .<sup>1</sup>

Section 403 provides specific rights to each Indiana University student that each student be represented by executive candidates who receive a specified “significant” percentage of votes cast in the election. This provision grants specific rights to every student, which are fundamental rights recognized in the United States. Each student has the right to be represented by executive candidates who are duly elected by a “significant” minority as provided by Section 403. This protects each student from representation by executive candidates whose views, opinions, and beliefs do not receive a designated percentage of support. Provisions of this type protect students from governance by radical representatives who may be outside the mainstream of acceptable political views or individuals who vigorously support minority views not acceptable to the vast majority of students.

Section 403 clearly protects the rights of students and mandates and dictates that each student shall not be represented by an executive candidate who does not receive the designated percentage of votes (40% or 30% under some limited circumstances). This student right is

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<sup>1</sup> Although only Kirkwood and Vote for Pedro would be included in any run off election, the Connect and College tickets join in this Petition to the extent the rights of their student members are affected.

not limited to the Kirkwood ticket, Vote for Pedro ticket, or any other ticket. Nor is this right limited to politically active IUSA members. It is a right possessed by each and every Indiana University student, without regard to political affiliation and is equally applicable to students who are highly politically active and students who have never voted in any election during their lifetime. This fundamental right to be represented by elected executive officials who achieve a minimum percentage of support is the basic issue presented in this Petition for consideration by the Student Body Supreme Court of Indiana University.

As a fundamental student right, Section 403 is not subject to waiver by any student, any IUSA ticket, or the IUSA Election Commission. This section, having been included in the IUSA Constitution, can only be removed by amendment and proper documentation as required by the IUSA Constitution. It is the petitioners' position that the most recent election should be subject to the most recent Constitution passed by the most recent IUSA Congress. Although there may be anecdotal comments that in the past, other Congresses may have "intended" changes to Section 403, to the extent that those changes were not properly documented, the 2005 Election should be subject to the specific terms and conditions of the Election Code passed by the most recent IUSA Congress.

Recently, the Election Commission declined to accept the Complaint filed by Kirkwood with the specific notation that, "No decision on the merits of the Complaint will be rendered." Therefore, this Court has the full authority and entitlement to consider this issue on its merits. It should also be noted that in the determination from the Election Commission, it was noted that, as to issues of any past removal of Section 403 "the records for that meeting are certainly inadequate . . ." The Election Commission also conceded that "multiple versions" of the Election Code were "floating around." Furthermore, the Election Commission acknowledged that "the current Congress voted to re-approve the previous years' Election Code, but the resolution did not include the text of the Code itself."

As discussed herein, changes to the Election Code may be made by Congress only up to four weeks prior to the election. Therefore, purported changes to the Election Code by deletion of Section 403 were not timely, nor enforceable. These issues relate to constitutional rights and are not subject to anecdotal comments concerning which party was either happy or unhappy with any such change. Whether

or not Kirkwood was happy with the Election Commission's position would not have precluded Vote for Pedro from making this same appeal had Vote for Pedro received 51 less votes. This issue relates to fundamental student rights and constitutional provisions which are not subject to waiver by any political party in any event.

The fact that the Election Commission issued a February 17, 2005 e-mail to the presidential candidates of various tickets in fact supports Kirkwood's position. If Section 403 had been duly suspended and removed from the Election Code, there would be no need to address issues raised in that e-mail. Comments suggesting that the tickets did not object to the e-mail do not take into consideration the simple fact that at the time the e-mail was issued, no ticket knew what percentage of votes would be cast. Therefore, no ticket was in a position to ascertain whether or not the 40% rule would have any application to the election in question. Certainly all candidates recognize that there were certain constitutional rights provided depending upon the results of any election. Those constitutional rights, which in fact apply to students rather than political tickets, are not subject to waiver in that fashion.

Neither the opinion of current IUSA administration, the Election Commission, nor the logistical objections from University Information Technology Services (UITS) has the authority to overrule the Election Code and Constitution as passed by Congress.

Perhaps the most compelling reason to consider and approve this petition involves the preservation of basic and fundamental student rights to be governed by executive officers achieving a certain percentage of support in a duly-conducted election. To the extent that there are disputes concerning what was "intended" by a prior Congress or what documentation (or lack thereof) exists as to the removal of Section 403, it is suggested that, given any such ambiguity or dispute, the Student Body Supreme Court of Indiana University should act in favor of preserving fundamental student rights as set forth in Section 403. Should Kirkwood's Petition be denied, the rights of all students to the protection of Section 403 would be denied. Conversely, should Kirkwood's Petition be granted, all students would be afforded an opportunity to vote for either Kirkwood or Vote for Pedro, which issue would therefore be decided in a clear cut fashion in a manner which protects the rights of all Indiana University students. Under these circumstances, principles of equity and fairness strongly support Kirkwood's position.

## I.

When election activity began in 2004, the version of the Election Code posted on the Supreme Court's website and the IUSA website included a Section 403, detailing circumstances under which a run-off would be required. Specifically, that "Executive candidates shall receive either at least forty percent (40%) of all valid votes or at least twenty percent (20%) more than the second high group of executive candidates, provided the high group of executive candidates have at least thirty percent (30%) of all valid votes cast. If no single group of executive candidates achieves at least one of these stated conditions, there shall be a run off election..."

On January 13, 2005, the IUSA Congress approved a new Election Code for the 2005 elections. That Code was posted to the IUSA website and did in fact include a Section 403. The Code posted on the Student Body Supreme Court website remained unchanged.

In conversations with Election Coordinator Derek Molter, presidential candidates were led to believe that the most up to date version of the Election Code was that which was posted on the Student Body Supreme Court website. Further, in comments to the Indiana Daily Student, Mr. Molter admittedly stated that the Election Code did include a Section 403 calling for a run-off.

## II.

The sole body charged with the responsibility of amending the IUSA Constitution is the IUSA Congress, those members elected by the Student Body to represent student interests. Changes to the Election Code by that Congress may be made only up to four weeks prior to the election (Article VI, Section 4).

Neither administrative negligence nor a clerical error on the part of the current IUSA administration or previous administrations is a valid justification for violation of the Constitution. Article V, Section 4 states: "...no bylaw or resolution may be in conflict with this Constitution." The Election Commission, appointed by the authority of Congress, is charged with carrying out the Election Code as approved by Congress. While Mr. Molter's asserts in the Commission's opinion docketed 05-01 that he knew the intent of Congress and was

acting in accordance with that intent, he did in fact suspend a portion of the IUSA Constitution as posted. The Election Commission's decision to suspend Section 403 was not a decision within their jurisdiction and was therefore unconstitutional.

Further, it is impossible for anyone to determine the "intent" of Congress without the supporting documentation, nor is it the desire of the petitioners to interpret the thoughts of an assemblage of individuals with varied goals. Regardless of what modifications may have been made in the past, the fact remains that the version of the Election Code posted on various official websites including the Court's own following its approval by Congress on January 13, 2005 did include a Section 403 calling for a run-off.

### **III.**

On February 17, 2005, Election Coordinator Derek Molter issued an e-mail to the presidential candidates of the various tickets indicating the Commission's decision to suspend Section 403. By issuing a suspension of the Section, the Commission recognized its existence as is evidenced by the text of Mr. Molter's e-mail. He wrote "...it does not seem that the rules actually passed by Congress call for a run-off, and even if they did, the run-off is not feasible..." Mr. Molter's e-mail (EXHIBIT 1) demonstrates even the Commission's own uncertainty about the existence of Section 403.

Mr. Molter maintains in the Commission's opinion docketed 05-01 that he "...clarified what was the accurate content of the Elections Code," however that allegedly accurate content was not made available to the petitioners during the course of the election. The only versions available to the petitioners were those posted on the aforementioned websites which did include a Section 403.

### **IV.**

Neither the opinion of the current IUSA administration, the Election Commission, nor the logistical objections from UITS has the authority to overrule the Election Code and Constitution as passed by Congress. Further, at the time of the Election Commission's decision to suspend Section 403, not even Congress had the authority to act as such as a result of the four-week rule, Article VI, Section 4. Failure to

enforce Section 403 calls into question the validity of the entire IUSA organization including the Constitution, Congress and fundamental student rights.

## V.

In many respects, the past IUSA election was a “model election” with all tickets complying with election rules in a good faith fashion. No one has disputed that the election was managed in a good faith fashion by the Election Commission. The area of dispute relates to the application of Section 403 of the Election Code which, by its very terms, impacts fundamental student rights. It is undisputed that neither Kirkwood nor Vote for Pedro met the requirements of the “40% rule” as mandated by Section 403. Neither party met the minimum standards set forth by this section of the Election Code. Therefore, the Election Code again mandates (i.e., shall) that a run off election be held concerning the executive candidates of those two parties.

Unfortunately, there is significant disagreement concerning the past legislative history of Section 403 considered in light of its application to the most recent election. Because things are not always formally documented, the IUSA Constitution provides procedures which should be followed in creating laws and in repealing laws. Nor is it appropriate to address someone’s “intent” which, by its very nature, is a subjective issue different for each individual. This petition does not suggest any impropriety on the part of anyone, including the Election Commission. To the extent that there remain ambiguities concerning the past history of Section 403 and its present application to the most recent election, it is the petitioners position that the Student Body Supreme Court of Indiana University should render a determination under these circumstances favoring application of fundamental student rights. Under these circumstances, principles of equity and fairness strongly suggest that a run off election be held between the executive candidates of Kirkwood and Vote for Pedro, which will afford all students an opportunity to exercise their voting rights. Such a run-off election will allow any interested student an opportunity to cast his or her vote as provided by the IUSA Constitution.

**THEREFORE**, Kirkwood requests relief, ordering that the IUSA Constitution in all its parts be followed, with specific enforcement of Section 403 as to the 2005 IUSA Election, with a run off election between the executive tickets of Kirkwood and Vote for Pedro held with all deliberate speed.

## **EXHIBIT I**

### **CONGRESS RESOLUTION NO. IUSA56-R22**

Sponsor(s): Norman (VPO)

Co-Sponsor (s): \_\_\_\_\_

Filed on 01/11/05 and assigned to the Organizational Affairs Committee(s). Considered on 01/13/05, with a final disposition of Voice Unanimous.

#### **Resolution to Approve the 2004-2005 IUSA Elections Code**

WHEREAS, Article VI, Section IV *Elections*, reads, "The IUSA Congress will adopt bylaws governing IUSA Elections";

WHEREAS, the previous IUSA Congress established a committee for election reform whose efforts resulted in the 2004 Elections Code;

THEREFORE LET IT BE RESOLVED, that the IUSA Congress approve the 2004 Elections Code for use in the 2005 IUSA Elections.

## **EXHIBIT II - Excerpts from Mr. Molter's January 17 e-mail**

----- Forwarded message from dmolter@indiana.edu -----

Date: Thu, 17 Feb 2005 18:19:27 -0500

From: dmolter@indiana.edu

Reply-To: dmolter@indiana.edu

Subject: IMPORTANT IUSA INFORMATION

To: "Clifford, Brian" <REDACTED - CJ/SBSC>, "Andrew C. Lauck" < REDACTED - CJ/SBSC >, "Palmer, John" < REDACTED - CJ/SBSC >, IUSA PRESIDENT < REDACTED - CJ/SBSC >, "S.M.Merriweather" < REDACTED - CJ/SBSC >, Alexander Shortle < REDACTED - CJ/SBSC >, Bryan Strawbridge < REDACTED - CJ/SBSC >, "Veldkamp, Stevan" < REDACTED - CJ/SBSC >, Eric Wolok < REDACTED - CJ/SBSC >

Ticket Leaders and Interested University Officials:

There are a few issues that you need to be aware of, and I also want to take one more opportunity to stress how important it is that we preserve the integrity of this election.

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## **2. Run-off**

There has been a great deal of confusion about the possibility of a run-off election. **When the Elections Code was rewritten, it was my understanding, and the understanding of many others, that the provision requiring a run-off for executive slates if they did not get 40% of the vote was removed by Congress. However, there was no record kept at the time of that Congressional meeting.** Last year, all the relevant authorities agreed that the Congress had removed the provision. **This change was not made in the version of the Election Code posted on the IUSA website. This year, the Congress decided to reapprove the previous year's Election Code (which we believed had taken out the run-off provision). The current IUSA Administration had informed tickets that the provision had been removed. I, mistakenly, told the IDS that there still could be a run-off.** When the Election Commissioner who is serving as our liaison to UITS discussed a run-off with UITS, they informed her that they would not be able to facilitate it. Even if they could, it would likely come at great expense, which IUSA could not have budgeted for (this is the first year that IUSA has had to pay UITS to administer the elections and the cost has already by about 4 times the original estimate). **So, it does not seem that the rules actually passed by Congress call for a run-off, and even if they did, the run-off is not feasible. Therefore, there will be no run-off election. Whichever ticket receives the most votes will win.**

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You have all been great to work with thus far. I wish you all the best of luck in the coming week, and please do not forget that an election which is respected by the student body is crucial to the effectiveness of IUSA.

Derek Molter  
IUSA Elections Coordinator

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Respectfully Submitted,

BRYAN S. STRAWBRIDGE  
President  
Kirkwood

In concert with and on behalf of College and Connect.