

CHIEF JUSTICE JAMES and JUSTICE KHANNA dissented:

The actions taken by the majority in this decision are a subversion of justice. This is a direct attack upon the powers granted to the Election Commission by the Legislature of the Student Government Association and undermines the very essence of accountability that is the backbone of a real democracy. In doing so, the majority has dealt a fatal blow to the ability of the Election Commission and the Judicial Court to hold everyone to standards firmly enshrined in the Code.

The Election Regulations state in Article VI, section I, subsection (a) states that candidates may incur violations “as determined by the Election Commissioner” . Furthermore, major violations are assessed by the Commission after they “take into account all evidence, and vote” on whether or not disqualification is warranted according to Article VI, section IV, subsection (a). The question before the Court was not the merit of the evidence, as the pre-trial hearing alleviated concerns regarding its validity; the question is whether or not the Commission acted within its purview in imposing a disqualification by going through the process afforded by the Code. The Court recognizes the ambiguity presented in this hearing, but that very uncertainty is the job of a reviewing body such as the Election Commission to discern. The Commission processes evidence and conducts voting in which the Commissioner only intervenes to serve as a tiebreaker. On each major violation, the Commission voted unanimously because the preponderance of the evidence indicated that voter influence took place in a systemic manner. The Court’s role in this matter is not to rescind the Commission’s decision because, this entity so far removed from what the Commission experienced in analyzing this information, disagrees with their evaluation. The Commission is a court of first instance, and to question their empiricism as opposed to issues of the Code related to process is an infringement of their authority.

Though the Court’s primary task is not as fact-finder, the dissenting justices feel the need to address the case’s smoking gun to emphasis the flagrant passiveness of the majority. Mr. Sutton, a witness during the pre-trial, expressed his qualms to Commissioner Keathley early during election week. As one who campaigned near the site of McIntosh’s team, Sutton contacted the Commission, shaken by the activity that he experienced. That activity included incidents from the aggressive pursuit of an unwilling student to the campaign team’s insistence that passerby vote on the spot. This is the equivalent of asking someone if they voted, following them to the polling place, and proceeding to walk into their private voting booth. From the myriad of reports to the Election Commission, the Court also viewed campaigners following and walking with students far past the campaign sites, another red flag in their pursuit to influence voting. The very assertion of voter influence is crucial in the discussion of ethics in this case. Though the majority believes that to subvert the free and fair nature of voting or commit coercion would have to involve something far more heinous, the dissenting justices assert that to request that a student votes, to peer over their shoulder, and to expound upon the candidate while the voter makes their

decision has a definite effect. If the majority does not constitute this activity as anathema to free and fair voting, the campaigners would have to do something as absurd as write a letter to the Commissioner, admit to unethical activity, and have the letter signed in front of a notary public before the Court considers the violations' claims.

The dissenting justices have good reason to believe that the campaign strategy pursued by Mr. McIntosh is historic and systemic. The plaintiff admitted to receiving advice from past Student Body Presidents, and the information conveyed to candidates at the Mandatory Candidates Meeting and the communication between this team and Commissioner Keathley indicate a willful disobedience of the Election Regulations. The plaintiff's team held an unpermitted campaign event, figuring that they could afford the fines and disregard the Commissioner's explicit instructions not to do so. This acknowledgement of the rules and blatant choice to carry forward with the illicit activity points to a disturbing pattern of behavior. The dissenting justices acknowledge the possibility that Mr. McIntosh's team, utilizing the methodology of past SBP candidates, was aware of their persuasive style and carried forward not expecting consequences. Based on the majority's decision, the lineage of this group will continue to act cavalier, knowing that their actions will have no consequences.

Another flaw of the majority is its failure to recognize the Election Commissioner's discretion in her interpretation of fraud. In the Election Regulations, Article VI, section III, subsection (a), sub-subsection (1) (i) a., "Voting fraud shall include but not be limited to" several actions along with "anything else deemed to be voting fraud by the Election Commissioner." The majority criticized Commissioner Keathley in communicating Mr. McIntosh's disqualification to him and invoking fraud as his major violation. However, the influence his campaign team wielded on voters was assessed by the Commission as fraud, a reasonable interpretation in the eyes of the dissenting justices.

What frightens the dissenting justices the most is the swift death blow delivered to the violation reporting process. What was previously covered by the Code as a means to call out public figures while maintaining individual protection from backlash in the form of incognito reporting is now washed away of all dependability. To expect any honorable Aggie to make the effort to bring violations to the attention of the appropriate authorities is foolish, since anonymous sources will simply never stand up in court based on the precedent set by the majority.

JUSTICE KHANNA further adds:

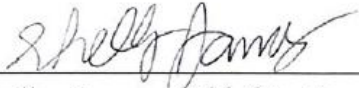
To quote Chief Justice John Roberts of the United States Supreme Court,  
"Just who do we think we are?"

*Spring Term 2017*

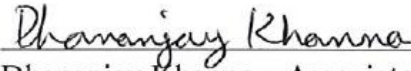
**JUDICIAL COURT OF TEXAS A&M**

No. | 69-01

*Signatures*



Shelby James – Chief Justice



Dhananjay Khanna – Associate Justice