



Student Judiciary

511 Memorial Union, 800 Langdon Street, Madison, WI 53706

phone: 608.265.4ASM ♦ fax: 608.265.5637

www.asm.wisc.edu/student_judiciary/index.html

Collegians for a Constructive Tomorrow (CFACT), Petitioner

v.

Barbara KIERNOZIAK, Kevin OTTEN, Drew DORSHORST, Emily MCWILLIAMS, in their official capacities as members and officers of: the Student Services Finance Committee and the Student Council, Respondents.

2004 ASM SJ 16

♦
Nathaniel Romano
Chief Justice

♦
Timothy Leonard
Chair, Student Elections
Commission

♦
Grant Collins
Vice-Chief Justice

♦
Nicholas Fox
Associate Justice

♦
Yin-Chin Wang
Associate Justice

CERTIFICATION OF APPEAL

Cite As: 2005 SJ Ord. 2

*Before Romano, CJ, Collins, VCJ, Fox, Leonard, Wang, S.JJ.
On Motion to Certify Questions for Appeal*

PER CURIAM. This case is a viewpoint neutrality appeal made by Petitioners alleging that Respondents collectively and illegally acted to have the Student Council remove nearly \$10,000 from their budget during a meeting on December 1, 2004. The original panel entered judgments of dismissal for Respondents Otten, Dorshorst, and McWilliams and a judgment against Respondent Kiernoziak, finding a non-malicious violation of viewpoint neutrality. The panel divided on the remedy, with the majority opting to leave the Council's decision unchanged. See, *CFACT v. Kiernoziak, et. al.*, 2004 ASM SJ 16.

The Student Judiciary certifies an appeal in the matter of *CFACT v. Kiernoziak et al.* to have the full court consider two questions. These questions are, we believe, pressing issues. One was not considered in the panel's opinion and that was not articulated in the hearing. The *Student Judiciary Rules of Procedure* state, "Any party materially affected by the outcome of a case may file an appeal within five (5) school days" (Rule 18(a)). The operative word in the Rule is "may," indicating that involved parties have the discretion to file appeals regarding disposed cases. Moreover, pursuant to *Amendola v. United Council & WisPIRG*, 1998 ASM SJ 3, the Judiciary has authority to certify an appeal without either party yet formally appealing that matter because there are substantial legal interests involved.

The first issue of appeal regards the membership status of Chair Kiernoziak in her relation to the Student Council. If Chair Kiernoziak is indeed a member of Student Council, then her comments made during the consideration of a grant allocation decision must be viewpoint neutral pursuant to the *Bylaws*. However, the issue currently at bar concerns Chair Kiernoziak's membership status: if Chair Kiernoziak is not part of Student Council (since she sits *ex officio* and cannot vote), can the Judiciary sanction her for comments made during a funding decision that may not be viewpoint neutral in nature. This is of vital importance to the government of ASM because the implications of this issue might expand beyond the scope of this case and more generally apply to other officers of ASM and their relationships to various committees, on which they may not sit as a member.

The second issue revolves around the fact that, in this case, *CFACT v. Kiernoziak et al.*, there is an unusual outcome where the three-justice Panel issued three separate opinions with regard to whether a budget decision by Student Council on December 1, 2004 shall be found void and null and accordingly be reversed to the Council for further consideration. In finding the validity of the above decision and remedy, Vice Chief Justice Collins delivered the opinion, joined by Chief

Justice Romano. Chief Justice Romano issued a concurring opinion, joined by Vice Chief Justice Collins. Justice Wang delivered the dissenting opinion. The majority upheld the validity. *Id.*

While the Panel unanimously found that Respondent Kiernoziak has violated the viewpoint neutrality requirement by providing incomplete, inaccurate material information to the Council, and by making impermissible comparison between student organizations, the diversity in the remedy issued draws the Judiciary's concerns and attention. This Court does believe in the need to readdress this issue on the appellate level in order to maintain judicial certainty and predictability. Further, it calls a question of whether ASM Bylaw §2.01(C)(II) was complied with when a possibly tainted decision is upheld.

The adoption of innocence presumption is a long-standing tradition in the administrative of criminal justice in American legal history. However a noble issue now before the Court is whether it is appropriate to draw such presumption in determining the intent of an overall, collective body.

Accordingly, for the reasons stated herein, the Student Judiciary, pursuant to Rule 18(c) of the *Student Judiciary Rules of Procedure*, certifies the following questions to the parties to be argued on appeal in the case at bar:

1. Did the Panel below err, in entering judgment against Respondent Finance Chair Barbara Kiernoziak and whether the Panel below should have dismissed on the grounds that, under a proper reading of Art. VII, §1 of the ASM Constitution, the Finance Chair should not be considered a "member" of the Student Council and thus not bound by the requirements of viewpoint neutrality?
2. Did the Panel below err in not reversing the judgment of the Student Council after finding Finance Chair Kiernoziak to have committed a non-malicious violation of viewpoint neutrality?

IT IS ORDERED that the above questions will be and are certified for appeal before the full Student Judiciary at its next regular business meeting. Each party shall be entitled to file such briefs as it sees fit and shall be entitled to a presentation of not more than thirty (30) minutes at the aforesaid appellate hearing.

By the Court, ***It Is So Ordered.***