

**Complaint No. 2**

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**THE IU STUDENT GOVERNMENT ELECTION COMMISSION**

MADLINE GARCIA, ARIANNA HOYE	)	
	)	Reply Brief to Complaint No. 2
Complainant,	)	
	)	
v.	)	
	)	
RACHEL ARANYI, RUHAN SYED,	)	Quinn Gordon,
	)	Election Commission Chairman
Respondent.	)	
	)	
	)	

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**REPLY BRIEF OF RESPONDENT  
ARANYI-SYED**

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Andrew Ireland

Counsel for Respondent  
Aranyi-Syed

March 13, 2020

**ORAL ARGUMENT REQUESTED**

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## Statement of Facts

On Tuesday March 10, 2020, Mr. Reardon, the Student Life Chair of the IUSG Congress and not a member of RESPONDENT's ticket or leadership team, sent four SMS messages in a text group with (1) Andrew Ireland, the Speaker of IUSG Congress and RESPONDENT's campaign manager; (2) Adam Ratzman, the Parliamentarian of IUSG Congress and RESPONDENT's Chief Technology Officer; (3) Tianshuo Bai, a volunteer for RESPONDENT's campaign; (4) Hunter Roser, a volunteer for RESPONENT's campaign; (5) Heather Goertzen, a volunteer for RESPONENT's campaign; (6) Ethan Fitt, a volunteer for RESPONDENT's campaign; (7) Madeline Riley, a volunteer for RESPONDENT's campaign; and (8) Hayden VanErmen, a volunteer for RESPONDENT's campaign along with Desiree Walker, Bianca Contreras, and Noah Moenning who are also members of IUSG Congress and affiliated with COMPLAINANT's campaign. The majority of these individuals are members of the IUSG Student Life Committee, but not all are, and at least two other members of the IUSG Student Life Committee are not members of the text group.

The exchange between Mr. Reardon and the other parties was as follows:

- (1) An SMS message at 3:25 PM with a link to a Google Form collecting signatures of support for ballot access as required by the IUSG Procedural Election Code;<sup>1</sup>

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<sup>1</sup> The link is titled "Sign up to support Rachel and Ruhan's eligibility to campaign for IU Student Government" and has the accompanying text:

By adding your name, you are indicating you support Rachel Aranyi's (President) and Ruhan Syed's (Vice President) eligibility for participation in the spring 2020 IU Student Government elections. To qualify, campaigns must receive 150 ballot access signatures. This is not an indication of what candidate(s) you are supporting in the election and should not be construed as a form of public-facing campaigning.

This Google Form collects names, Indiana University email addresses, and phone numbers to verify the authenticity of ballot access signatures. <https://forms.gle/EgVu4Pg3PuVQYB9g9>

(2) An SMS message at 3:26 PM reading:

If you could all fill this out, that would be great! It's to support Rachel (Education Chair) and Ruhan (Environmental Chair) as they run for Executive Board. They have my full endorsement and I think you all should endorse them also :)

(3) Noah Moenning, a member of COMPLAINANT's campaign, responded at 3:32 PM, writing:

I believe the election code doesn't allow them to send mass emails or announce they are campaigning until March 26th.

(4) An SMS message from Mr. Reardon at 3:36 PM reading:

This isn't for their campaign. This is for them to get on the ballot

(5) An SMS message from Mr. Reardon at 3:37 PM reading:

They need signatures in order to get on the ballot

The text group has existed since at least mid-February and has been used on two occasions by Mr. Reardon: once to share the meeting time and location of his committee and another to share several policy ideas he had for IUSG. The phone numbers and other information concerning the members is included in the IUSG Box Folder, which is available to the general public for transparency purposes and these contacts are also readily accessible to COMPLAINANT's presumptive Presidential candidate, Madeline Garcia, as an active member of the IUSG Congress GroupMe and other resources.

No additional action has been taken by Mr. Reardon or any further messages by any member of the text group since the time of this event. **See Exhibit 1.** Additionally, no signatures were obtained because of Mr. Reardon's post.

## Summary of the Argument

This is an especially petty, troubling case of unnecessary litigiousness by COMPLAINANT done to harass RESPONDENT and undermine its participation in the IUSG elections. This COMPLAINT was made in response to an innocent act done perhaps in poor judgement—though not in violation of any rule—by a friend but nonmember of RESPONDENT’s campaign to obtain ballot access signatures. It resulted in no additional support, as all members of the chat are committed to one of the two presumptive tickets, or even ballot access petitions received.

[I] RESPONDENT is not yet a ticket as defined by the code, thus COMPLAINANT cannot be eligible for penalties under Sections 503, 510, and 601 of the Procedural Election Code. This arises from a conflict in the text which must be resolved, per the rule of lenity, in favor of RESPONDENT.

[II] COMPLAINANT cannot show by clear and convincing evidence any violation of the text or underlying purpose of the Procedural Election Code. Even if such a violation were found, assuming arguendo, Mr. Reardon did not act under the control of and in coordination with the prospective ticket or its leaderships thus RESPONDENT should not be held accountable for his actions.

[III] COMPLAINANT likely misled the Election Commission in its complaint by omitting additional messages which undermine and directly relate to its COMPLAINT and by not providing critical contextual information about the membership of the text message group (e.g., all members are presently committed to one of one of the parties’ campaigns).

[IV] COMPLAINANT's unnecessary litigiousness and presentation of several frivolous arguments should be addressed, at equity, as it unreasonably and unnecessarily hinders RESPONDENT's participation in the IUSG elections.

## Argument

### **I. RESPONDENT IS NOT A CERTIFIED CANDIDATE OR TICKET UNDER THE CODE AND THUS CANNOT BE IN VIOLATION.**

The express language of the provisions cited by COMPLAINANT (e.g., 503, 510, 601) each require violations of the Procedural Election Code (“the Code”) to be done by a “ticket” or “non-affiliated candidate.” RESPONDENT is not a certified ticket or candidate for the 2020 Executive Branch elections by the Election Commission and cannot be certified as such until March 25 at 11:59 PM. *See* Section 212, 701.

This conflict of the text—providing no grounds for redress before the campaign timeline—results from recent changes to the IUSG election code. Congressional intent and other conventional considerations may be inappropriate in resolving this conflict given the significant involvement of RESPONDENT’s supporters in Congress; however, the rule of lenity, a bedrock principle of statutory interpretation that requires a body to apply any unclear or ambiguous law in the manner most favorable to the accused, provides an appropriate remedy. The Commission should find RESPONDENT is not in violation, applying the Code in the manner most favorable to RESPONDENT.

### **II. COMPLAINANT CANNOT SHOW BY CLEAR AND CONVINCING EVIDENCE ANY VIOLATION OF THE IUSG PROCEDURAL ELECTION CODE, THUS THE COMPLAINT SHOULD NOT BE ACTED UPON BY THE COMMISSION.**

COMPLAINANT fails to demonstrate by clear and convincing evidence RESPONDENT [a] engaged in public campaigning outside of the permissible timeline, [b] has used non-public resources generated exclusively for the use of IUSG, or [c] engaged in any form of voter fraud.

**A. RESPONDENT has not engaged in public promotion before the beginning of the official campaign period, per Section 510.**

Section 510 provides, “any public promotion of a particular candidate or ticket before the beginning of the official campaign period as defined in Section 109 shall constitute a violation of this Code.” The Code is silent as to what constitutes public promotion but RESPONDENT has been informally advised by the Commission that this includes all activities outside of building a ticket, operational considerations, and, quite strictly, obtaining ballot access signatures:

March 26 is the first day you can do public facing campaigning, which is like wearing shirts on campus or putting laptop stickers out there or going through your dorm talking to people you’re specifically running for Executive, this is why you should vote for me...we see the collection of signatures of support as building the campaign infrastructure necessary to run for office. So, if you are talking to people to get them to sign your petition of support that is fine. That being said, we don’t want you going to a group saying “Hey, I’m running for this. This is why you should vote for me. It should be more of a conversation of “we are wanting to be a part of the campus debate in this election, would you like to see us on the debate stage?” It shouldn’t be like this is our name, this is who we are, you should vote for us, this is who we’re running against, anything like that.

*See Election Callout Meeting Live Video, Facebook.com at 16:02:00. <http://bit.ly/33iOdDo>.*

The actions of Mr. Reardon cannot constitute public facing campaigning, as they were taken for the purpose of collecting ballot access signatures and not to advocate for any one campaign. Mr. Reardon’s actions were also not in coordination with or under the control of RESPONDENT. Therefore, the Commission should take no action on the complaint.

- i. Mr. Reardon articulated the purpose of his messages was to collect signatures for RESPONDENT to be on the ballot and not to campaign.*

Mr. Reardon used the term “endorse” to describe his signature of RESPONDENT’s ballot access petition and not as a means of pressuring other members to vote for or otherwise back RESPONDENT’s campaign and Mr. Reardon provided no explicit reasoning or policy positions on why the prospective ticket should be supported. Indeed, Mr. Reardon



stated in his message to the text group members that the link he had sent “isn’t for [RESPONDENT’s] campaign. This is for them to get on the ballot.” COMPLAINANT omits this key information in its COMPLAINT, despite ample access to it, along with the content of the link, which states clearly the non-public promotion nature of the form and its sole purpose as a means of collecting ballot access signatures. *See* Footnote 1 at 3.

Notably, Mr. Reardon’s actions similarly cannot constitute impermissible public promotion as the group is a closed forum and all members are currently involved in one of the two parties’ prospective campaigns, providing no opportunity for picking up supporters or ultimately votes, even if that were Mr. Reardon’s intentions. Indeed, no signatures came from Mr. Reardon’s sharing of the link and any impact it may have on the outcome of the election—e.g., name recognition of the candidates—is de minimis.

The Commission should not find public promotion of the campaign as Mr. Reardon did not engage with the public or promote RESPONDENT.

- ii. *Mr. Reardon, at most a prospective volunteer and not a member of RESPONDENT’s campaign staff, did not act in coordination with and under the control of RESPONDENT and its leadership team.*

The IUSG Congress, in partnership with the Commission, recently altered the language of the Code providing for a heightened “control and coordination” test when determining if an individual is a de facto member of campaign staff. *See* Section 212. The Code provides that only members of campaign staff and the ticket may cause violations under the Code.

While no official campaign staff list is required of RESPONDENT until filing, the Commission may look to the de facto member test (i.e., under the control of and in coordination with) in determining if a violation has occurred. Similarly, staff is best

described as individuals with a management or other professional role with a ticket and should not be read to include unguided assistance or self-initiated volunteerism—as was the express concern addressed by the recent amendments to Section 212 of the Code.

Mr. Reardon chose on his own volition to help collect signatures for RESPONDENT to get on the ballot but he is not a member of the prospective campaign and is not expected to assume a leadership role in its efforts during the public campaigning element of the elections. Mr. Reardon's actions to assist RESPONDENT are not sufficient to establish by clear and convincing evidence both coordination with and control of Mr. Reardon, thus any violations should not be imputed on RESPONDENT. Indeed, RESPONDENT would have nothing to gain from asking Mr. Reardon to take these actions for reasons previously discussed (e.g., all members are already part of the campaign, no signatures were collected) along with its already significant level of ballot access signatures collected (already exceeding 150). This principle is also echoed by Section 701 of the Code, which indicates a degree of leniency in penalizing campaigns for the violative actions of a lone, non-leadership member without their authorization.

**B. RESPONDENT has not relied on or expended any non-publicly available resources generated exclusively for and by the use of IUSG, per Section 503.**

Section 503, in relevant part, reads “any resources generated exclusively for and by the use of IUSG may not be used for campaigning unless the resource is publicly available or distributed to all tickets.” The group text Mr. Reardon used is not a non-public resource generated exclusively for use by IUSG, thus the Commission should not act on the COMPLAINT.

The information of the group text members is readily available to COMPLAINANT's presumptive Presidential candidate as Congressional Secretary and to the general public via the IUSG website and public Box folders. More, the group text, while previously used to facilitate some Student Life work, is also not a resource unique to the committee—it has individuals outside of the Student Life Committee on it and also omits other members of the committee from it.

Finally, the purpose of Section 503 is to bar the use of exclusive resources (e.g., the printer; the IUSG office; paper; pens; mailing lists) to give one campaign a unique advantage over another. Because SMS messaging as a service and the information of the members too are both readily available, no such advantage exists. Even if such an advantage were to exist here, no gain has occurred as all members of the group are committed to one of the two parties of this dispute and no signatures were obtained by Mr. Reardon's actions.

**C. COMPLAINANT fails to make an addressable complaint of voter fraud under Section 601 of the Code and provides a baseless assertion of abuse of power.**

COMPLAINANT asserts Mr. Reardon's actions are a form of voter fraud and an abuse of power—i.e., using a person's stature to garner support—and the provisions of Section 601 should be applied a fortiori to his activities. This is grossly overbroad and, as an interpretation, falls well outside of the purpose of Section 601: guarding against voter intimidation, fraudulent activity, and other inappropriate electioneering.

Mr. Reardon requested signatures and not votes, but even if he had, his role as Student Life Chair alone is hardly enough to constitute intimidation/pressuring or other impermissible acts. If this were the case, as COMPLAINANT insists, neither presumptive ticket may ultimately campaign because of their significant roles in IUSG (e.g., Congressional

Secretary; Education Chair) would “intimidate” or “pressure” members to vote a certain way. Mr. Reardon’s SMS messages are hardly a form of coercion that merits consideration by the Commission.

Finally, assuming *arguendo* Mr. Reardon’s actions were a gross abuse of power, as COMPLAINANT suggests, this is more appropriately remedied by other tools within IUSG, including impeachment provisions and other sanctions by Congress. Mr. Reardon’s actions should not be imputed on RESPONDENT.

### **III. COMPLAINANT DISPLAYED AN INTENT TO DECEIVE THE ELECTION COMMISSION WHICH PROVIDES FOR IMMEDIATE DISQUALIFICATION.**

Section 604 of the Code defines a violation as an “any intentional attempt...to deceive or mislead the Election Commission, or an inquiry or investigation thereof, shall constitute a violation of this code.” COMPLAINANT misled the Election Commission in its COMPLAINT by providing an incomplete chain of relevant messages. The Code provides the appropriate remedy for deception as disqualification.

The COMPLAINANT has a duty in providing a full, accurate account of factual information to the Commission. In its COMPLAINT, COMPLAINANT purposefully omitted important information available to it with the intent to mislead or deceive the Commission. COMPLAINANT deceptively provided as evidence only two of the four messages sent by Mr. Reardon excluding immediate clarifying language about the non-promotional nature of his initial two messages. *See supra* Statement of Facts at 3-4.

### **IV. COMPLAINANT FILED MULTIPLE COMPLAINTS FOR THE IMPROPER PURPOSE OF HARASSING REPENDENT, THE CLAIMS PRESENTED CONSTITUTE FRIVILOUS ARGUMENTS, AND ALL FACTUAL CONTENTIONS HAVE INSUFFICIENT EVIDENTIARY SUPPORT.**

Finally, COMPLAINANT's frivolous arguments should be addressed by the Election Commission at equity, providing sanctions in the form of points or otherwise against COMPLAINANT for submitting harassing complaints unsupported by any reasonable interpretation of the Code or sufficient evidence. *See also*, Complaint #1 (rejected by the Commission). Such conduct undermines the election process and unnecessarily requires significant resources from RESPONDENT to litigate. Election victories should be earned by votes, not complaints.

### **Request for Relief**

We ask the Commission to deny each of COMPLAINANT's claims in full and further to find them in violation of Section 604 of the Code, providing a disqualification or 6-point penalty, and otherwise to cite COMPLAINANT at equity or other provisions of the Code for its improper use of the complaint procedure.

Sincerely,  
Andrew Ireland  
Counsel for RESPONDENT

Exhibits

**Exhibit 1:**

