

# THE STUDENT BODY SUPREME COURT OF INDIANA UNIVERSITY

SPARC v. IUSA Election Commission

Docket Number: SBSC-2013-02 (2013)

Before BOWER, Chief Justice, and BEAN, CARD, HUANG, MANON, NEVILL, NIELSEN, NIEVES, PALLOTTA, STRZESZKOWSKI, and ZHAO, Associate Justices.

## **Opinion**

Justice BEAN delivered the opinion of the Court.

### **Background**

A petition for writ of certiorari was filed on March 21, 2013, by the SPARC ticket asking this Court to REVERSE the Election Commission's decision to disqualify the SPARC ticket due to Thomas Dauer's withdrawal from the SPARC ticket. Mr. Dauer, citing academic reasons, notified Sidney Fletcher that Dauer no longer wished to run for the executive office of Vice President for Congress. Mr. Dauer submitted his withdrawal to the Election Commission because, from what he understood, that was the only way to have his position replaced. The Election Commission subsequently disqualified the SPARC ticket as not having a complete ticket, citing §§ 209 and 210 of the Election Code. The SPARC ticket petitioned for certiorari following the Election Commission's decision.

On March 21, 2013, the Student Body Supreme Court of Indiana University accepted this petition. The Court allowed the parties to submit briefs and set the docket for oral arguments. On March 28, 2013, the Court heard oral arguments. The Court REVERSES the Election Commission's disqualification of the SPARC ticket.

### **Discussion**

On appeal, SPARC presented two questions to the Court. First, SPARC challenged whether the Election Commission properly issued an advisory opinion upon SPARC's request for interpretation of the IUSA Election Code, as required by Election Code § 103(5). Second, SPARC challenged the Election Commission's disqualification of the SPARC ticket by asking whether a candidate on an executive slate can be replaced. These issues were considered by the Court, and other issues not in dispute prior to the appeal cannot be raised for the first time on appeal.

#### **I. The Election Commission Should Have Issued an Advisory Opinion to the SPARC Ticket.**

Section 103(5) of the Election Code requires that the Election Commission "[i]ssue advisory opinions to any individual or body requesting interpretation of the Code." Subsection 5

requires two parts: (1) Any individual or body requests interpretation of the Code; and (2) The Election Commission issues an advisory opinion.

The individual or body requesting interpretation of the Code is not required to use the magic words “advisory opinion” in order to receive an advisory opinion from the Election Commission. Rather, it is enough for the individual or body to “request interpretation of the Code” from the Election Commission and, at that point, the Election Commission shall issue an advisory opinion.

Pursuant to § 103(5), the Election Commission shall issue an advisory opinion. An advisory opinion, as an official interpretation of the Code, should be provided to the individual or body in written form so as to inform the individual or body. Oral responses by the Election Commission can be misinterpreted or misconstrued and, most certainly, are difficult from an evidentiary standpoint to present to the Court. When the Election Commission issues a written advisory opinion to the individual or body, there is no question as to whether an advisory opinion was given.

SPARC argues that it was deprived its Due Process rights when the Election Commission did not provide an advisory opinion and subsequently disqualified the SPARC ticket when the Vice President for Congress, Mr. Dauer, asked to be replaced by another candidate on the ticket. SPARC further argues that Mr. Dauer was “pressured by the Election Commission” to first withdraw from the SPARC ticket and, then and only then, the Election Commission would determine whether the SPARC ticket was a valid ticket.

The Election Commission argues that it did provide an advisory opinion to SPARC’s request when it orally informed SPARC that its ticket could “probably not replace the candidate.” The Election Commission further argues that the SPARC ticket never directly asked for an “advisory opinion,” in those exact words, and that the Election Commission, although unaware at the time, did issue an advisory opinion.

SPARC went to the Election Commission asking for an interpretation of the Code but the Election Commission did not satisfy its responsibility of providing a sufficient advisory opinion. SPARC was not required to use the exact language “advisory opinion” when asking for an interpretation of the Code. SPARC satisfied its request for interpretation. However, the Election Commission only provided a response that was indefinite at best. SPARC should not be held to understand that the oral communications with the Election Commission were an advisory opinion when the communications by the Election Commission to Mr. Dauer were indefinite. Therefore, the Election Commission failed to meet its burden of issuing an advisory opinion to the SPARC ticket.

## **II. SPARC Must Be Allowed to Replace the Vice President of Congress Candidate on Its Executive Slate.**

The Election Code is silent as to any procedure for replacing a candidate of an executive ticket. The Court looks to the IUSA Constitution for guidance. Article III, Section 6 of the IUSA Constitution provides for a procedural process for replacing executive vacancies. This section provides that if the office of Vice President for Congress (FN1: During oral arguments, the Election Commission agreed that the Vice President for Congress and the Congressional Secretary are the same position, and the titles can be used interchangeably.) “becomes vacant, the President will appoint a replacement to serve the unexpired balance of the term with the consent of Congress.” IUSA CONST. art. III, § 6. When an executive office position is vacated, a

replacement can be appointed; similarly, when an executive office candidate position is vacated, that candidate can be replaced.

Applying parallel reasoning to candidates for the office of Vice President of Congress, the Presidential candidate can appoint a replacement to fill the vacancy on the ticket by a showing of good cause to the Election Commission. Good cause is a discretionary standard and is determined on a case by case basis. Good cause is not a high bar. However, an example that does not meet good cause includes, but is not limited to, strategic replacement of a candidate to increase the number of votes for that ticket. However, that is not the case here.

SPARC argues that it should be able to replace a candidate on the executive ticket. Specifically, SPARC argues that, because elected executive officials can be replaced pursuant to Article III, § 6 of the IUSA Constitution, candidates on an executive ticket should be able to be replaced in a comparable fashion. In other words, Mr. Dauer should be able to be replaced by an eligible candidate upon a showing of good cause.

The Election Commission argues that SPARC should only be able to replace a candidate for “extenuating circumstances.” Neither the Election Code nor the IUSA Constitution lends support to this proposed criterion. The Election Commission articulated a few examples of extenuating circumstances—that is, circumstances that severely disrupt the candidate’s studies, a death in the family, or a situation that causes the candidate to drop out of the University for the semester.

SPARC has satisfied its burden of showing good cause to the Election Commission in order for Mr. Dauer to be replaced by an eligible candidate for the office of Vice President for Congress. Specifically, Mr. Dauer, in an email to Mr. Fletcher and later provided to the Election Commission, wrote that he “will not have the time to develop and implement sound policy after the election [due to his interest in pursuing physics more deeply.]” Mr. Dauer’s reasons for withdrawal satisfy good cause. An “extenuating circumstances” requirement for withdrawal is too rigorous and only provides an opportunity for withdrawal in a small number of cases. A good cause standard promotes what is best for the student, the election process, and the University. Therefore, SPARC must be allowed to replace Mr. Dauer on its executive slate.

### **III. Issues Not Yet Disputed Cannot Be Raised for the First Time on Appeal.**

Both parties briefed issues not yet disputed before the appeal—e.g., whether the Vice President for Congress attended all of the required all-candidate meetings, and whether there was bad faith by either of the parties. The Court only granted certiorari to the issues addressed in Parts I and II *supra*. Therefore, the Court did not hear these issues at oral argument and will not rule on these issues in this Opinion.

### **Conclusion**

We therefore REVERSE the Election Commission’s disqualification of the SPARC ticket.

Justice STRZESZKOWSKI, with whom Justice CARD join, concurring.

Justice Strzeszkowski concurs. The Election Commission denied the SPARC ticket its due process rights when it failed to issue an advisory opinion regarding the withdrawal of a candidate.

This Court has final say in questions of disqualifications. In *Re IUSA* (SBSC 2008-05) this Court ruled that a provision in the Election Code that granted the Election Commission power to disqualify candidates with the approval of Congress superseded the Supreme Court's power as the Highest Court of Indiana University-Bloomington. Therefore, the provision was ruled unconstitutional. Moreover, the current Election Code § 807 states that, "In the event that the Election Commission disqualifies an individual candidate or ticket, an appeal to the Student Body Supreme Court may be filed, consistent with the guidelines established in § 803. If the appeal is accepted, the Student Body Supreme Court shall follow guidelines under § 805 for procedures in hearing disqualification appeals. The decision of the Student Body Supreme Court will be final."

First, the decision is so rendered because the Election Commission failed to prove why disqualifying the entire SPARC ticket for a candidate withdrawal "provid[es] fair and equal opportunities for all IUSA members to run for Congressional and Executive offices" as per the Preamble of the Election Code. (IUSA CONST. Bylaws, Appendix A, Election Code)

Next, The Election Code only addresses the entire ticket regarding an individual candidate's actions regarding a penalty. "If students are running as part of a campaign ticket, the Election Commission shall **have the authority to determine whether penalties will be imposed upon an entire ticket or upon only one or more individual candidates**. The Election Commission shall base such a determination on its judgment of whether the evidence presented indicates that a **ticket conspired to commit a violation**, or conversely that a single candidate, or small group of candidates, failed to adhere to this Code without the knowledge of the ticket's leadership." Code Title VII § 702 (2), emphasis added. A withdrawal is not a violation of the Code as it is allowed under § 110 (5). To disqualify a ticket for a withdrawal is to apply the most damaging sanction provided by the Election Code for an action that is not even a violation under the current Election Code.

Moreover, Title VII § 702 (3) orders the disqualification of an entire executive slate for the disqualification of a single candidate. Again, the issue at hand is a withdrawal, not a disqualification. Specifically, the SPARC ticket wanted to *replace* one member of the executive slate with another candidate. Since this would be before the election deadline, there would be no deception for the Indiana University Student Association or Student Body. Rather, it would be *unfair* to replace an executive officer *after* the election—permitted in Art III. § 6 of the IUSA Constitution—because the Student Body would not be able to vote on such a member. Should the SPARC ticket have withheld Mr. Dauer's withdrawal to only replace him after winning the election, this would be more deceptive and contrary to the Election Code's Preamble.

Finally, the Election Code is silent regarding a process for replacing candidates on executive slates before the election, and Congress should address this in the future. In *Action v. Crimson* (SBSC 03-01), this Court wrote, "this Court shall issue an order demanding action on the part of the Indiana University Student Association to rectify the problems of the *Indiana University*

*Student Association Elections Code* ... so that future elections may be respected by the students of Indiana University—Bloomington.” The Court does not have the authority to demand the legislative branch to amend the bylaws, but it is strongly recommended Congress consider amending the Election Code to speak on the issue of replacing executive candidates before the election after the application deadline. Regarding another Election Code dispute, in *Steel v. Kirkwood* (SBSC 02-01), this Court wrote it “must entrust the legislative representatives to address this issue within the Indiana University Student Association Elections Code to which we are all bound.” The Court holds the separation of powers and cooperation of the three branches in the highest of regards and reserves to Congress the right to make laws and amend them.

With regard to the Majority Opinion’s requirement of a “good cause” withdrawal for this case, I respectfully disagree. The Majority asserts that the Election Code does not permit an interpretation for “extenuating circumstances” to be required for withdrawal. Well, neither does it demand “good cause.” It simply requires “a written request for a withdrawal from the election to the Election Commission no later than one (1) week before the IUSA Election begins.” (§ 110 (5).) As long as this requirement is met, then a candidate’s withdrawal must be accepted under the current Election Code. The Majority agrees that this unique situation identifies a loophole in the Election Code and attempts to address it with a “good cause” standard. However, for the current case, a “good cause” standard is unnecessary and overreaching the text of the Constitution and its bylaws. Should Congress choose to amend the Election Code to explicitly allow for a process to replace candidates before the IUSA Election and after the application deadline, then it should establish its own standards for what is acceptable.