

# JUDICIARY of the DUKE STUDENT GOVERNMENT

*Valeria Silombria v. John Markis*



Office of the Justices

Docket No. 00028

Case No. 28

Filed on

March 10th, 2020

Decided on

March 16th, 2020

## **Overview**

On March 5th, 2020, while voting was open for the 2020 presidential election, Kat Tiscornia sent a message in the Gamma Phi Beta GroupMe chat expressing her support for presidential candidate Thomas (Tommy) Hessel. Tiscornia was the President of Gamma Phi Beta, the Head of Social Media of “Tommy Hessel for DSG President,” and the ‘owner’ of the GroupMe chat. On March 6th, 2020, presidential candidate Valeria Silombria filed a report of election irregularity to Attorney General John Markis. Candidate Silombria asserted that Tiscornia’s message violated §5 clause 2 of the Statute of Duke Student Government Establishing the Election Rules and Procedures for 2020 (“the 2020 Election Statute”). After Attorney General Markis ruled that no election violation occurred, candidate Silombria appealed the decision to the Judiciary. The Judiciary ruled that Attorney General John Markis was correct in his application of §5 clause 2 of the 2020 Election Statute. GroupMe does not function as a listserv and falls under §5 clause 4 of the 2020 Election Statute as a “social media platform.”

## **Parties**

### Parties of the Petitioner

Valeria Silombria, Presidential Candidate, *Petitioner*

Jannis Stöter, *Advocate*

### Parties of the Respondent

John Markis, Attorney General of Duke Student Government, *Respondent*

## **Held**

GroupMe does not function as a listserv for the purposes of §5 clause 2 of the Statute of Duke Student Government Establishing the Election Rules and Procedures for 2020.

The Judiciary rules in favor of and upholds the ruling of the Respondent, Attorney General John Markis.

**OPINION of the COURT**

Associate Justice William C. Brodner delivered the opinion of the Judiciary,  
assisted by Clerk Weston Lindner

**Joined by**

Chief Justice Georgia Lala

Associate Chief Justice Justice Marc Chmielewski

Associate Justice Vicki Qingning Zhang

Associate Justice Emma Coleman

Associate Justice Carlee Goldberg

**Further assisted by**

Clerk Chitra Balakrishnan

Clerk Hanna Bigal

Clerk Jonathan Griffin

Clerk Sagan Singh

Note: Associate Justice Anjali Kunapaneni was absent.

## **Facts of the Case**

On March 5th, 2020 at approximately 12:00pm voting for the 2020 Duke Student Government presidential election opened. At 4:05pm on the same day, Kat Tiscornia sent a message in the Gamma Phi Beta GroupMe chat supporting presidential candidate Tommy Hessel. Tiscornia was the President of Gamma Phi Beta, the Head of Social Media of the Hessel Campaign and the 'owner' of the GroupMe chat. The GroupMe contained 91 members of Gamma Phi Beta.

The message read: "Hey everybody! The Duke Student Government elections have opened today and I could not be more proud to support Tommy Hessel for DSG President. Tommy [sic] is the most endorsed candidate and as DSG President, Tommy will work with students to leave Duke better than we found it and bring tangible change to make a more egalitarian duke! The link to vote is here (seniors, you CAN vote) ->[bit.ly/VOTE4TOMMY](https://bit.ly/VOTE4TOMMY)".

On March 6th, 2020 at 11:51am, presidential candidate Valeria Silombria filed a report of election irregularity with Attorney General John Markis. Candidate Silombria asserted that Tiscornia's message violated §5 clause 2 and subsequently §2 clause 1 of the Statute of the 2020 Election Statute. She requested that the Hessel Campaign be docked 90 votes in accordance with §9 clause 5 of the 2020 Election Statute.

Attorney General Markis ruled that no election violation occurred, ruling that GroupMe fell under §5 clause 4 of the 2020 Election Statute. He noted that Silombria's petition misquoted the 2020 Election Statute, relying on an outdated version of the 2020 Election Statute that did not reflect the current version of §5 clause 2.

Candidate Silombria appealed the decision to the Judiciary under §8 clause 10 of the Statute, further arguing GroupMe functions as a listserv and thus the Attorney General's decision was not in accordance with the law.

## **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 was the respondent in this case. Pursuant to §8 clause 10 of the 2020 Election Statute: “Any other decision of the Attorney General may be appealed to the Judiciary by any party with standing on the grounds that it is in violation of procedure or constitutional right, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law”. The decision was appealed on the grounds of being not in accordance with the law.

## **Relevant Law**

### A Statute of Duke Student Government Establishing the Election Rules and Procedures for 2020

#### *§2: General Campaign Rules Clause 1*

Campaigning shall follow all applicable laws, regulations, and university policies.

#### *§5: Campaign Correspondence Clause 2*

No candidate shall send any email through a listserv without the permission of the listserv manager. “Candidates and their supporters who manage listservs of specific Duke student organizations (clubs, RA halls, etc.) may only send campaign-neutral, general election information through that account.

#### *§5: Campaign Correspondence Clause 4*

Candidates and their supporters may send direct correspondence to their personal friends and explicit campaign supporters. They may post on social media platforms in groups not related to Duke activity and any permitted listserv.

*§8: Adjudication Procedure Clause 10*

Any other decision of the Attorney General may be appealed to the Judiciary by any party with standing on the grounds that it is in violation of procedure or constitutional rights, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

**Questions Raised**

Does a GroupMe chat function as a listserv for the purposes of §5 clause 2 of the 2020 Election Statute?

Neither the spirit nor the letter of the law suggests that a GroupMe qualifies as a listserv.

As the Attorney General notes in his decision, Duke OIT defines a listserv as “an electronic mailing list that offers an efficient way to disseminate information to large numbers of people using a single email address.”

Listservs have the capability to restrict senders so that only the manager of the group can send messages to those in the group. The 2020 Election Statute prevents listserv managers from using this capability to influence elections.

By contrast, a GroupMe chat is a non-email form of communication in which every group member can send messages to all other group members.

Tiscornia managed the Gamma Phi Beta GroupMe chat in the sense that she was its ‘owner.’ However, messages by GroupMe chat ‘owners’ are not privileged or highlighted. In this sense, GroupMe chats are more consistent with the “social media platforms” explicitly authorized by §5 clause 4 of the 2020 Election Statute.

The Judiciary’s conclusion is strengthened by the legislative history of the 2020 Election Statute. The original proposed statute included an explicit provision that named GroupMe chats in the definition of a listserv. The Senate chose to amend this provision and confine the language to the word

“listserv.” It would be odd to find that the Senate intended for GroupMe chats to be considered listservs, when they intentionally stripped the language from the 2020 Election Statute that would make it so.

### **Conclusion**

Attorney General John Markis was correct in his application of §5 clause 2 of the 2020 Election Statute. GroupMe does not function as a listserv for the purposes of §5 clause 2 of the 2020 Election Statute, falling instead under §5 clause 4 as a “social media platform.”

*It is so ordered.*