

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 a 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.

*JH* *JH* 15

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Jacob Hadjis, Associate Justice