

JUDICIARY of the DUKE STUDENT GOVERNMENT

Valeria Silombria v. John Markis



Office of the Justices

Docket No. 00029
Case No. 29

Filed on
March 10th, 2020

Decided on
March 16th, 2020

Overview

On March 6th, 2020, while voting was open for the 2020 presidential election, Ann Gehan, Head of Strategy and Platform for Thomas (Tommy) Hessel's presidential campaign, displayed a pro-Hessel message on her smartphone at the West Campus bus stop for a picture. Presidential candidate Valeria Silombria filed a report of election irregularity to Attorney General John Markis asserting that Gehan's actions violated §6 and subsequently §2 clause 1 of the Statute of Duke Student Government Establishing the Election Rules 2020 (referred to here on out as the 2020 Election Statute). After Attorney General Markis ruled that no election violation occurred, presidential candidate Silombria appealed the decision to the Judiciary arguing the Attorney General did not conduct a thorough investigation and thus violated §11 clause 3. The Judiciary ruled that the Attorney General can conduct his investigation in any matter he sees fit. However, the Judiciary also ruled the Attorney General violated §8 clause 10 of the 2020 Election Statute as his reasoning for docking 31 votes from the Hessel Campaign was not in accordance with the law. The Judiciary overruled the Attorney General's decision to dock 31 votes from the Hessel Campaign.

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

The Attorney General did not violate §11 clause 3 of the Election By-Law in the process of hearing, investigating, and responding to Silombria's petition.

However, the Attorney General violated §8 clause 10 of the 2020 Election Statute as his reasoning for docking 31 votes from the Hessel Campaign was not in accordance with the law. Gehan's possession of her phone does not meet the definition of proffering for the purposes of §6 of the 2020 Election Statute. Furthermore, the graphic displayed on Gehan's phone does not constitute a banner under §4 of the 2020 Election Statute and is thus not subject to penalty under §9 clause 1 of the 2020 Election Statute.

The Judiciary overrules the Attorney General's decision to dock 31 votes from the Hessel Campaign.

OPINION of the COURT

Chief Justice Georgia Lala delivered the opinion of the Judiciary assisted by
Clerk Jonathan Griffin

Joined by

Associate Chief Justice Justice Marc Chmielewski

Associate Justice Vicki Qingning Zhang

Associate Justice William C. Brodner

Associate Justice Emma Coleman

Associate Justice Carlee Goldberg

Further assisted by

Clerk Chitra Balakrishnan

Clerk Hanna Bigal

Clerk Weston Lindner

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.

On March 6th, 2020 approximately between 9:55am and 10:15am, Devin Mahoney took a picture of Ann Gehan, the Head of Strategy and Platform for presidential candidate Tommy Hessel which showed her displaying a graphic stating “tommy 4 DSG” on her phone at the West Campus bus stop. Between approximately 10am and 11am, Devin Mahoney posted the photo to her Instagram account story.

On March 6th, 2020 at 9:18pm, presidential candidate Valeria Silombria filed a report of election irregularity with Attorney General John Markis. Candidate Silombria asserted Gehan violated §6 and subsequently §2 clause 1 of the 2020 Election Statute. She requested that the Hessel Campaign be docked 459 votes in accordance with §9 clause 5 of the 2020 Election Statute.

On March 7th, 2020 at 11:05am, Attorney General Markis ruled the Hessel Campaign violated §6 of the 2020 Election Statute when Gehan proffered her phone to Mahoney, docking 1 vote per §9 clause 5 of the 2020 Election Statute. Attorney General Markis further ruled the phone graphic was a ‘banner’ for the purpose of §9 clause 2 the 2020 Election Statute, docking a further 30 votes per the same clause. Attorney General Markis docked a total of 31 votes from the Hessel Campaign.

Candidate Silombria appealed the decision to the Judiciary under §8 clause 10 of the Statute. Candidate Silombria argued the Attorney General’s decision was not in accordance with the law, as the Attorney General violated §11 clause 3 of the Election By-Law by failing to conduct a thorough investigation.

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” because 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.

§4: Campaign Materials

The following rules shall apply to all flyers, banners, and similar campaign materials....

§6: Election Day Campaigning

While polls are open, no student shall solicit votes from any candidate while proffering an electronic device that can access the ballot to another student. While polls are open, candidates and their supporters may not allow other students to use their electronic devices for election purposes.

§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.

§9: Penalties Clause 1.2

Candidates shall generally be docked votes for publicity violations as follows:

...

2. Each offending poster or banner in a highly public location, 30 votes

§9: Penalties Clause 5

Candidates shall be docked votes for unauthorized direct contact at the rate of one vote for every individual unlawfully contacted rather than the number of unlawful contacts.

Election By-Law

§11: Election Violations Clause 3

When the Attorney General receives a complaint, he or she shall provide an opportunity for all parties involved to respond, including any candidate who may be punished for the alleged violation.

Relevant Judicial Precedents

Kristina Smith v. Shreya Bhatia (2017)

Questions Raised

How should the Attorney General conduct investigations into voter irregularity?

The Attorney General is not held to explicit standards when they conduct investigations into voter irregularity other than the duties prescribed by the Election Statute and Election By-Law. The Attorney General's latitude includes the extent to which the Attorney General conducts fact finding beyond the information presented in a petition of voter irregularity. The burden of proof at no point shifts from the petitioner to the Attorney General to prove the petitioner's claim.

What constitutes a banner for the purposes of §9 clause 3 of the 2020 Election Statute?

§4 of the 2020 Election Statute uses the terms flyer, banner and poster interchangeably. §9 clause 1 of the 2020 Election Statute delineates penalties for offending flyers versus offending posters and banners. While no descriptions are offered of the three terms, they are distinctly separated from electronic devices, which are addressed in §6 of the 2020 Election Statute. The separation indicates electronic devices, even those displaying campaign graphics, do not fall under §9 clause 1 of the 2020 Election Statute. The Judiciary holds the graphic displayed on Gehan's phone does not constitute a banner under §4 of the 2020 Election Statute and thus is not subject to penalty under §9 clause 1 of the 2020 Election Statute.

What constitutes proffering for the purposes of §6 of the 2020 Election Statute?

In accordance with the precedent set by *Smith v. Bhatia* (2017), the possession of an electronic device is not equivalent to the proffering of one. Proffering for the purpose of §6 of the 2020 Election Statute is the exchange of an electronic device for the specific purpose of providing a student with direct access to the ballot in order to solicit votes. The evidence presented to the Judiciary only shows that Gehan was in possession of her phone between approximately 9:55am and 10:15am. No evidence was presented that Gehan offered her phone to any individual to provide them direct access to the ballot in order to solicit a vote. The Judiciary holds the actions of Gehan are not in violation of §6 of the 2020 Election Statute, and are thus not subject to penalty under §9 clause 1 of the 2020 Election Statute.

Conclusion

The Attorney General did not violate §11 clause 3 of the Election By-Law in the process of hearing, investigating, and responding to Silombria's petition. However, the Attorney General violated §8 clause 10 of the 2020 Election

Statute as his reasoning for docking 31 votes from the Hessel Campaign was not in accordance with the law.

The Judiciary overrules the Attorney General's decision to dock 31 votes from the Hessel Campaign.

It is so ordered.