

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."

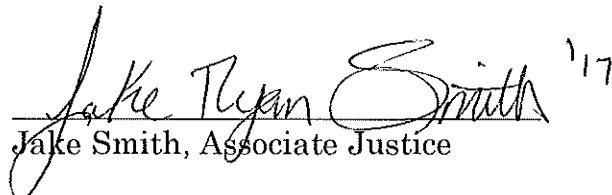
If our colleagues would look deeper into the text of the election regulations they would have found Article XXIII, Section IV, subsection (f), (i):

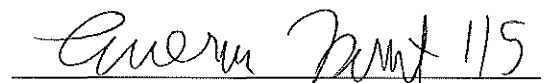
"In any appeal concerning election fines, disqualification, or the improper application of these Regulations, the defendant shall be the Election Commissioner..."

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.

  
Jake Smith, Associate Justice

  
Cameron Halbert, Associate Justice