

JUDICIARY of the DUKE STUDENT GOVERNMENT

Stöter v. Markis



Office of the Justices

Docket No. 00026

Case No. 26

Filed on:
March 22nd, 2020

Ruled on:
April 15th, 2020

Overview

On January 22, 2020, Attorney General John Markis introduced a Statute of Duke Student Government Establishing the Election Rules and Procedures for 2020. The Senate voted to pass the Statute.

On March 5th, 2020 at approximately 12:00pm Attorney General Markis' email was sent by UCAE software 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. Prior to polls closing, presidential candidate Valeria Silombria filed a report of election irregularity regarding a potential campaign violation by presidential candidate Thomas (Tommy) Hessel's campaign team with the Attorney General. Candidate Silombria also sent an email to the Attorney General indicating her intention to file a second report. Despite the presence of an unresolved complaint, Attorney General Markis released the results of the presidential election on March 6th, 2020 at approximately 1:30.

On March 22nd, Senator Stöter filed a petition with the Judiciary against Attorney General Markis. Senator Stöter argued the Attorney General committed numerous violations of the Election Bylaw in his handling of the presidential election.

The Judiciary found the Attorney General violated §4 and §8 clause 1 of the Election By-Law, and as a result violated Article VIII. Elections and Terms of Office §1 Clause b. by failing to conduct the presidential election in accordance with the provisions of the By-Laws and Statutes of the DSG.

Parties

Parties of the Petitioner

Jannis Stöter, Senator and Chair of Senate Judiciary Committee, *Petitioner*

Parties of the Respondent

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

Held

The Judiciary finds Senator Stöter does not have standing to file a complaint alleging some students did not receive Attorney General Markis' email containing the ballot for the 2020 president and executive vice president elections and the constitutional referendum. Senator Stöter also does not have standing regarding the Attorney General's release of the presidential election results prior to the resolution of all complaints.

The Judiciary finds the Attorney General did not violate §4 of the Election By-Law by failing to consult with the Senate Judiciary Committee prior to introducing the 2020 Election Statute to the Senate.

The Judiciary finds the Attorney General violated §4 and §8 clause 1 of the Election By-Law by failing to ensure the 2020 Election Statute was uploaded to the DSG website and failing to ensure the 2020 Election Statute and Election By-Laws were circulated through a student-wide email.

The Judiciary finds the Attorney General is not responsible for any delays in the receipt of the email containing the election ballot on the day of the election. As such, the Attorney General did not violate §1 clause 2.2 of the 2020 Election Statute.

The Judiciary finds the Attorney General violated Article VIII. Elections and Terms of Office §1 Clause b. by failing to conduct the presidential election in accordance with the provisions of the By-Laws and Statutes of the DSG.

The Judiciary rules in favor of Stöter in part.

OPINION of the COURT

Chief Justice Georgia Lala delivered the opinion of the Judiciary.

Joined by

Associate Chief Justice Marc Chmielewski

Associate Justice Vicki Qingning Zhang

Associate Justice William C. Brodner

Associate Justice Emma Coleman

Associate Justice Carlee Goldberg

Assisted by

Clerk Chitra Balakrishnan

Clerk Hanna Bigal

Clerk Weston Lindner

Clerk Jonathan Griffin

Clerk Sagan Singh

Note: Associate Justice Anjali Kunapaneni was absent.

Facts of the Case

On January 22, 2020, Attorney General John Markis introduced a Statute of Duke Student Government Establishing the Election Rules and Procedures for 2020 (henceforth referred to as the 2020 Election Statute). After debate, the Senate voted to pass the 2020 Election Statute.

On March 5th, 2020 at approximately 12:00pm Attorney General Markis' email was sent by UCAE software 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.

On March 6th, 2020 at 11:51am presidential candidate Valeria Silombria submitted a complaint to Attorney General Markis via email regarding a potential campaign violation by presidential candidate Thomas (Tommy) Hessel's campaign team.

On March 6th, 2020 at 12:30pm candidate Silombria informally told Attorney General Markis via email of her intention to submit an additional complaint regarding a potential campaign violation by presidential candidate Tom Hessel's campaign team.

On March 6th, 2020 at 12:46pm Attorney General Markis emailed candidates Silombria and Hessel stating that he planned to delay the release of the presidential election results until Saturday March 7th at 12:00pm.

On March 6th, 2020 at 12:47pm candidate Silombria informally submitted a second complaint to Attorney General Markis regarding a potential campaign violation by presidential candidate Tom Hessel's campaign team.

On March 6th, 2020 at 12:55pm Attorney General Markis received a text from a staff member at UCAE containing the results of the presidential and executive vice president races and the constitutional referendum. The results for the presidential election were incorrect.

On March 6th, 2020 between 12:55pm and 1:17pm Attorney General Markis planned to reverse his decision to delay the release of the presidential election results, believing that Silombria had won and her petition would not affect the ultimate results of the 2020-2021 presidential election.

On March 6th, 2020 at 1:17pm Attorney General Markis emailed candidates Silombria and Hessel with the following information, "I have had ample time to review the evidence due to the quick responses of investigated parties. If there are any further injunctions, he would respond accordingly, but at that time he would release the initial results then follow through with the violations in the coming days."

On March 6th, 2020 at approximately 1:30pm Attorney General Markis called candidate Silombria to inform her of her victory.

On March 6th, 2020 at approximately 1:43 the Duke Chronicle reported candidate Silombria won the 2020-2021 presidential race.

On March 6th, 2020 between approximately 5:00pm and 6:30pm the Duke Chronicle reported a voter miscount and the existence of petitions regarding the 2020-2021 presidential race.

On March 6th, 2020 at 9:17pm candidate Silombria formally submitted her second complaint to Attorney General Markis regarding a potential campaign violation by presidential candidate Tom Hessel's campaign team.

On March 7th, 2020 at 11:01am Attorney General Markis formally dismissed both petitions submitted by candidate Silombria.

On March 10th, 2020 candidate Silombria appealed both of the Attorney General's decisions on her petitions to the Judiciary.

On March 16th, 2020 the Judiciary ruled in favor of and upheld the decision of the Attorney General in one petition, and overruled the decision of the Attorney General in the second. As a result, candidate Hessel had the greatest number of votes in the presidential election.

On March 20th, 2020 at 11:02pm Attorney General Markis notified both parties of the final result, in which he formally declared Hessel winner of the presidential election.

On March 22nd, 2020 Senator Stöter filed a petition with the Judiciary against Attorney General Markis. Senator Stöter argued the following violations occurred when the Attorney General conducted the 2020 presidential election:

1. Attorney General Markis failed to consult the Senate Judiciary Committee prior to introducing the 2020 Election Statute to the Senate, violating §4 of the Election Bylaw.
2. Attorney General Markis failed to publish the 2020 Election Statute to the DSG website and failed to circulate the 2020 Election Statute and Election By-Law through a student-wide email, violating §4 and §8 clause 1 of the Election By-Law.
3. Attorney General Markis sent the email containing the link to the ballot to vote for the 2020-2021 DSG President and Executive Vice President on March 5th at 12:06pm, violating §1 clause 2.2 of the 2020 Election Statute.
4. Attorney General Markis released the presidential election results prior to resolving all complaints, violating §8 clause 2 of the Election By-Law.
5. Due to Attorney General Markis' violations listed in 1-4, the 2020 presidential election violated Article VIII. Section 1b of the Duke Constitution.
6. The entire Undergraduate Student Body did not receive Attorney General Markis' email containing the link to the ballot to vote for the

2020-2021 DSG President and Executive Vice President, violating Article IX. Section 6 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...”. Senator Stöter was the petitioner in this case, and Attorney General Markis was the respondent.

Relevant Law

The Duke Constitution

Article VIII. Elections and Terms of Office §1 Clause b

Elections and inaugurations shall be conducted according to the provisions of the By-Laws and Statutes of the DSG.

Article IX. Bill of Rights §6

All students have the right to vote in all referenda and public elections held by Duke Student Government and by their respective classes and houses. No student shall be deprived of the right to vote, nor shall any poll tax or other payment be a condition to voting, nor shall any proof of eligibility or identity be required unless it is readily available to all students.

Election By-Law

§4 Election Rules and Procedures

The Senate shall, not less than annually, pass a statute establishing Election Rules and Procedures. The Senate Judiciary Committee shall review the proposed statute in consultation with the Attorney General. After the statute is adopted, it shall be prominently published on the DSG Website. The statute shall include...

§8 Communication of Election Rules Clause 1

Links to or attachments of this By-Law and the Election Rules and Procedures shall be provided through a student-body-wide email between three and five weeks before each election.

§12 Determination of Election Outcome Clause 3

After the final deadline to file complaints regarding election violation passes and all complaints filed have been resolved, the Attorney General shall determine and certify the results of the election.

The 2020 Election Statute

§1 Campaign Schedule Clause 2.2

The election will occur from 12:00pm March 5 to 12:00pm March 6.

Questions Raised

Does Senator Stöter have standing to file the petition?

Senator Stöter brings forth six complaints. For each complaint, Senator Stöter must have standing and be able to prove he suffered harm as a result of the events that took place.

Regarding Count 1, Senator Stöter is the chair of the Senate Judiciary Committee and thus has standing.

Regarding Count 2 and 3, Senator Stöter is a member of the Undergraduate Student Body and thus has standing.

Regarding Count 4, Senator Stöter does not present evidence that he himself was harmed by the release of the presidential election results prior to the resolution of all complaints and thus does not have standing.

Regarding Count 5, Senator Stöter is a member of the Undergraduate Student Body and thus has standing.

Regarding Count 6, Senator Stöter affirms in his testimony he received the Attorney General Markis' email containing the link to the ballot to vote for the 2020-2021 DSG President and Executive Vice President. As Senator Stöter cannot bring forth a petition on the behalf of another, Senator Stöter does not have standing.

As a result, the Judiciary considered only Counts 1-3 and 5 in its ruling. Counts 4 and 6 are discussed in the Judiciary's recommendations.

Did the Attorney General violate §4 of the Election By-Law by failing to consult with the Senate Judiciary Committee?

As the Election By-Law is written, there is a shared responsibility between the Attorney General and the Senate Judiciary Committee (SJC) to collaborate on the Election Rules and Procedures Statute. While §1 of the Election By-Law identifies the Attorney General as the primary officer responsible for the implementation and supervision of all DSG elections, §4 of the Election By-Law delegates the role of reviewing the proposed statute to the SJC. Senator Stöter did not present any evidence that the Attorney General actively prevented the SJC from reviewing the Statute prior to introducing it to the Senate. Instead, it appears that the SJC never asked the Attorney General for the 2020 Election Statute to review. The SJC further waived its right to raise issues with the 2020 Election Statute when it was passed by the Senate. As such, the Attorney General did not violate §4 of the Election By-Law.

Did the Attorney General violate §4 and §8 clause 1 of the Election By-Law by failing to publish the 2020 Election Statute to the DSG website and circulate the 2020 Election Statute and Election By-Law through a student-wide email?

§8.1 of the Election By-Law requires that links or attachments of the Election Bylaw and Election Rules and Procedures be provided through a student-body-wide email between three and five weeks before each election. §4 of the Election By-Law requires the newly passed Election Rules and

Procedures be promptly uploaded to the DSG website. While §4 and §8 do not explicitly state who within DSG must perform these tasks, §1 names the Attorney General as the primary officer responsible for the implementation and supervision of all DSG elections. As such, the duty to ensure the circulation of the Election By-Law and the 2020 Election Statute falls under the Attorney General's purview. The Judiciary acknowledges the Attorney General traditionally does not have access to the Undergraduate Student Body listserv and thus must send all communication proactively throughUCAE. This being said, the Election By-Law does not require that the Attorney General himself circulate the Election By-Law and Election Rules and Procedures, rather that he ensures that they are in fact circulated. As such, the Attorney General violated §4 and §8 clause 1 of the Election By-Law.

Did the Attorney General Markis send the email containing the link to the ballot to vote for the 2020-2021 DSG President and Executive Vice President on March 5th at 12:06pm?

The Attorney General traditionally does not have access to the Undergraduate Student Body listserv and thus must send all communication proactively throughUCAE. Upon investigation, the Judiciary found that the softwareUCAE uses to send emails to the Undergraduate Student Body does not distribute all emails at exactly the same time. Usually, there is a delay of between 1-15 minutes between the first email delivery and the last email delivery. The Judiciary found this was also the case on March 5th, 2020 in which students received the Attorney General's email containing the link to the ballot to vote in the presidential election between 12:00pm and 12:15pm.

Even if it was the Attorney General himself who ultimately delivered the email to students, rather thanUCAE, he could not be liable for any delays in the software's delivery of the student-wide email. As such, the Attorney General did not violate §1 clause 2.2 of the 2020 Election Statute.

Does the Attorney General's violations of §4 and §8 clause 1 of the Election By-Law constitute an illegal presidential election per Article VIII. Section 1b of the Duke Constitution?

In light of the Attorney General's violations of §4 and §8 clause 1 of the Election By-Law, the Judiciary finds the Attorney General violated Article VIII. Elections and Terms of Office §1 Clause b. by failing to conduct the presidential election in accordance with the provisions of the By-Laws and Statutes of the DSG.

The Judiciary is sympathetic to the relief requested by Senator Stöter on these grounds: that the results of the 2020 presidential election be voided. However, the Judiciary finds the relief requested to be disproportionate to the violation that occurred. Whatever effect the Attorney General's violation of §4 and §8 clause 1 of the Election By-Law may have had on the results of the presidential election would pale in comparison to the effect of calling for an entirely new election in which voters knew both which candidate won in the first election and by how many votes.

Recommendations

Clarifying the delegation of election responsibilities

The ultimate responsibility to ensure the 2020 Election Statute was published to the DSG website and that the 2020 Election Statute and Election By-Law were circulated through a studentwide email fell on the Attorney General as the administrator of DSG elections. This being said, DSG would benefit from By-Laws that more clearly state who is responsible for carrying out specific tasks. 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.

Addressing the Attorney General's release of presidential election results prior to the resolution of all complaints

Senator Stöter did not have standing to bring forward this complaint. Irrespective of the petition brought forward, the Judiciary found that several

issues with the presidential election were exacerbated by the Attorney General's release of the presidential election results prior to the resolution of all complaints, as required by §12 clause 3 of the Election By-Law.

Notably, the 2020 Election Statute did not include the process and deadlines for making complaints and details of the adjudication procedure as required by §12 clause 3 of the Election By-Law. The Attorney General cannot be held solely at fault in this regard. The Senate passed an Election Statute that contained numerous violations of the Election By-Law. The absence of a complaint deadline left the Attorney General to certify election results while petitions were still being filed. This being said, the Attorney General should not have released the results of the presidential election when he did as he was still in possession of an unresolved complaint.

Addressing potential issues with theUCAE email software

Senator Stöter did not have standing to file a complaint alleging some students not receiving Attorney General Markis' email. Even if Senator Stöter could present evidence that he himself did not receive Attorney General Markis' email the Attorney General would not be the correct individual to file a complaint against. As stated previously, the Attorney General traditionally does not have access to the Undergraduate Student Body listserv and thus must send all communication proactively throughUCAE. This listserv and software are thus under the purview ofUCAE.

That being said, there may be potential shortcomings in theUCAE email software if Senator Stöter is correct and not all members of the Undergraduate Student Body received the Attorney General's email. The Judiciary recommends DSG establish a working group to ensure that all eligible voters receive announcements and updates issued by the Attorney General, amongst other important information sent through the vendor system employed byUCAE. The working group should use this analysis to establish if the current system used byUCAE protects and upholds students' right to vote per Article IX. Bill of Rights §6 of the Duke Constitution.

Conclusion

The Judiciary finds the Attorney General violated §4 and §8 clause 1 of the Election By-Law, and as a result violated Article VIII. Elections and Terms of Office §1 Clause b. by failing to conduct the presidential election in accordance with the provisions of the By-Laws and Statutes of the DSG.

The Judiciary recommends DSG clarify in its By-Laws who is responsible for carrying out specific tasks, and create a working group to investigate the efficacy and legality of the email software system used by UCAE.

It is so ordered.