

SPRING TERM, 2015

# JUDICIAL COURT OF THE TEXAS A&M STUDENT GOVERNMENT ASSOCIATION

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Case Number 67-03

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MICHAEL MURTHA *v.* ELECTION COMMISSIONER EMMA DOUGLAS AND  
STUDENT BODY PRESIDENT-ELECT JOSEPH BENIGNO

## SYLLABUS

Appellants filed alleging that Election Commissioner Emma Douglas erred in not appropriately penalizing SBP Candidate Joseph Benigno for campaigning off-campus and for violating several traffic laws. The Court addressed four issues relating to the appeal and held as follows:

- I. On the issue of whether off-campus campaigning occurred, five justices sided with Murtha (C.J. Cooper, JJ. James, Halbert, J. Smith, and Hadjis); four sided with Benigno and Douglas (JJ. S. Smith, Bonsu, Maredia, and Mueller).
- II. On the issue of whether the Election Commissioner violated the equal protection clause of the SGA Constitution, eight justices sided with Benigno and Douglas (C.J. Cooper, JJ. James, Halbert, S. Smith, J. Smith, Bonsu, Maredia, and Mueller); one justice sided with Murtha (J. Hadjis).
- III. On the issue of whether Joseph Benigno violated the Election Regulations' prohibition against offenses against local, state, and federal law, six justices sided with Benigno and Douglas (JJ. S. Smith, Bonsu, Maredia, Miller, James, and Hadjis); three justices sided with Murtha (C. J. Cooper, JJ. J. Smith and Halbert).
- IV. On the issue of whether the Court should grant relief to the appellants and whether to affirm or reverse the Election Commissioner's decisions, five justices sided with Benigno and Douglas (JJ. S. Smith, Mueller, Maredia, Bonsu, and James), ruling for the Court that no judicial action will be taken against Douglas; four justices sided with Murtha, contending that some kind of relief needed to be granted (C.J. Cooper, JJ. Hadjis, J. Smith, and Halbert).

JUSTICE S. SMITH delivered the plurality opinion of the Court, in which JJ. Mueller, Maredia, and Bonsu join.

## I

This case poses several issues for the Court’s consideration. First, we must address whether or not Student Body President Elect Joseph Benigno violated the Election Regulations in terms of off-campus campaigning. The Appellant contends that Mr. Benigno participated in off-campus campaigning while filming a campaign video. Several pieces of evidence were presented to the Court attempting to demonstrate this. The evidence presented was from a video entitled, “Go Pro with Joe”. We hold that the video in question can be defined as a “campaign material”. Therefore, we believe that the actions carried out during the video were for the sole purpose of creating campaign material, rather than the act of campaigning itself. The Election Regulations defines “campaign materials” in Article II, Section C, Subsection (i):

“Campaign materials are defined as anything distributed or displayed for the purpose of soliciting votes for a candidate.”

We contend that the act of waving the flag in the context of the video was not itself an act of campaigning, as the act itself was not done to solicit votes. While the flag bore the campaign slogan of the Appellee, the Appellee was not seeking to directly solicit votes at the time of the action (i.e. the riding of the moped and waving of the flag). The Election Regulations do not specify that campaign materials cannot be created off-campus. We hold that all actions contained within the video were being engaged in as part of creating a campaign material, and thus we believe that no off-campus campaigning occurred.

The Appellee also contends that the Election Commissioner erred in not fining the Student Body President Elect for his actions contained within the video. The Election Commissioner maintains that she reviewed the video and fined Mr. Benigno appropriately for violations contained within. The Election Commissioner is responsible for determining what constitutes campaigning, which is demonstrated by the Election Regulations, Article III, Section B, Subsection (i):

“The Election Commissioner is the judge of what constitutes campaigning”

We hold that the Election Commissioner should be the judge of what constitutes campaigning and what does not. A plain interpretation of this line of the text leaves no other alternative. If the Election Commissioner reviewed the footage accordingly, and determined that no off-campus campaigning occurred, then in our eyes, no off-campus campaigning occurred. The fact that Mr. Benigno was fined for other elements of the video shows that the Election Commissioner reviewed the footage accordingly.

Counsel for the Appellant was unable to prove that the Election Commissioner was biased towards Mr. Benigno or had any reason to levy fines towards him in an unequal fashion. We concede that the Judicial Court has the authority to review the decisions of the Election Commissioner when hearing Judicial Court Appeals, however we still hold that the Election Commissioner acted within her authority, regardless of whether we thought off-campus campaigning occurred or not. The Election Regulations give the Election Commissioner the power to determine appropriate sanctions and fines in Article IV, Section C, Subsection (i):

“...final sanction amounts and degrees are at the discretion of the Election Commissioner”

If the Election Commissioner has discretion in determining both what does and does not constitute campaigning and the appropriate sanctions for such behavior, we have no reason to believe that the Election Commissioner violated the Election Regulations.

## II

In their next line of argumentation, Counsel for the Appellant argued for equal protection under the Election Regulations. In his argument, he cited Student Body President Candidate Isaiah Tsau, who was fined for campaigning in off-limits areas. Mr. Tsau’s violation was for campaigning in the Memorial Student Center. The Election Regulations, Article III, Section B, Subsection (vii) specifies off-limits areas as follows:

“Areas inside the Memorial Student Center, Rudder Complex, classrooms, the Rec Center including Time Out Deli, and the John J. Koldus building are off limits to campaigning during the campaigning period... Any candidate found actively campaigning in the aforementioned areas shall be assessed a major violation.”

The Memorial Student Center is specifically listed as an off-limits area for campaigning. The Election Commissioner levies fines based on severity and intent. The Election Commissioner judged that by campaigning in the MSC with a banner that encouraged students to vote, the intent was to directly solicit votes. Campaigning in the MSC is also explicitly stated in the Election Regulations as a major violation.

The Appellant argues that Mr. Benigno should be fined in a manner consistent with the punishment carried out against Mr. Tsau. We believe that the situations are fundamentally different. The offenses that Mr. Benigno is being accused of were committed in a different area (i.e. off-campus). The Election Regulations states only this about off campus campaigning in Article III, Section B, Subsection (iii):

“Off-campus campaigning shall be prohibited. No campaign materials shall be distributed, posted, or held off campus.”

The Elections Regulations do not include a mandated sanction for off-campus campaigning. The Election Commissioner is allowed to judge the severity and intent of violations. Even if the Court were to rule that a violation occurred, the Election Commissioner’s actions are still covered by her discretion. We hold that the Election Commissioner has discretion in deciding whether to fine or not fine candidates as she sees fit. The Election Regulations grant her this discretion over the rules. Because of this, we affirm the decision of the Election Commissioner and we believe that she acted within the discretion provided by her position.

### III

The Appellant also argues that in the “Go Pro with Joe” video, Mr. Benigno committed several violations against state and local law regarding traffic safety and parking. We hold that it is not the role of the Court to assess violations against state and local laws that were not first assessed by the proper authorities. The Election Regulations define major violations as follows in Article IV, Section C, Subsection (i), Sub-Subsection (i.a):

“Major Offenses: Major violations include, but are not limited to: offenses against local, state, or federal law to any degree...”

We believe that the word offense in this statement is referring to a crime. We assert that it is not the role of the Court to decide whether or not a crime occurred. If a crime did occur and Mr. Benigno was given due process by the proper authorities, then it would be appropriate for the Court to reprimand Ms. Douglas for not issuing him a fine.

Mr. Benigno was not indicted or convicted of an offense against any law. The Judicial Court is not the police department, nor do we have the authority to interpret State law. Our job is to determine whether a violation was committed against the rules contained in the Student Government Association Constitution, Code, or Election Regulations. While the Election Regulations do state that any offense committed against federal, state, or local law is a major violation, Mr. Benigno has not been proven guilty of any offense in a court of law, and in our eyes, he is innocent until proven guilty. The Judicial Court cannot offer true due process of law, and thus we simply cannot determine whether Mr. Benigno has committed an offense against the law.

#### IV

The heart of the issue in this case is not the actions of Mr. Benigno, but rather the inactions of Ms. Douglas. While we contend that off-campus campaigning did not occur, even if we believed it did, the Election Commissioner and her commission have discretion over which candidates are fined and how much they are fined. Because his actions were part of creating a campaign material, and the intent of such actions was not to directly solicit votes, we do not believe that Mr. Benigno engaged in off-campus campaigning. We also maintain that it is not the role of the Court to enforce federal, state, and local laws without proper due process. Therefore, we AFFIRM the arguments of Student Body President Elect Joseph Benigno.

The Election Commissioner worked well within the confines of her position and assessed proper penalties in accordance with her interpretation of the Election Regulations. Because the Election Regulations allot her discretion in her execution of the rules, we AFFIRM the decision of the Election Commissioner.

JUSTICE JAMES concurred in part and dissented in part:

The court addressed four issues when reviewing Case 67-03 that seemingly create dissonance in the text but are ultimately reconciled by Commissioner Douglas's interpretation of the Election Regulations: the question as to whether or not defendant Joseph Benigno committed a violation in creating the campaign video, whether or not an offense against state law occurred, if the SGA Constitution's "equal protection of the statutes" was undermined in determining fines, and whether or not Douglas erred in applying her discretion.

In regards to the first question, Benigno clearly committed violations of the Election Regulations. Douglas used the video's segment of students holding a banner to assess Benigno's violation of the provision limiting campaigning for any candidate to four individuals in one place at a time. However, Douglas defined the use of the sign wielded while riding the motorcycle as material used solely for the creation of the video, not off-campus campaigning. Article II, Section c, Subsection i of the Election Regulations defines campaign materials as "anything distributed or displayed for the purpose of soliciting votes for a candidate." Furthermore, Article III, Section b, Subsection iii states, "Off-campus campaigning shall be prohibited. No campaign materials shall be distributed, posted, or held off campus." Like the featured banner, Benigno and his campaign team used the sign "held off campus" with the intention of soliciting votes in their promotional video.

The second issue addressed by the court brings into question the definition of "offense" in the context of the Election Regulations and whether or not, because of due process, it is within our jurisdiction to recognize a violation of state law if conviction has not taken place. The fact Benigno did not incur punishment from the law does not compel the court to presume his innocence. Article IV, Section c, Subsection i of the Election Regulations specifies that "offenses against local, state, and federal law to any degree" are major offenses without stipulating that an indictment must take place for the Election Commissioner to recognize such offenses. While punishing traffic violations may create precedent for unbounded actions by the Election Commissioner, the photographic and video evidence submitted to the court clearly depict the offenses to state law.

In interpreting Section IV, Subsection a of the Student Government Association Constitution, the court must identify whether or not Douglas's assessment denied equal protection to the candidates and whether or not her discretion is deemed unconstitutional if "arbitrary and capricious". The Election Regulations grant candidates protection by outlining prohibited activity and its consequences but also inform candidates that the "regulations are subject to interpretation only by the Election Commissioner" (Article I, Section b). In applying a tier to a violation, the Election Regulations define the tiers as a "guideline" and allow Douglas to determine "the final sanction amounts and degrees" of each violation. The plaintiff's counsel argued Douglas must assign Benigno the same fines incurred by SBP candidate Isaiah Tsau for campaign violations, but the defendants' counsel referred to Article IV, Section c, Subsection i of the Election

Regulations dividing tiers “according to severity, intent and impact on the campaigning process.” Douglas used her authority as Election Commissioner to assign fines based on the context of the violations and handled each differently, as they are situational. One may argue this power extends only to bridging tiers, but the text allows her interpretation as to what constitutes “campaigning” and an “offense”. As Douglas asserts off-campus campaigning did not take place and the candidate did not commit an offense against state law, she is not required to impose fines on Benigno.

CHIEF JUSTICE COOPER dissented in part and concurred in part:

The fundamental difference between the plurality and myself is that, where the plurality sees the Election Commissioner's discretion as almost completely unbound and wide-sweeping, I see it as broad and decisive but only within certain parameters. The Election Regulations do grant the Commissioner a great degree of flexibility in prosecuting, adjudicating, and responding to many components of the election process. But the Election Commissioner is also bound by the various provisions which the Senate has passed in the Election Regulations. Where the plurality sees the Election Commissioner's discretion allowing her movement throughout the entire globe, the text seems to impose a view that casts that discretion as unchecked movement within a fenced-in backyard or garden. Within the parameters of discretion given to the Election Commissioner in the Election Regulations, the Commissioner's word is final. The Commissioner cannot, however, use her discretion to infringe upon clearly stated rules in the Election Regulations. It is the Court's job, furthermore, to review the Commissioner's discretion on the basis of the other freestanding provisions of the Regulations.

This view stems from my belief that, in the absence of a successful Constitutional challenge, the Court ought to give the greatest possible effect to all provisions of the text. *O'Rourke v. Douglas*, 67-01; *Lanier v. Lanz and Douglas*, 67-02, *C.J. Cooper, Concurring*. If the public meaning of the Election Regulations had been to give the Commissioner the amount of discretion the plurality thinks it grants her, the Senate would certainly be able to express so. I trust that the Senate would have no difficulty (and they would save a lot of time) if the Election Regulations were a sentence long that said, "the Election Commissioner shall make all decisions related to the election process as that process goes along." That, however, is not what has been duly passed through the democratic process. Instead, we are faced with a 24-page document that, while granting the Commissioner wide discretion in a large number of areas, has clearly defined rules for a large number of particular situations. Where the plurality errs is in its underlying idea that the Senate has wasted its breath in delineating these specific provisions beyond the Commissioner's discretion that stand alongside other provisions that do grant the Commissioner a great deal of judgment.

## I

The first such instance of this error is in determining whether the Election Commissioner erred in failing to penalize the Joseph Benigno campaign for campaigning off-campus. The Election Regulations state in Article III, Section B, Subsection iii that:

"Off-campus campaigning shall be prohibited. No campaign materials shall be distributed, posted, or held off campus."

“Campaign materials,” are defined in the election regulations in Article II, Section C as “anything distributed or displayed for the purpose of soliciting votes for a candidate” (a different definition is given in Article V, but that definition seems to relate only to expensing campaign materials, which is not the issue in this case). I find it hard to find an interpretive method under which a flag that bears a widely recognized campaign slogan is not a thing which is displayed for the purpose of soliciting votes. Since this campaign material is being posted in an off-campus location, as is well-documented by the evidence submitted to the Court and is not contested by the appellees, this is clearly within the definition of off-campus campaigning imposed by the text and therefore outside of the realm of the Commissioner’s discretion.

I furthermore disagree with the “ham sandwich” argument put forth by the appellees. This argument claims that the only things which can be defined as “soliciting votes” are those which are *directly* soliciting votes. To claim otherwise, the argument contends, would force us to view a candidate eating a ham sandwich as campaigning since the sandwich is used to nourish the candidate who then goes out and solicits votes. The appellee claims that the flag was not used for soliciting votes. It was used to make a video which was in turn used to solicit votes. But the extension of this logic to ham sandwiches, and the argument which the appellees try to make with it, is unwarranted. The Court certainly does not need to draw a bright line between ham sandwiches and campaign flags. These categorizations may be better made on a case-by-case basis. But there is no question that, regardless of where that line would be drawn, the campaign flag would be on a side opposite the ham sandwich. The two differ in at least one key respect. Ham sandwiches are eaten for a vast number of reasons other than soliciting votes. The flag, however, was placed on the moped for the ultimate goal—and the sole ultimate goal—of soliciting votes.

The plurality also errs in appealing to the Election Commissioner’s discretion in Article III, Section B, Subsection I, which states that “The Election Commissioner is the judge of what constitutes campaigning.” But this must be construed in order to allow for harmony with the other clearly stated rules in the Election Regulations. In other words, the Election Commissioner is allowed to define campaigning however she wishes so long as it does not contradict the clearly defined rule that “off-campus campaigning shall be prohibited. No campaign materials shall be distributed, posted, or held off campus.” The plurality opinion has essentially judged this latter provision to be Senate’s wasting of its breath. If the text was supposed to mean unbridled discretion in defining campaigning, this specific provision would not be in place.

## II

I agree with the plurality’s contention that there is no Constitutional equal protection issue at stake in this case. Equal protection must be given to circumstances which are similarly situated. The actions taken by Isaiah Tsau—

campaigning on-campus in the MSC, where many students travel in and out of every day—differ substantially from the circumstances of Benigno’s non-penalty in his off-campus campaigning. The impact on the campaigning process is far larger in the former than the latter and so the Election Commissioner is certainly within her rights in treating these two vastly different situations differently.

### III

I disagree with the plurality’s reasoning that the Election Commissioner did not err in failing to penalize the Joseph Benigno campaign for violating state traffic laws. The argument relies on the idea that the candidate must actually have charges pressed against him if the Court is able to determine whether an offense occurred. There is nothing, however, in the SGA Code which requires such an element to the situation. If this element was required, the Senate would have expressed it in the text. Furthermore, this cannot be the meaning to the provision since an indictment would require a time period far beyond the time of the campaigning. The entire campaign process lasts fewer than two weeks. For a trial to be carried out and an indictment to be rendered, it would take far longer than that. The Court should adopt a presumption against ineffectiveness. “*Reading Law*”, by *Scalia and Garner*. If we are seeking to find the public meaning of this provision, it cannot be a meaning which would apply in absolutely zero cases. The plurality has essentially done away with this provision without a successful Constitutional challenge. For a branch charged with applying and interpreting the SGA Code, this hardly seems good practice.

The Judicial Court of Student Government is certainly not a court that has jurisdiction over determining whether someone is guilty of a crime. But it is a Court which has the responsibility of applying the rules given to it by the legislative and executive branches. The only interpretation which keeps this provision from being discarded wrongfully in the absence of a Constitutional challenge is that, for better or worse, the Student Senate has imported all the rules of local, state, and federal law into the Election Regulations. In that importation, they cease to become laws and start to become rules. The Court, then, does not determine *guilt of laws*, but *violations of rules*. The Court must treat these violations like the violation of any other rule, weighing the evidence submitted by either party and holding it against the rule in the Student Government code.

### IV

The Court should issue a writ of mandamus commanding the Election Commissioner to levy a penalty in response to these violations. The Election Commissioner does have a large amount of discretion granted to her in determining which penalties to impose. Article IV, Section C of the Election Regulations grants the Election Commissioner discretion in determining whether a rule violation is a major or minor offense and in determining how much to fine the candidate. The

Election Commissioner would not be unwise in determining that it is rather frivolous and silly to effectively disqualify a candidate because he did not wear a helmet since this violation is not at all severe, was not done with malicious intent, and probably did not have a huge impact on the campaign process, which are all factors which the Election Regulations allow to play into the Commissioner's discretion.

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Brenton Cooper, Chief Justice

JUSTICE HADJIS dissented in part and concurred in part:

The case before us requires us to grapple with issues that cut at the core of our schema of ordered liberty as a student body. The right to free and fair elections is central to the democratic process and our Constitution and Regulations have implemented checks and controls to ensure that the candidates conform to these regulations so that the voice of the students may truly be heard. These protections, along with all our cherished rights, are but a paper shield. Their utility as a shield against tyranny and abuse is shredded if not upheld by proper application of the law. I fear that the plurality of this court has permitted the tear to appear on the fringes of this shield today and it is for this reason that I am obliged in good conscience to dissent to the lack of relief granted by this Court.

The first consideration that this court must decide is whether SBP-elect Joseph Beningo committed major violations pursuant to the election regulations. In this matter I concur in judgment with the plurality. While Petitioner has submitted persuasive evidence substantiating the claim that the Beningo campaign violated several sections of the Texas State Traffic Code pursuant to the filming of a campaign video, this Court is not the forum within which to determine criminal guilt. Counsel for Petitioner contends that Article XXI, Section III, Subsection a(1) serves to incorporate the local, state and federal codes into the election regulation process. If this is to be the case, however, the codes must be incorporated in their entirety, including all the guarantees for defendant rights contained therein. This Court cannot practically accommodate the extensive criminal and civil procedural rights with which we are blest in this nation. A more accurate reading of the section would determine that a Major Violation has occurred if a candidate is indicted for a violation of the local, state, or federal law. The indictment process requires the establishment of probable cause, a level of certainty that is certainly reasonable to merit the simple administrative punishments levied under the regulations. The regulation as written clearly intends for fines to be levied as a consequence to a violation of established law. While this Court lacks the practical capacity to adequately adjudicate claims of criminal transgression, an indictment provides an inextricable link between the charged party and the offense that satisfies the requirement under the regulation for a violation of state, local, or federal law. As no indictment has been made pertaining to the traffic violations, no punishment should render.

The second issue pertains to the allegations of off-campus campaigning. Here I concur with the plurality in decision but dissent in the relief granted. That the actions recorded in the video constitutes as off-campus campaigning is clear and undeniable. Article XIX, Section III, Subsection a, defines campaign materials as “anything distributed or displayed for the purpose of soliciting votes for a candidate.” The photographic evidence demonstrates that Respondent and members of his campaign rode on a moped off campus while carrying a flag bearing the words “Go with Joe.” There can be no other purpose of the flag than to solicit votes as a campaign flag lacks any utility outside of the campaigning process. Counsel for

Respondent attempted to assert in oral arguments that to define the waving of the flag as a form of campaigning would serve to extend the definition of campaigning to a point of inoperability. The doomsday predictions Respondent prophesized are ultimately unfounded. There is a clear and distinguishable difference between wearing a shirt that bears a slogan urging students to vote for a candidate and waving a flag with a similar message. The shirt does not cease to be useful as a shirt at the conclusion of the campaign. It will presumably maintain many of the shirt-like qualities that make it an acceptable article of clothing within a western society. A flag encouraging students to vote for a specific candidate, however, lacks a similar lasting utility. Its sole function is to solicit votes in some manner. Its practical utility ceases at the conclusion of the elections and is thus a campaign material.

That the preparation of the campaign video failed to create an impregnable bubble around the actions contained within the video is demonstrated through a simple review of the facts and evidence presented before the court. Counsel for Respondent asserted that the waving of the flag was not campaigning as it was not performed to solicit votes but rather to prepare a video. This faulty distinction failed to shield the campaign from fines and thus should provide no greater defense from the court. The record is clear that fines *were* levied for campaign violations contained within the video, primarily the section of the video where more than four people were standing in the vicinity of a banner. The Election Commissioner attempts to assert that the matters are unrelated and levied her punishments based upon intent. This analysis of intent is inherently faulty. The SBP-elect's intent in waving the flag was presumably identical to his intent in dancing around the banner. He was preparing a video for the purpose of soliciting votes. If having an excess of supporters standing near a banner was not protected by the simple assertion that it was "merely for the purpose of filming a video" no other form of campaign violation should be either. One cannot have their cake and eat it too. If having more than four people standing near a banner can constitute as a campaigning violation then it is clear that aspects of the video can be defined as campaigning. As discussed earlier, the sole utility of the flag is to solicit votes. As such, driving around whilst waving the flag off campus is a form of campaigning and a fine should have been levied accordingly.

A plurality of this Court agrees that off campus campaigning occurred and that the Election Commissioner failed to punish this violation. The plurality inexplicably contends, however, that this Court is incapable of granting relief. The plurality reads Article XV Section II of the Election Regulations so broadly as to elevate the Election Commissioner to the position of a tyrannical Leviathan whose word is final, absolute, and unreviewable. The plurality contends that while this Court may issue an opinion airing our disagreement with the Leviathan, as they do in the case before us, they are powerless to compel the Leviathan to remedy its wrong. The plurality believes that as the definition of what a violation is and the determination of what the punishment for a violation shall be lies solely in the discretion of the Commissioner, the Court lacks the power to compel the

Commissioner to levy a punishment for a violation. I believe that this is a dangerous precedent that lacks any form of basis in either the text of the regulations, the rights guaranteed of all students in the Constitution, or the simple application of common sense.

Article IV Section I of the SGA Constitution clearly reads:

“The powers of the Judicial court shall extend to any case between any student and any member of the Student Government Association in regards to: any statute; any rule or procedure enacted pursuant to this Constitution or any rule or procedure enacted pursuant to any statute; *or any action or inaction authorized by the same*” (italics added for emphasis)

This clearly establishes this Court’s power to hear and adjudicate any case where the Election Commissioner, a member of Student Government Association, has failed (through inaction) in the proper application of her authority. This power is further strengthened in Article XV Section II of the Election Regulations which states:

“These regulations are subject to interpretation only by the Election Commissioner and are *subject to review only by the Student Government Judicial Court. No other member of the Student Government Association or the Election Commission is authorized to interpret the Election Regulations.*” (italics added for emphasis)

The Constitution and Election Regulations are clear and undeniable. The Court has the power to review the decisions and actions of the Election Commissioner. Should the Election Commissioner fail in the proper exercise of her duties, this Court has not only the power to rule to that effect but to issue a *writ of mandamus* ordering the Commissioner to right her wrong. Any contention to the contrary not only violates the text of both the Constitution and Regulations as written; it endows the Election Commissioner with near tyrannical power over the results of the elections and the disposition of fines for violations.

The plurality asserts that this Court is unable to issue a *writ of mandamus* compelling the Election Commissioner to levy a fine for off-campus campaigning as the decision to issue a fine is at the discretion of the Commissioner. This bizarre assertion contradicts the precedent of this Court. In *Lanier v Douglas and Lanz* 67-02 (2015), this Court held that the Election Commission failed to tally the votes in an election in accordance with the Election Regulations. As a result, this Court issued a *writ* compelling the Commission to recount the votes pursuant to the election regulations. In a similar manner, this Court holds the power to issue a *writ* compelling the Commissioner to levy a fine pursuant to the election regulations if it determines that the Commissioner failed to do so.

Article X Section IV of the SGA Constitution states:

“The liberty, rights, and privileges of any student shall not be deprived except by fair process of law. Each student shall have equal protection of the statutes, but each equal protection of groupings of students shall only be deemed unconstitutional if arbitrary and capricious.”

This clearly establishes that in any dealing with any agent of Student Government, the students of this University should expect fair and consistent treatment. Conversely, students who are charged with violating similar provisions should expect similar punishments. It is undeniable that the fine amounts levied by the Election Commission are ultimately within the discretion of the Election Commissioner. This in no way, however, liberates the Election Commissioner from the Constitutional obligation to treat students fairly, affording them equal protection under the regulations. While a Commissioner may use his or her discretion to levy a higher fine for one violation than another, this discretion must be rooted in some basic form of logic. The Commissioner is not free to punish or refrain from punishing in a capricious or wanton manner. As such, I believe it is well within the power of this Court to not only compel the Election Commissioner through a *writ of mandamus* to levy a fine for an unpunished violation but to compel the Commissioner to ensure that the levied fine is not inconsistent with those previously levied for similar offenses.

Counsel for Petitioner drew the Courts attention to the fines levied against Mr. Tsau for Major Violations to the Election Regulations. While it is certainly the case that the violation committed by Mr. Tsau’s campaign is not identical to the violations committed in the present case, they are undeniably similar. The Election regulations define both offenses as Major Offenses and the principle of *noscitur sociis* should compel this Court to determine that, as the violations are grouped together in the Regulations and as the sanctions afforded to the violations are identical under the Regulations, the fines associated with the violations should also be similar. The exact amount of the fine shall always be at the discretion of the Election Commissioner, however, a plain reading of the text of the Regulations clearly suggests that the fines, while potentially different, must not be inconsistent with each other. To hold otherwise would be to permit the very “arbitrary and capricious” application of statutes that the Constitution supposedly protects students against. I strongly believe that this Court should issue a *writ* compelling the Commissioner to levy a fine for the off-campus campaigning and that the *writ* should stipulate that the amount of the fine shall not be indefensibly inconsistent with the amount levied for other Major Offenses.

The proper application of the law provides a levy that strains constantly to hold back the rising tide of the tyrannical bureaucracy. I fear that the decision of the Court today has caused a small leak to spring in the structure. As such I must dissent to the lack of relief granted, lest the dam break and our Constitutional rights find themselves swept away by the rushing flood.

JUSTICE J. SMITH submitted his own opinion, concurring in part and dissenting in part, in which J. Halbert joins:

We disagree with the ruling of the plurality of the court in three main parts: Off-campus campaigning, the offenses against the state of Texas, and the discretion of the election commissioner. We agree with the plurality on the issue of equal protection.

## I

The first part addressed of disagreement is off-campus campaigning. Article XX, Section II, subsection (c) of the text states:

“Off-campus campaigning shall be prohibited. No campaign material shall be distributed, posted, or held off campus.”

There is no disputing the fact that within the “Go-Pro with Joe” video the defendant has a campaigner riding on the back of his moped waving a flag marked “Go With Joe” off-campus. The defendants brought up the point of the flag being used for the campaign video so it should be considered campaign material, not off-campus campaigning. We find this to be false, if this were to be true than the election commissioner would not have levied a fine against the Benigno’s campaign from material in that video. The election commissioner fined the campaign 20 dollars for having more than four people at a campaign location, citing the text, Article XX, Section II, subsection (m):

“Only four (4) people working for one candidate or any mutually supportive group of candidates may campaign in one place at a time. This does not include the candidate or group of candidates themselves.”

If the election commissioner would have remained consistent throughout her time while evaluating the video she would have sought two options: levy the fines throughout the whole video, or not levy any fines at all. If in the majority, Smith and Halbert would have pursued for a Writ of Mandamus requiring the election commissioner to impose a fine for off-campus campaigning at her distinction as it states in the text.

## II

We agree with the plurality in one part: the question of unequal protection. The question of unequal protection was brought up by the appellants who cite the Constitution, Article X, Section IV, subsection (a):

“The liberty, rights, and privileges of any student shall not be deprived except by fair process of law. Each student shall have equal protection of the statutes, but such equal protection of groupings of students shall only be deemed unconstitutional if arbitrary and capricious.”

While the appellants felt it necessary to compare the campaign violations assessed by the election commissioner to Mr. Tsua’s campaign and Mr. Benigno’s campaign, they are two different scenarios, as described in the text of the election regulations. We would refer back to the plurality of the court to address this question.

### III

A clear reading of the text is why we disagree with the ruling of the plurality of the court in deciding the offenses the defendant committed against the state of Texas. The text of the election regulations states in Article XXI, Section III, subsection (a), (1):

“Major offenses: Major violations include, but are not limited to offenses against local, state, or federal law to any degree; sabotage of opposing campaigns; voting fraud, falsified documents (including finance reports); withheld finance reports and ethics/Honor Code violations.”

The defendant beyond a shadow of a doubt committed an offenses against the state of Texas by not wearing a helmet, running a stop sign, driving the moped on a sidewalk, and having more than two people on the moped. The defendants brought up the argument that he was not indicted by the state of Texas; therefore he should not be charged for crimes he has not been convicted for. While this would be true if the election commission was assessing fines for the states of Texas, they are not. They are assessing fines that are committed “offenses against local, state, or federal law to any degree,” which in this video shows him committing all of these actions. The action of the court should follow that of the first dispute with the majority; a Writ of Mandamus should be issued to compel the election commissioner to issue fines against Benigno, in any amount she deems fit. Since we are found not in the majority such writ cannot be issued, therefore another reason for our dissent.

### IV

The final disagreement we have with the plurality of the court is the discretion of the election commissioner. The Justices upholding the election commissioner and her full discretion leave no room for boundaries on which she is to operate. They derive this interpretation from a part of the text of the election regulations, Article XXI, Section I, subsection (a):

“Failure to comply with the aforementioned and subsequent regulations may result in a violation as determined by the Election Commission.”

In addition to Article XXI, Section III, subsection (a):

“...The amount a certain tier suggests for a violation is only a guideline, and final sanction amounts and degrees are at the discretion of the Commissioner.”

If our colleagues would look deeper into the text of the election regulations they would have found Article XXIII, Section IV, subsection (f), (i):

“In any appeal concerning election fines, disqualification, or the improper application of these Regulations, the defendant shall be the Election Commissioner...”

This gives the court the ability to oversee the actions taken by the election commissioner and their wrongdoings. This is further supported by the SGA Constitution which trumps a statute such as the election regulations. In Article IV, Section I, subsection (a) the text states:

”The powers of the Judicial court shall extend to any case between any student and any member of the Student Government Association in regards to: this Constitution, any statute; any rule or procedure enacted pursuant to this Constitution or any rule or procedure pursuant to any statute; or any action or inaction authorized by the same.”

A simple reading of this constitutional text gives the court the ability to oversee any inaction of a member of the Student Government Association, i.e. the election commissioner not issuing fines for off-campus campaigning and committing an offense of state law; and any statute, i.e. the election regulations. If we would have been in the majority/plurality we would have pursued a Writ of Mandamus requiring the election commissioner to uphold her duties by issuing fines for those two violations in the amount that she deems fit.