

JUDICIARY of the DUKE STUDENT GOVERNMENT

Ryan and Moore v. Markis and Senate



Office of the Justices

Docket No. 00027

Filed on
March 5th, 2020

Decided on
April 23rd, 2020

Overview

On January 22nd and February 5th, 2020 the Senate held its first and second readings of the proposed amendments to the Duke Constitution.

On March 5th, 2020, Attorney General John Markis sent an email to the student body containing the link to the ballot to vote for the DSG President, Executive Vice President and to vote in a constitutional referendum. Included in the email was a statement in support of the constitutional amendments.

Undergraduate students Kyle Ryan and Charlie Moore filed a petition with the Judiciary against the Senate (represented by President Pro Tempore Diaz) and Attorney General Markis. The students argued the Attorney General's statements regarding the constitutional amendments violated §3 clause 2 of the Election By-Law. The students also argued the Senate failed to provide sufficient public notice of the amendments to the DSG Constitution, and failed to hold two successive readings of the proposed amendments as required by Article X § 1 of the DSG Constitution.

The Judiciary found Attorney General Markis violated §3.2 of the Election By-Law by distributing biased information pertaining to the proposed constitutional amendments. The Judiciary also found the Senate violated Article X §1 of the DSG Constitution by failing to notify the Undergraduate Student Body of the proposed amendments at least seven days prior to the constitutional referendum.

Because of the violations of the Senate and the Attorney General, the Judiciary retroactively voided the results of the constitutional referendum held on March 5th, 2020. A new constitutional referendum was held on Thursday April 16th, 2020.

Parties

Parties of the Petitioner

Kyle Ryan, *Petitioner*

Charlie Moore, *Petitioner*

Parties of the Respondent

John Markis, Attorney General, *Respondent*

Aly Diaz, President Pro Tempore representing the DSG Senate, *Respondent*

Held

The Judiciary finds Attorney General Markis violated §3 clause 2 of the Election By-Law by sending an email to the Undergraduate Student Body that included language biasing students towards voting in support of the constitutional amendments.

The Judiciary finds the Senate violated Article X §1 of the DSG Constitution by failing to notify the Undergraduate Student Body of proposed amendments at least seven days prior to the constitutional referendum.

The Judiciary finds the Senate held two readings of the proposed constitutional amendments as required by Article X §1 of the Duke Constitution.

Because of the Senate's violation of Article X §1 of the DSG Constitution and the Attorney General's violation of §3 clause 2 of the Election By-Law, the Judiciary retroactively voids the results of the constitutional referendum held on March 5th, 2020. A new constitutional referendum was held on Thursday April 16th, 2020.

The Judiciary rules in favor of Ryan and Moore in part.

OPINION of the COURT

Associate Justices Emma Coleman and Carlee Goldberg delivered the
opinion of the Judiciary

Joined by

Chief Justice Georgia Lala

Associate Chief Justice Marc Chmielewski

Associate Justice Vicki Qingning Zhang

Associate Justice William C. Brodner

Further assisted by

Clerk Chitra Balakrishnan

Clerk Hanna Bigal

Clerk Weston Linder

Clerk Jonathan Griffin

Clerk Sagan Singh

Note: Associate Justice Anjali Kunapaneni was absent.

Facts of the Case

On January 29th, 2020 Executive Vice President Avery Boltwood introduced proposed amendments to the DSG Constitution. The Senate agenda for that evening stated that Senators should “see folder for 2020 amendments and 2017 original” (sic). The Judiciary found these documents were not in the meeting folder.

On February 5th, 2020 the Senate held its second reading of the proposed constitutional amendments. The meeting folder included the original DSG Constitution and a copy including the proposed amendments. After the reading, the Senate voted to approve the proposed amendments.

On March 5th, 2020 at approximately 12:00pm Attorney General John Markis sent an email to the undergraduate student body containing the link to the ballot to vote for the DSG President, Executive Vice President and to vote in a constitutional referendum (henceforth referred to as ‘the email’).

The email included the text:

“Additionally, Duke Student Government has approved amendments to the constitutions to accommodate students more easily and to streamline the bureaucratic process. To formally pass this initiative, 25% of students must vote in favor. The previous constitution is available here. This amendment will benefit students for years to come, so I ask that you take a moment to support this new constitution, which you can read in full detail here. The question will appear directly below the vote for executive vice president.”

On March 5th, 2020 Kyle Ryan and Charlie Moore, members of the Undergraduate Student Body, filed a petition with the Judiciary. Ryan and Moore argued the Attorney General’s message violated §3 clause 2 of the Election By-Law. Ryan and Moore also argued the Senate violated Article X §1 of the Duke Constitution.

Application of Power of the Judiciary

The Judiciary is authorized to rule in this case pursuant to Article V §5 Clause b. of the DSG Constitution: “The Judiciary shall decide cases in which the DSG or an officer of the DSG in an official capacity is a party...”. Attorney General Markis and President Pro Tempore Aly Diaz were respondents in this case.

Relevant Law

DSG Constitution:

Article X Amendments and By-Laws §1

Amendments to this Constitution may be proposed either by a petition signed by fifteen percent of the members of the student body, or by a two-thirds vote of the Senate, provided that the amendment shall have been read at two successive meetings of the Senate. Amendments shall be enacted when ratified by a majority of those voting in a referendum of the student body that shall take place only after seven days public notice, provided twenty-five percent of the student body participates.

Executive By-Law:

Article VI The DSG Attorney General §2

In addition to those duties set forth in the Constitution, the Attorney General shall:

....

2. Coordinate the Election Process in consultation with the Vice President and President Pro Tempore and Board of Elections.

Election By-Law:

§3 Conflicts of Interest Clause 2

All information distributed by the Attorney General regarding elections must not pertain to any one candidate, campaign, or specific issue(s). The information distributed should pertain to voting and descriptions of roles up for election.

Questions Raised

Are referendums under the jurisdiction of the Attorney General?

According to Article VI §2 of the Executive By-Law, the Attorney General's duties include the coordination of the election process. §13 of the Election By-Law describes the administration of referendums. As there is no additional information that differentiates referendums from elections, the election process should be broadly interpreted to apply to referendums.

Are amendments to the Duke Constitution referendums?

Article X §1 of the Duke Constitution states amendments to the Duke Constitution shall be enacted when ratified by a majority of those voting in a referendum of the student body. As such, student wide voting on amendments to the Duke Constitution clearly qualifies as a referendum.

Did the Attorney General's email violate §3 clause 2 of the Election By-Law?

The Attorney General's email included a call for members of the Undergraduate Student Body to "take a moment to support this new constitution." The Attorney General also asserted that, "this amendment will benefit students for years to come." §3 clause 2 of the Election By-Law prevents the Attorney General from distributing information that pertains to any one candidate, campaign, or specific issue. The Attorney General's biased statements towards the constitutional amendments and his balentent call for students to support them are in clear violation of §3 clause 2 of the Election By-Law.

Were constitutional amendments made available to members of the Undergraduate Student Body 7 days prior to the constitutional referendum?

Article X §1 of the DSG Constitution requires that the Undergraduate Student Body be notified of proposed amendments at least seven days prior to a constitutional referendum. While the DSG Constitution does not specify the exact body who must ensure the Undergraduate Student Body is notified of proposed amendments, it can be assumed said duty falls under the purview of the Senate as the legislative body since the DSG Constitution

requires Senate to approve any proposed amendments through a two-thirds vote in conjunction with two successive readings (unless by fifteen percent of the Undergraduate Student Body file a petition to amend the constitution).

The Judiciary could not locate a record of the Senate releasing public notice of the proposed constitutional amendments. Testimony from President Pro Tempore Diaz shows that there was not a plan put in place to circulate the proposed constitutional amendments. Instead, the Senate assumed that students who wanted to see the proposed constitutional amendments would know to go onto the DSG Hub, located the Senate meeting folder in which the Senate voted on the amendments, and find the proposed constitutional amendments there. The Senate meeting folder for the January 29th meeting (when the constitutional amendments were introduced) does not include a copy of the proposed constitutional amendments. Only the meeting folder for the February 5th meeting (when the constitutional amendments had their second reading) includes a copy. Even if both folders included the proposed constitutional amendments, it is clear that the limited actions of the Senate do not meet the requirement for notification laid out in Article X §1 of the DSG Constitution.

Did the Senate conduct two readings of the proposed constitutional amendments?

Article X §1 of the Duke Constitution requires that constitutional amendments be read at two successive meetings of the Senate before the Senate votes on them. According to the 22nd of January and 5th of February Senate agendas and testimony from President Pro Tempore Diaz, the Senate held two readings of the constitutional amendments. In accordance with Rule VII section xii of the House Rules, “authors or sponsors shall have five minutes to present, followed by five minutes for questions, but no amendments may be proposed, and debate may not begin.” However, Rule VII section xi of the House Rules then stipulates that both “friendly amendments” and debate may occur during second readings. As such, the

Senate was within its rights to change the language of the proposed amendments to the Constitution during the second reading of the document prior to voting on the amendments.

Recommendations

Clarifying the delegation of election responsibilities

The ultimate responsibility to ensure the constitutional amendments were made available to members of the Undergraduate Student Body seven days prior to the constitutional referendum fell on the Senate. As noted in *Stoter v. Markis (2020)*, DSG would benefit from By-Laws that more clearly state who is responsible for carrying out specific tasks required by the By-Laws. This includes tasks specified in the Duke Constitution. The Judiciary recommends the Senate review its By-Laws, and, in clauses that call for the fulfillment of a specific task, clarify what member of DSG is responsible for fulfilling that duty.

Accessibility of the Senate agenda items

The Judiciary is sympathetic to Ryan and Moore's argument that the Senate meeting folders alone do not provide clear evidence that the Senate held two successive readings of the proposed constitutional amendments. The Judiciary found the Senate meeting folder for the January 29th meeting (when the constitutional amendments were introduced) does not include a copy of the proposed constitutional amendments.

For the average member of the Undergraduate Student Body who wants to stay informed of the proceedings of the DSG, it is currently difficult to keep track of legislation reviewed by the Senate. The Judiciary employs the Senate to ensure it includes *all* items of legislation reviewed by the Senate in the appropriate meeting folders on the DSG Hub to allow members of the Undergraduate Student Body to review them. This would allow members of the Undergraduate Student Body to be more informed of the legislation reviewed by the Senate, and offer students time to organize to present in

front of the Senate during Public Forum to voice any concerns they might have about a particular piece of legislation.

Conclusion

The Judiciary finds Attorney General Markis had jurisdiction over the constitutional referendum as referendums can be reasonably assumed to fall under the purview of the Attorney General as established in Article VI §2 of the Executive By-Law.

The Judiciary finds Attorney General Markis violated §3.2 of the Election By-Law by distributing biased information pertaining to the proposed constitutional amendments.

The Judiciary finds the Senate violated Article X §1 of the DSG Constitution by failing to notify the Undergraduate Student Body of proposed amendments at least seven days prior to the constitutional referendum.

The Judiciary finds the Senate held two readings of the proposed constitutional amendments as required by Article X §1 of the Duke Constitution.

Because of the Senate's violation of Article X §1 of the DSG Constitution and the Attorney General's violation of §3 clause 2 of the Election By-Law, the Judiciary retroactively voids the results of the constitutional referendum held on March 5th, 2020. A new constitutional referendum was held on Thursday April 16th, 2020.

The Judiciary recommends DSG clarify in its By-Laws who is responsible for carrying out specific tasks, and increases the accessibility of the Senate's agenda items for the Undergraduate Student Body.

It is so ordered.