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

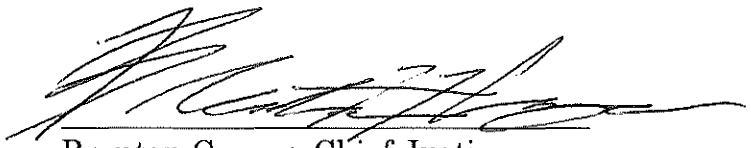
I disagree with the plurality's reasoning that the Election Commissioner did not err in failing to penalize the Joseph Benigno campaign for violating state traffic laws. The argument relies on the idea that the candidate must actually have charges pressed against him if the Court is able to determine 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.



Brenton Cooper, Chief Justice