The Student Body Supreme Court of Indiana University

In Re Petitions Challenging the Indiana University Student Association Elections Code

Docket Number: SBSC-2008-05

The Student Body Supreme Court of Indiana University received two separate petitions challenging the *Indiana University Student Association Elections Code* ("Elections Code") from IU students Megan Robb and Alexander Shortle. Specifically, Petitioners each challenged the constitutionality of Title VIII, Section 802 of the Elections Code. Petitioner Shortle, former Student Body President of IUSA, also challenged the constitutionality of Elections Code Title IX, Section 907, as well as Title XI, Section 1104. Pursuant to *Indiana University Student Association Constitution* ("Constitution") Article IV, Section 5, subsection (c), the petitions were accepted and a constitutionality hearing granted. Said hearing was held Wednesday, April 30, 2008.

The Court invited briefs in support of or opposition to the two petitions for a period of seven (7) days after accepting those petitions, and received one in support. This brief, originally written in 2001 but resubmitted to this Court due to its historical significance, came from former IUSA Elections Commissioner and principal IUSA Constitution author Paul Musgrave. It appears in the appendix of this document. A statement by Mr. Musgrave, which also appears in the appendix of this document, was read into record at the hearing.

The Court's decision follows.

Chief Justice FitzGerald and Justice Dammu delivered the opinion of the Court.

I. Summary of sections in question

Title VIII, Section 802 of the Elections Code (2007 version – for which, incidentally, no written record of ratification exists in Congressional minutes) outlines the procedures for disqualification of a candidate or ticket if found in violation of any section or sections of Title VI. According to Section 802, any disqualification by the Elections Commission must then also be confirmed by a two-thirds (2/3) vote of the Indiana University Student Association Congress. A narrow reading of this section would indicate that the Elections Commission, not the Student Body Supreme Court, would be the highest entity in the judicial process.

Title IX, Section 907 of said Elections Code states that in cases of disqualification by the Elections Commission that are upheld by the Supreme Court, such disqualification must then be submitted to Congress for approval, which cannot be appealed further.

Finally, Title XI, Section 1104 of said Elections Code states, "Congress shall have the authority to confirm a ticket or candidates' [sic] disqualification by the Elections Commission not reversed under

proper appeal by the Student Body Supreme Court. Disqualification confirmations by Congress cannot be appealed."

II. Examination of relevant sections

First, an internal conflict exists between Elections Code Sections 802, 907 and 1104 and Elections Code Section 1001, which states that the "Supreme Court shall have the final authority over all properly appealed IUSA Election and referendum disputes."

Furthermore, and very significantly, the conditions ordered by Sections 802, 907 and 1104 stand in clear violation of Article IV, Section 2 of the IUSA Constitution, which grants the Court the right to adjudicate election disputes. Additionally, "the Student Body Supreme Court of Indiana University recognizes its responsibility, as the highest judicial body within the Indiana University – Bloomington student government system, to preserve the integrity of the student government elections and to prove the rights and address the concerns of the student body" [*Action v. Crimson,* SBSC-03-01 (2003)].

Article V, Section 4 of the IUSA Constitution establishes the supremacy of the IUSA Constitution and specifies that no bylaw or resolution may exist in conflict with it. According to Article VI, Section 4 of the Constitution, the Elections Code is a set of bylaws adopted by Congress.

Upon examination, it is evident that Sections 802, 907 and 1104 of the Elections Code are unconstitutional because they do not respect the Supreme Court's primacy in the judicial process. This conclusion is corroborated by Mr. Musgrave's detailed statement indicating the intent of those who authored the Constitution.

Sections 802, 907 and 1004 of the Elections Code exist in blatant contradiction to the IUSA Constitution. The Constitution supersedes bylaws. Sections 802, 907 and 1104 of the 2007 Elections Code are hereby ruled unconstitutional. These sections must be removed from the Code or edited to reflect full constitutionality.

Justices Albin, Bowers, Fishburn, Howard, Isaacs, Maloney, Martin, Udoff and Whited joined in the Court's opinion.

Appendix

I. Petition by Ms. Megan Robb

The IUSA Constitution in Article IV, Section 2 clearly states that the judicial authority of IUSA includes adjudicating elections disputes. Section 802: Procedures for Disqualification of the Election Code contradicts Section 1001 of the same document. While Section 1001 states that "The Supreme Court shall have the final authority over all properly appealed IUSA Election and referendum disputes." Section 802 undermines this authority when it states that if the Supreme Court upholds the disqualification decision of the Election Commission, then that decision must be confirmed by 2/3 majority of Congress. Considering the recent dispute over the 2008 IUSA elections, I am afraid that this contradiction between the Election Code and the Constitution, and the internal contradiction in the Election Code itself, could be misinterpreted to challenge the Supreme Court's authority to make the final decision on the elections' outcome.

However I would like to point out that the Election Code in its current form still does not permit the IUSA President, or indeed anyone else, to call for a Congressional session to affirm or challenge the Supreme Court's disqualification of the Kirkwood ticket. Section 802 of the Elections Commissions specifies action *only if* the Election Commission disqualifies the candidate *and* the Supreme Court upholds that decision. In this case, of course, the Election Commission upheld Kirkwood's candidacy and the Supreme Court overturned that decision. Without specific direction to the contrary, we must assume *even within the existing legislation* that the IUSA Constitution and Section 1001 of the Election Code upholds the Supreme Court's final authority regarding elections.

II. Petition by Mr. Alexander Shortle

It is my belief that Title VIII, Section 802, Title IX, Section 907, and Title XI, Section1104 of the *Indiana University Student Association Elections Code* (hereinafter "Elections Code") is in direct violation of *The Constitution of the Indiana University Student Association* (hereinafter "Constitution"). As such, I respectfully submit this Indiana University Student Association Constitution and Bylaws Challenge Form, and request prompt adjudication due to the relevance of the title in question.

Article IV, Section 1 of the Constitution recognizes the Indiana University Student Association Supreme Court (hereinafter "Court") and other inferior courts and judicial commissions as the judicial branch of the Indiana University Student Association (hereinafter "IUSA"). Further, Article IV, Section 2 of the Constitution states that "The Judicial authority will include the power of judicial review, adjudicating elections disputes, certifying elections results, and fulfilling the requirements of the University judicial process." Therefore, the Court, as a judicial authority, has the power of adjudicating elections disputes and certifying elections results.

Article V, Section 4 of the Constitution states that "This Constitution will be the supreme authority for the governance of IUSA. No bylaw or resolution may be in conflict with this

constitution."Further, Article VI, Section 4 of the Constitution states that "The IUSA Congress will adopt bylaws governing IUSA elections. The Congress may not amend bylaws governing IUSA elections during the four weeks before the elections." Therefore, the Elections Code is a collection of bylaws, and as such, may not be in conflict with the Constitution.

I contend that the following passages are in direct violation of the constitutional principles outlined above:

Title VIII, Section 802 of the Elections Code states that "Any candidate or ticket found in violation of any section of Title VI shall be eligible for disqualification. Once a candidate or ticket is found to be in violation of any section of Title VI, the Elections Commission must reach, by unanimous vote, a decision as whether or not to disqualify the individual or ticket. Any disqualification by the Elections Commission must also be confirmed by two-thirds (2/3) vote of the members present and voting. **In the case of an Elections Commission (or Supreme Court upholding on appeal) disqualification, The Student Body President shall call for an emergency Congress session to be held within five (5) calendar days of the Elections Commission's decision (or in the case of a Supreme Court appeal, within five (5) days of the public decision announcement of the court). Congress must establish a two-thirds (2/3) quorum to hear a case of disqualification. In the event Congress does not establish a two-thirds (2/3) quorum, the commission's decision shall be automatically upheld. In the event that Congress does not uphold the decision of the Elections Commission, the disqualification will be dismissed and the decision of the Election's Commission automatically overturned. Disqualifications of the Elections Commissions may be appealed to the Student Body Supreme Court before a Congressional vote, per section 907. However, Congressional disqualifications cannot be appealed** (emphasis added)."

Title IX, Section 907 of the Elections Code states that "In the event an individual candidate or ticket is disqualified by the Elections Commission, an appeal to the Student Body Supreme Court may be filed, consistent with the guidelines established in Section 902. The Student Body Supreme Court shall follow guidelines under Section 905 for procedures in hearing disqualification appeals. **In the event a decision of the Student Body Supreme Court upholds the decision of the Elections Commission, the disqualification will be forwarded to Congress for approval. Congressional approval of an election disqualification cannot be appealed** (emphasis added). Disqualifications overturned by the Student Body Supreme Court will become final and will not be submitted to Congress for approval."

Title XI, Section 1104 of the Elections Code states that "**Congress shall have the authority to confirm a ticket or candidates' disqualification by the Elections Commission not reversed under proper appeal by the Student Body Supreme Court. Disqualification confirmations by Congress cannot be appealed** (emphasis added)."

The emphasized clauses above describe the process of Congressional confirmation of Student Body Supreme Court (hereinafter "Court") decisions with respect to appeals presented by

candidates/tickets of the IUSA elections process. The Court, as the judicial authority of IUSA, has the power of adjudicating elections disputes and certifying elections results (Article IV, Section 2). Each of the emphasized clauses states that decisions of the Elections Commission "upheld" by the Court are *then* forwarded to Congress for approval. "In the event that Congress does not uphold the decision of the Elections Commission, the disqualification will be dismissed and the decision of the Election's Commission automatically overturned (Title VIII, Section 802 of the Elections Code)," thus overturning a decision of the Court, violating Article IV, Section 2 of the Constitution. Article V, Section V of the Constitution states that, "No bylaw or resolution may be in conflict with this constitution." Thus, Title VIII, Section 802 of the Elections Code is unconstitutional and should be removed. Title IX, Section 907 and Title XI, Section 1104 of the Elections Code reference the same approval procedure, and are thus, as detailed above, unconstitutional and should be removed.

III. Statement by Mr. Paul Musgrave

As the principal author of the current IUSA constitution, I have been following the current elections crisis with more attention than alumni usually give to campus affairs. The issue currently before the Court--viz., the constitutionality of a provision in the Elections Code granting the IUSA Congress the prerogative of reviewing and approving a judgment of the Court in an elections dispute--is a manifestation of a contingency specifically contemplated by those who wrote the constitution.

During the 2000-2001 school year, the IUSA Supreme Court, acting without a complaint from a member of IUSA, overturned a provision in that year's Elections Code that provided that the Supreme Court Chief Justice would act as head of the elections commission, a position that was notoriously difficult to fill. Almost immediately, the IUSA Congress passed resolutions proposing constitutional amendments greatly restricting the Court's prerogatives in granting cert and prohibiting the Court from acting without due process or giving its opinion without a cause before the Court. (It is a little unbelievable, but I have an electronic copy of the amicus brief I filed with the court in that issue. It is attached, as is a memorandum circulated throughout IUSA urging passage of the constitutional amendments mentioned supra.)

That crisis sparked a larger sense of dissatisfaction with the constitution of that era, which was cumbersome, self-contradictory, and ill-suited to the organization's needs. Accordingly, in the winter of 2001-2002, a small group of IUSA members worked to create a new constitution. I have attached the pamphlet that accompanied the draft of the IUSA constitution that I submitted to the Congress. After some debate and revision, Congress approved and the voters ratified that constitution.

The purpose of the revision was largely to remove questions of organizational arrangements and jurisdictional disputes from the IUSA agenda. (As the foregoing indicates, IUSA had come to spend quite a bit of time hashing out issues that should have been crystal clear.) Accordingly, the structure of IUSA was simplified, with the President, the Speaker, and the Chief Justice granted far more

power within their spheres than before, and with the executive branch given sweeping power to take action within a general framework to be decided by the Congress. Given the history of the constitutional debates in 2000-2001 and 2001-2002, it was no surprise that the Court's role was materially reduced.

Except in one case.

The impetus for all of this reform, recall, had been a flawed elections commission selection process. No good answer had yet been put forward via the bylaws, and those who took the time to care about the issue were convinced that the Court would strike down any prima facie reasonable solution in any event. The Court at the time saw itself not as apolitical but as supra-political, and refused to contemplate any direct involvement in elections, even when the possible harm to the organization was lasting, obvious, and serious. (The 2002 elections, which also featured a ticket named Kirkwood that committed grave and repeated violations of the elections code, did not spark the righteous and justified action that this year's Court took in a similar dispute.)

In the light of these realities, I insisted, and others concurred, that the elections function be explicitly made a part of the judicial branch and that the Court retain the final power to arbitrate these disputes. (See the previous IUSA Constitution at Art. VII, Section 2.) IUSA had an overriding interest in fair, swift, and final decisions in elections disputes, which is the reasons for the elections exemption to the otherwise detailed rules for the Court to grant cert and hear challenges to the bylaw. In other words, the constitution was designed explicitly to give the judiciary, and ultimately the Court, final review of elections matters. Only the Court, and no other branch, could deliver a tough decision, such as the disqualification of a ticket, with the legitimacy that such a measure required.

I provide this information as a friend of the Court and hope it will help to illuminate its interpretation of the document.

Sincerely,

Paul Musgrave '04

IV. 2001 Amicus Curiae Brief by Mr. Paul Musgrave, Resubmitted for Historical Reference

IUSA Student Body Supreme Court
In Re: Congress Resolution No. 00-11-06
Brief for Amicus Curiae
Paul Musgrave, Elections Commissioner for the IUSA
22 January 2001

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Interest of Amicus Curiae

As an election commissioner and member of the IUSA as defined by the Constitution in Article III, Section 1, I believe that my interests are at stake in the matter currently before the Supreme Court. Both as part of my office and as a University student, I desire to see the current election carried out smoothly. In addition, the campus as a whole benefits from a well-functioning government, and the current rifts between the judiciary and the other branches of the IUSA impairs the government's ability to function smoothly. Finally, certain arguments made in the IUSA's ruling on Congress Resolution No. 00-11-16 constitute a clear danger either to the future of legislative supremacy in the IUSA or, indeed, to the very continuance of the Court. Neither outcome is desirable.

Argument

I. The Ruling Issued January 17 is Invalid and Nonbinding

In its deliberations on January 17, the Court undertook action on two measures: Whether the Court could hear challenges to the constitutionality of bills passed by the IUSA Congress without prior complaint, and whether the specific resolution Congress Resolution No. 00-11-06 was unconstitutional. Unfortunately, the Court failed to consult the bylaws of the IUSA, and therefore issued an egregiously wrong ruling in this matter.

The Court cites Article VII, Section 2 and Article VIII, Section 4 of the IUSA Constitution as providing grounds for its judgment that "it is not necessary to have a formal challenge or complaint in order for the Supreme Court to review legislation with the intent to determine constitutionality." Clearly, Articles VII and VIII grant an implicit power of judicial review to the Court; this is not in dispute, and is necessary and proper for the Court to enforce the Constitution. However, the Court's

contention that it may "[hear] cases concerning the violation of the IUSA Constitution or Bylaws" without a prior complaint is troubling on several counts.

The most important and disturbing aspect of this ruling is its lack of recognition of the relevant statute, Section XXII of the IUSA Bylaws. The Court utterly disregarded the due process protections outlined in this statute; indeed, this statute is nowhere mentioned in the Court's ruling, nor does anything in its reasoning imply that the Court was aware of the statute's existence. Section XXII outlines the process by which constitutional challenges may be brought to the Court's attention, expanding on Article VIII, Section 3 in the IUSA Constitution, which provides for bylaws "to supplement the Constitution and eliminate ambiguities." Since the bylaws clearly require a prior written complaint by either a student or congressperson to challenge the constitutionality of any bill or resolution passed by the IUSA Student Congress, the written opinion of the Court of January 17 is invalid as it contradicts the very law which the Court is to interpret.

Moreover, the Court's own "Internal Codes, Regulations, and Procedures" provides that hearings may begin only after "a member of the IUSA shall complete the appropriate hearing request form and submit it to both the Chief Justice and the Internal Affairs Chair of the Court" (Title VI, Section 601.1). Next, "individuals or parties named within the hearing request will be notified of the pending hearing and provided with copies of the petition" (Title VI, Section 601.2.b) and then "Members of the Executive and Legislative Branches shall be notified of the hearing so that they will have ample opportunity to submit Amicus Curiae, "Friend of the Court", briefs in which they can express their opinion on the matter being considered." (Title VI, Section 601.2.d) As the current uproar over the Court's action in this matter shows, even these basic procedures were disregarded in the January 17 ruling.

Hence, the ruling must be vacated with all due haste, as an extension of the reasoning granting the Court sweeping powers to exercise judicial restraint would have dangerous consequences for the concepts of adversary procedure, due process, and any notion of participatory democracy on the University. In effect, the Court would be arrogating to itself a form of judicial veto for which there is no provision in the Constitution, and which the framers clearly meant to avoid with the adoption of Section XXII. The opinion of January 17 is therefore not a valid ruling, but merely a nonbinding "sense-of-the-Court" document.

II. <u>The Elections Commission is Judicial in Nature</u>

The next matter the Court considered in its ruling was an expression of its view that Congress Resolution No. 00-11-06 is unconstitutional. In its opinion the Court cited "multiple constitutional violations involved with requiring the Chief Justice of the Supreme Court to also serve as the Elections Commissioner." The opinion listed two main theses and one procedural objection to the constitutionality of the resolution: that the Chief Justice could not serve as a member of a non-judicial board, that the appointment created conflicts of interests for the Chief Justice, and that there would be no protocol for replacing the Chief Justice as Elections Coordinator under the IUSA Constitution. This amicus brief will deal with the three objections in turn.

The Court first noted that the IUSA Constitution states in Article VII, Section 1 that a member of the Supreme Court is prohibited from serving in any non-judicial position. Further, the Court's opinion held that the Elections Commission (and by extension, the Elections Coordinator) is "independent of the judiciary." This objection is flawed on two grounds: first, the Elections

Commission is a judicial body, and second, the Elections Commission, far from being independent of the judiciary, is as much a part of the campus judiciary as residence hall J-boards.

That the Elections Commission is a judicial body is implicit in the IUSA Constitution. To understand why, an explanation of the electoral process provided by the Constitution is necessary. The executive branch clearly does not have a role in overseeing the elections. In the Constitution, the word "elections" is mentioned under Article V, which lists the duties and responsibilities of the executive, only three times, twice in Section 6 and once in Section 8. Even then, the context is clear: to the executive, constitutionally speaking, the general election is no more than a date that limits the powers of "lame-duck" officeholders and imposes certain duties on the IUSA Treasurer.

Nor does the legislature have a significant role to play in the elections. Article VI, Section 2 of the Constitution enumerates the powers of the Congress. While the legislature is granted broad discretion in matters of executive oversight, fiscal bills, and other issues, its power over elections are remarkably narrow. The Congress may only "[provide] guidelines for the nomination and election of IUSA office holders." The legislature discharged this, its sole function in overseeing and administering elections, with the passage of Appendix A to the Student Bylaws.

Logically, as neither the executive nor the legislative branch of the IUSA is given much power over the electoral process, one would expect the judicial branch to have broad powers in this area. Such is indeed the case. Article VII, Section 2 gives the court jurisdiction as the "final authority in all disputes arising from IUSA elections," and the IUSA Elections Code (Appendix A to the Student Bylaws) further confirms that the "Supreme Court shall be the final authority over all IUSA Election and referendum disputes." Title IX, Sections 901 and 903 make clear that the Court's power over elections is total; no officeholder may be seated until the Court has certified the election results and then (Section 904) administered the Oath of Office to the eventual winner.

Clearly, then, the IUSA Constitution and Bylaws make the Supreme Court the ultimate arbiter in all elections disputes and matters of procedure. Still, the Court's January 17 ruling holds that the Elections Commission is not judicial in nature. Still, an objective reading of the Elections Code, especially Title I, Sections 103 and 104; Title VI, Section 601; Title VII, Section 701; and Title VIII, Sections 801-806, prove that in all matters, the Commission is acting as an agent of the Supreme Court. Consider the Commission's judicial role: it may fine or otherwise penalize candidates, hold hearings, and issue rulings. In all of these matters, however, it is subject to Supreme Court original jurisdiction in these matters, as a residence hall judicial board or some other trial court would be in a routine appeal. Even the Commission's limited administrative responsibilities are analogous to the non-judicial functions the Chief Justice fulfills under existing arrangements (that is, advising the President on the appointment of new associate justices and swearing in new IUSA officials). Further, the argument the Court expressed that "the position of Elections Coordinator does not fall under any of the duties inherent to the office of Chief Justice as outlined in Article VII, Section 3" is a non-starter. First, Article VII, Section 3 provides that "The duties of the Chief Justice shall be to faithfully execute the duties inherent to the office which include, but are not limited to . . . ." [emphasis added]. Congress is merely expanding on the ambiguity inherent in such a clause. Second, as the Court already oversees all other stages of the elections process, installing the Chief Justice in one more stage is hardly an overextension of legislative power. Therefore, the Elections Commission, being subject to the Court's oversight and fulfilling what are, under the IUSA Constitution, essentially judicial functions, is a judicial body, and the appointment by Congress

Resolution 00-11-06 of the Chief Justice to the position of Elections Coordinator is in keeping with established laws governing the IUSA elections process.

III. The Chief Justice Does Not Have to Recuse Himself

The Court's second major objection to the constitutionality of Congress Resolution 00-11-06 stems from its interpretation that the resolution, as passed, would require the Chief Justice to recuse himself from voting. The Court mentions several reasons to support its analysis. The last, that Title II, Section 202, Appendix F requires justices to recuse themselves from any interest at which a conflict of interest might impair their objectivity, is the least convincing. "Conflict of interest" in this context does not mean that a justice has heard the case before; rather, when hearing appeals related to elections law, it refers to whether a justice has campaigned for a candidate or has similarly compromising relations with a party named in a dispute – simple judicial ethics, not prior hearing of the case, governs this instance. An example from the history of the institution upon which the Student Body Supreme Court is modeled underscores this contention: originally, "the justices of the Supreme Court of the United States performed two separate roles. For a small part of the year they were appellate judges sitting together in Washington, D.C., as the Supreme Court of the United States. But for the rest of the year they were circuit justices assigned to hold court and hear cases in a particular geographic part of the nation." (William Rehnquist, Chief Justice U.S. Supreme Court, Grand Inquests, 1992) However, at this time, the justices did not recuse themselves from hearing appeals from their decisions.

The Court's other objections, however, are indeed valid. Thus, Appendix B to this amicus brief lists alternative remedies for this problem.

IV. The Court's Objections to CR 00-11-06's Provisions for Replacement of the Elections Commissioners Have Been Superseded

As members of the Court are surely aware, the copy of the bill upon which their ruling of January 17 was based was not the final bill passed as amended by the Congress. Furthermore, the members of the Court must also be aware that their procedural objection that "CR 00-11-06 provides no protocol for finding a new Elections Coordinator should the Chief Justice/Elections Coordinator be removed" was dealt with in the amendments to the final bill. Therefore, the specific objections the Court listed in its rulings no longer hold. However, as discussed in Appendix B, the amendments themselves present significant constitutional problems.

Conclusion

When the Court met to deal with the constitutionality of Congress Resolution No. 00-11-06, it did so in violation of multiple statutes and without the provisions for due process and informed deliberation critical to the proper functioning of the judiciary. The recent strains in the relationship between the Court and the other branches of the IUSA is ample testimony to the dangerous precedent set when it issued its ruling on January 17. Accordingly, the ruling should be vacated, and I urge the justices to consider alternative remedies, such as those discussed in the appendices, to the problems they discovered in the resolution.

Appendices to 2001 Amicus Curiae Brief by Paul Musgrave

A. Selected Relevant Statutes and Definitions

(in order of citation)

Argument I:

Article VII, Section 2. The Jurisdiction of the Supreme Court.
The jurisdiction of the Supreme Court shall include, but not be limited to: interpreting the IUSA Constitution and the IUSA Bylaws, hearing cases concerning the violation of the IUSA Constitution or Bylaws, serving as final authority in all disputes arising from IUSA elections, hearing cases concerning the impeachment of IUSA officers or the dismissal of IUSA employees, associates or volunteers.

Article VIII, Section 4. Constitutional Supremacy.
This constitution shall be the supreme authority for the governance of IUSA. No other constitutional or bylaw provision may be inconsistent or in conflict with this constitution, or the Code of Student Ethics.

Section XXII of the IUSA Bylaws
1. By Article VI.D (1,2) of the Constitution of the Indiana University Student Association, the Student Body Supreme Court shall provide students and congresspersons alike with the opportunity to challenge the constitutionality of any act of legislation upon written motion submitted to the Student Body Supreme Court.
2. The Student Body Supreme Court shall evaluate such requests and make known the final opinion concerning the request, in writing, two (2) weeks following the date of submission. 3. There shall be a position of Clerk of the Student Body Supreme Court so that such requests may be filed and evaluated properly. The Chief Justice of the Student Body Supreme Court shall make this appointment.

Article VIII, Section 3
IUSA may adopt bylaws to supplement the Constitution and eliminate ambiguities. Proposals for adoption and amendments shall be initiated by any member of IUSA and shall be ratified by a majority vote of the total Student Congress. Bylaws adopted may be vetoed as provided by Article V, Section 2., of the Constitution. The veto may be over ridden by a two-thirds vote of the entire Congress.

Argument II:

Article VII, Section 1
The judicial authority of the IUSA shall be vested in the Student Body Supreme Court which shall consist of ten members and the Chief Justice. Once a member of the student body has been duly appointed to The Student Body Supreme Court the individual is prohibited from serving in any non-judicial IUSA position. The IUSA President, with the advice of the Chief Justice, shall nominate each candidate for the IUSA Supreme court individually. The IUSA President shall forward the nominees to the Congress for confirmation. Upon approval of two-thirds of the Congress present and voting, the appointment shall be effective for two calendar years for the Chief Justice and three calendar years for Associates, or until the individual resigns, is impeached, or is no longer a student.

The Chief Justice may be reappointed for a two year term. Associate Justices may be reappointed for one additional three year term.

Article V, Section 6 [excerpt]
At the last regularly scheduled meeting of the Congress, following the general election, the Treasurer shall inform the Congress of all anticipated expenditures exceeding five hundred dollars which must be made prior to the expiration of the terms of the incumbent members of the executive branch. No expenditures exceeding five hundred dollars not having the expressed approval of the Congress may be made following the general election and the end of current administration's term, unless approved by a two-thirds vote of the Finance Committee. A Treasurer who has obtained "lame duck" status may not sign contracts with directors, or other entities which bind IUSA beyond the end of the outgoing administration.

Article V, Section 8
If the office of the IUSA President becomes vacant, the Vice-President for Congress shall become President. If the Treasurer, or one of the Vice-Presidential offices becomes vacant, the President shall appoint a replacement who, upon being accepted by a 2/3 majority of the total Student Congress, will continue to serve until the next regularly scheduled election. The President and Vice-Presidents shall continue to serve until spring commencement.

Article VI, Section 2
The Student Congress shall be the final policy making body for IUSA and shall have original exclusive jurisdiction over all expenditures. The powers of the Student congress shall include, but not be limited to: approval of appointments and removals; approval of executive contracts that are signed in the hope of generating revenue for the IUSA; approving organizational changes; providing guidelines for the operation of IUSA Departments, activities, and businesses; and providing guidelines for the nomination and election of IUSA office holders, the raising of fees or other revenue for the purpose of funding IUSA services or programs, deciding the level of funding for all IUSA programs and services, and undertaking any other action that will benefit the IUSA or any segment of the University community.

Article VII, Section 2 [see above]

Article VII, Section 3
The duties of the Chief Justice shall be to faithfully execute the duties inherent to the office which include, but are not limited to: presiding over the meetings of the IUSA Supreme Court, administering the Oath of Office to IUSA Officers, advising the IUSA President concerning the nominees of the Supreme Court prior to their being submitted to the Congress for confirmation, advising the IUSA President concerning which members of the Supreme Court should serve on university committees, appointing Associate Justices to internal committees of the Supreme Court, appointing members to serve on the Campus Judicial Board Selection Committee, as well as appointing members of the Supreme Court to serve on review boards and hearing commissions as provided in the Code of Student Ethics.

B. Suggested Alternative Remedies

As I mentioned in my discussions both of the Chief Justice's voting rights as a member of the Elections Commission and of the protocol for replacing the Chief Justice as Elections Coordinator, while I disagree with the Court's January 17 decision on many levels, CR 00-11-06 is still probably unconstitutional on many levels. However, a simple remedy exists, although unfortunately one that the Court cannot directly enforce.

First, the bill as now written would require the Chief Justice to abstain from voting in any appeals from the Elections Commission. This is unconstitutional and a blatant invasion of the Court's prerogatives by the Congress. Nowhere in the Bylaws nor the Constitution is the Congress given power to inform justices on what they may or may not vote upon. This is a matter of judicial ethics and is, as such, governed by the Court's own internal codes.

Second, the bill as amended presents a number of problems. As it is difficult to obtain copies of the bills, I will work from memory. As I recall, the amendments provide for the Chief Justice's removal from office as Elections Coordinator by a two-thirds vote of Congress and his replacement by another officer to serve as Elections Coordinator. Further, the Chief Justice would not be allowed to vote on any appeals arising from the Elections Commission; rather, another, "temporary" Chief Justice would be appointed in his stead. If the previous paragraph challenged constitutional standards, these amendments (if I remember them correctly) are egregious violations of the separation of power system inherent in the concept of a written Constitution. They are undeniably unconstitutional and should be ruled as such.

Both of these problems stem from having the Chief Justice serve on both the Supreme Court and the Elections Commission. There are many advantages to this system. Recruiting Elections Coordinators is difficult, as most qualified students are either running for office or running the IUSA and are therefore ineligible to serve. Further, no matter how qualified the eventual coordinator chosen may be, he is unlikely to have much experience in dealing with Congress, the President, or elections. And since few commissioners reenlist for additional tours of duty on the commission, there is little or no continuity from year to year, with obvious problems. Installing the Chief Justice on the Elections Commission would solve all of these problems. Therefore, it is desirable from a practical standpoint.

Still, the current IUSA proposal is unacceptable in its present form. The solution is simple enough: install the Chief Justice as an ex officio, non-voting chairperson of the Elections Commission. At a stroke, every difficulty is solved: the Chief Justice's impartiality is preserved, he can fulfill his responsibilities to the Court, and, since he serves ex officio, there would be no need to invent a cumbersome replacement system. The Chief Justice would simply assume the duty as he already does swearing in new IUSA officers and presiding over Supreme Court meetings, and could be

replaced by a simple impeachment procedure. If the Court adopts my recommendations, I would also hope that they include in their opinion vacating the January 17 decision a paragraph indicating a resolution such as I have outlined would be acceptable to and desired by the Court.

C. Examples of Decisions in Previous Constitutional Challenges

I include these decisions for Court members' perusal. Reflecting an even more highly contentious decision, as is obvious from the decisions' content, still the documents reflect the care taken to ensure proper procedure was followed. The end of the decision by Guthrie, urging Congress to take a more reasoned course of action, suggests a less antagonistic resolution to the Court's current difficulties.

IUSA Supreme Court Decisions

09/29/97 - BYLAWS HEARING (Decision)

Julius. The issue before the Court was to determine the content of the IUSA Bylaws at the present time. Questions had arisen because a new set of bylaws passed in November, 1995, but the content of the bylaws was partially dependent upon passage of a Constitutional referendum. During the April, 1996 election, the referendums passed during the general election but were overturned by the Summer Supreme Court in July of 1996 because of inconsistencies among both the Netscape and paper ballots. The Summer Court mandated that the IUSA Bylaws return to the structure and content of the bylaws preceding the passage of 95-11-11 with the inclusion of Off-Campus Districts and Congressional Caucuses from 95-11-11 since they were not dependent upon a unicameral legislature. In addition, the Summer Court suspended both the referendums and the 95-11-11 bylaws until the next general election. The bylaw amendments made during the MMSB administration subsequently came into question when 95-11-11 went into effect following the passage of the referendums during the April, 1997 election because a majority of the amendments made to the bylaws during the MMSB administration were not made to the 95-11-11 bylaws. Due to the complex nature of this matter, the Court began at the time of the original passage of 95-11-11 during the DSBH administration and considered any amending resolutions that were passed afterwards including those that were passed during the current administration. The following is the Court's decision...

The Court agreed that any amending resolutions passed during the DSBH administration after 95-11-11 were valid with one minor exception. The amending resolutions which were upheld in their original form include 96-2-2, 96-2-10, 96-2-20, 96-2-24, 96-2-29, 96-2-32, 96-3-3, and 96-3-6. However, the resolution which established legislative sessions and created provisions for the codification of IUSA statutes, 96-2-3, contained a clause which was in conflict with CASI amendments made during the OCBY administration. 96-2-3 names the IUSA Statutory Code as Appendix E. However, Appendix E was later designated as the location for the CASI Guidelines. The Court believes that this was a general oversight, and the CASI Guidelines were not meant to replace the IUSA Statutory Code. Therefore, in order to maintain the basic integrity of the amendment, the Court found that only the following clause from B, #5 of the Section VI. Legislative Sessions amendment should be removed: "IUSA Bylaws Appendix E, pursuant to Article IX of IUSA Constitution". **[10-0-0]**

The Court then proceeded to address those amendments which were made by a unicameral legislature at the beginning of the MMSB administration before the Summer Supreme Court overturned the passage of the referendum. These amending resolutions were 96-4-3, 96-4-8, and 96-5-5. Initially, the Court could not agree on any particular logic and simply voted on whether to consider the amendments as a whole or separately and as valid or invalid. The decision was to vote upon them as a whole **[7-3-0]**, and they were deemed to be valid **[5-4-1]**. However, when the Court reconvened for further deliberations, a motion to reconsider this issue was passed **[7-0-0]**.

Upon reconsideration of this issue, the Court decided that without the passage of the referendums, Senators were the only members of Congress with the legal authority to vote on bylaw amendments. Following this line of thought, the amendments were deemed to be valid because the Senate votes constituted a majority of Senate seats filled **[6-1-0]**. While the Court upheld these amendments, we were disturbed by the fact that the Senate neglected to readdress these amendments when the Summer Supreme Court ruled that they had been operating under an unconstitutional structure.

Before the Court could proceed any further, we had to directly address the Summer Supreme Court decision made last July. The Court disagrees with the decision rendered last year concerning which bylaws should prevail without the passage of the referendum. The DSBH administration set precedence by operating under the 95-11-11 bylaws for five months prior to the April election with certain stipulations concerning the voting authority of Senators and Representatives and the composition of the Organizational Affairs Committee. Upon deciding that the referendums were not passed correctly by the Student Body, it is logical that 95-11-11 should have continued to act as the IUSA Bylaws with the stipulations set forth by DSBH put back into place. We believe that the Summer Court erred in returning back to the bylaws preceding the passage of 95-11-11, and thus have voted to overturn that decision **[7-0-0]**.

Operating under the Summer Court mandate, the MMSB administration returned to the bylaws preceding 95-11-11 and made amendments to those bylaws. The Court believes that these amendments would have been made to the bylaws contained in 95-11-11 had they continued to operate under the 95-11-11 bylaws with the exception of one. The Court upholds the amending resolutions 96-9-7, 96-10-8, 96-10-9, 96-11-3 and 97-3-4. The resolution concerning academic assembly committee oversight appointments, 96-10-16, however, is deemed to be invalid because the Court does not believe that this amendment would have been necessary had the Congress been operating under the 95-11-11 bylaws because specific oversight appointments are already laid out in the those bylaws. **[7-0-0]**

Finally, the Court believes that the referendums were passed correctly in the 1997 election so any amendments made to the Bylaws by the OCBY administration are valid. These amendments include 97-6-5, 97-7-9, 97-9-5, and 97-9-14. **[7-0-0]**
[brackets indicate votes made during deliberations**]**
*vote totals that equal ten were made by Justices Nelson, Susnjara, Julius, Lockwood, Friedlander, Staley, Rubin, Felker, Senefeld, and Miller with Chief Justice Dudley in attendance
*vote totals that equal seven were made by Justices Nelson, Susnjara, Julius, Staley, Felker, Senefeld and Miller with Chief Justice Dudley in attendance
**all bylaw amendments passed after 95-11-11 which are not directly stated in this decision were deemed to be superseded by other amendments

***in a final 7-0-0 vote, the Court declared that the preceding statements are its final decision on this matter

07/15/96 - RESOLUTIONS 96-2-5 and 96-2-4

Guthrie. The case before the court concerns the referendum to pass resolutions 96-2-4 and 96-2-5. The students voted electronically and by paper ballots in the 1996 IUSA Elections held on April 1 and April 2 to pass the amendments. According to the IUSA Constitution, "All amendments to the IUSA Constitution become final upon ratification of a majority of those students voting in the next regularly scheduled IUSA general election" (Article X, Section 2). Therefore, the constitutionality of the passed amendments should not be questioned. However, it has been brought to the court's attention that 2500 or 62.5% of the votes were disqualified and copies of the Constitution or the Resolutions were not available. The purpose of this opinion is to investigate the validity of the passed referendum.

As stated above, Article X, Section 2 of the IUSA Constitution requires that a majority of the students must "ratify" a Constitutional amendment. It is reasonable to believe that the framers of the IUSA Constitution wanted the majority from 100% of those voting. However, in the 1996 election, 62.5% of the votes were discarded due to Netscape difficulties and improper wording. Clearly, this violated Article X, Section 2 of the Constitution because it does not constitute a majority of the students.

Secondly, copies of the Constitution or the Resolutions were not available at the polling sites. The lack of material violates Title VII, Section 701.2 of the elections code, "Polling places shall . . . Be provided with all necessary equipment . . . copies of the IUSA Constitution, Bylaws and applicable election legislation." This violation forces the court to invalidate the votes taken on paper ballots (32.5%).

The court was also disturbed by the fact that the questions on the electronic ballots and the paper ballots differed. We felt all voters should answer the same question for a majority to be reached. In conclusion, the IUSA Supreme Court found that ratification of the amendment could not be upheld because all votes were eliminated by the IUSA Constitution and Election Code. Therefore, it is the unanimous opinion of the court that the resolutions stay in place but the referendum results be deemed unconstitutional.

Associate members Hanley, Julius, Klaas concur with Guthrie.