IN THE STUDENT SUPREME COURT IN AND FOR THE FLORIDA STATE UNIVERSITY

STUDENT BAR ASSOCIATION, a Graduate Registered Student Organization,

Petitioner,

v.

Adam O'Neill, as Speaker, CONGRESS OF GRADUATE STUDENTS,

Respondent.
_____/

Moorhead, C.J. delivers the Opinion of the Court.

Published May 3, 2019.

SYLLABUS

This case comes before the Court on an appeal by the Student Bar Association ("SBA"), a graduate registered student organization, from a decision by the Congress of Graduate Studies ("COGS"), through its speaker, Adam O'Neill ("the Speaker"), to not approve a portion of minutes from a meeting of the Law School Council ("LSC"), where LSC allocated $1,875 to an organization labeled "FSU Law Softball".

This case initially revolved around the label used by LSC to denote the organization requesting the funds. "FSU Law Softball" appeared in the column on the minutes denoting the requesting organization. SBA asserted this was a clerical error, and that the SBA was the actual organization which requested funding, not "FSU Law Softball". The Speaker decided to not approve that portion of the minutes labeled "FSU Law Softball" stating, *inter alia*, "FSU Law Softball" is not a registered student organization, graduate or otherwise. Additionally, the Speaker determined that even if funds were to be allocated, the event which the organization would attend allowed for alcohol to be purchased with the funds provided by the Student Government Association ("SGA"). As further explanation of his reasoning, the Speaker sent an email detailing each statutory provision purporting to give him the authority to make his decision, and outlining statutory authority which he believed supported his decision. This case followed.

ISSUES

I. Is this appeal time-barred?
II. Does SBA have standing to appeal the decision of the Speaker?
III. Was the actual organization requesting the funding a non-registered student organization, graduate or otherwise?
IV. Does the event incorporate alcohol in such a manner which supports the Speaker's decision to deny funding?
V. Was there a "lack of appropriate travel," "lack of legitimate academic purpose," or other enumerated justification which would sufficiently support the Speaker's decision?

HOLDING

I. No, the appeal is not time-barred.
II. SBA has standing to challenge the decision of the Speaker.
III. SBA was the actual organization requesting funding.
IV. The event does not incorporate alcohol in a manner justifying the Speaker's decision.
V. The Speaker's justifications for denying funding are insufficient.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 6, 2019, Petitioner, the Student Bar Association ("SBA"), applied to the Law School Council ("LSC") for an allocation of funds for travel in the amount of $1,875.00. The funds were to be used to send a group of students to the "2019 UVA Law Softball Invitational" held in Charlottesville, Virginia by the University of Virginia. Initially, the forms supporting the submission contained what SBA has termed a "clerical error" listing "FSU Law Softball" as the requesting organization. Sometime prior to the meeting SBA became aware of the error and resubmitted the request with the requesting organization corrected, listed as "Student Bar Association." The correction was not, however, denoted on the minutes, but was at some point between February 6 and March 1, accurately reflected in Nole Central, the website all requests for funding must be made on. That same day, February 6, LSC voted in favor 3-1-1 (Yes-No-Abstain) of funding the organization. The minutes were then sent to Respondent, Adam O'Neill, as Speaker of the Congress of Graduate Students ('the Speaker"), for his approval.

On February 8, 2019, SBA received an email from LSC stating the minutes from the February 6 meeting, which allocated $1,875.00 to "FSU Law Softball" in travel had been approved. SBA Composite Evidentiary Exhibit 1, at 5. The email did not state by whom, only that the minutes were approved. SBA understood this to mean the Speaker had approved the minutes and that SBA would receive the funds as requested, despite the clerical error reappearing on the "approved minutes." *Id*.

Roughly two weeks past between the LSC's email with the "approved minutes" and when the Speaker reached out to LSC regarding clarification of the minutes. In a February 21 email to LSC, the Speaker asked for clarification regarding specific details of the event ranging from academic events, to the purchase of alcohol with Activity and Service Fee generated funding ("A&S Fees"). COGS Non-Admitted Exhibit F. LSC, by and though its co-chairperson Lauren Brooker responded on February 23 that the event was purported to be a networking opportunity, in addition to a softball tournament, and that Ms. Brooker was unsure about the use of A&S Fees funding alcohol. COGS Evidentiary Exhibit 1. Additionally, she informed the Speaker the result of the vote of LSC 3-1-1 (Yes-No-Abstain). *Id*. Based on this email COGS, through the Speaker, denied the funding request on February 26. COGS Non-Admitted Exhibit H. Additionally, the Speaker offered to meet with SBA so they could more fully understand why the request was denied. *Id*.

The Speaker's denial of the funding request, and his offer to meet, was forwarded to who can only be presumed to be SBA on the same day. COGS Non-Admitted Exhibit I (email dated Feb. 26, 2019 containing no information regarding the intended recipient). The following day February 27, Mitchell Custer emailed the Speaker requesting a clarification of the reasons for his denial, and requesting to meet with him regarding the funding request. *See* COGS Evidentiary Exhibit 3; *see also* COGS Evidentiary Exhibit 4.

It was not until after Mr. Custer sent the first his two initial emails that the Speaker actually had definite answers regarding the questions of alcohol use at the event, and academic events at the event. *Compare* SBA Evidentiary Exhibit 1, *with* COGS Non-Admitted Exhibit D. The Speaker received two separate emails on February 27, answering his email sent the same day. SBA

Evidentiary Exhibit 1. The Speaker had asked the events organizers, "[o]ne quick question regarding the drink specials you mentioned. How are those paid for?...[N]one of the money can go to alcohol related events. Will this stipulation be a problem?" *Id*. The organizers of the event responded nine minutes later "[n]one of your registration fee is going to alcohol." *Id*.

The Speaker received these emails and met with Mr. Custer regarding his decision to deny the funding request. The Speaker then was asked to compile a list of reasons which supported his denial on February 28. SBA Composite Evidentiary Exhibit 1, at 6. The Speaker informed Mr. Custer on March 1 that the "formal denial" document was being prepared as requested, and he then delivered it to Mr. Custer on March 4, at 9:19 a.m. *Id*., at 6-7.

This appeal was then filed on March 4, at 11:33 p.m.

ANALYIS

This Court reviews questions of law *de novo*, and questions of fact under the substantial evidence standard. Sup. Ct. R. P. 5(d).

The questions of law put before the Court in this case are questions regarding how the Speaker interpreted both the Student Body Statutes, and The Administrative Code of The Congress of Graduate Students ("COGS Code"). Issues involving statutory interpretation, require *de novo* review. *See Dockswell v. Bethesda memorial Hospital, Inc.*, 210 So. 3d 1201, 1206 (Fla. 2017). Similarly, "appellate courts apply a de novo standard of review when the construction of a procedural rule…is at issue." *Barco v. School Bd. Of Pinellas County*, 975 So. 2d 1116, 1121 (Fla. 2008) (citing *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006)).

Substantial evidence is only that which a reasonable mind would accept as adequate to support a given conclusion. *See Erickson v. Liestner*, 324 So. 2d 208, 209 (Fla. 3d DCA 1975). However, "the substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences." *Fla. Rate Conference v. Fla. R.R. and Pub. Util. Comm'n*, 108 So.2d 601, 607 (Fla. 1959).

I

The first question for resolution is whether or not the appeal is time barred. This Court's Rules of Procedure require that "a request for certiorari must be submitted to the Court within 24 hours" in order to appeal a lower body's decision. Sup. Ct. R. P. 5(a). COGS asserts the appeal was filed in an untimely manner, the Speaker having made his final decision on February 26, 2019, at 8:02 a.m. COGS Evidentiary Exhibit 2. SBA asserts the final decision was not made until the Speaker provided the justifications for his reasoning, which he did not submit to SBA until March 4, 2019 at 9:19 a.m. SBA Composite Evidentiary Exhibit 1, at 7.

While this is not a question of fact for review, in the traditional sense which employs a specific review standard, it is, nevertheless, a question for this Court's consideration, based on our rules. "As a rule statutes of limitation impose a strict time limit for filing legal actions." *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074 (Fla. 2001). This Court follows the same guidelines through its rules. The statute is subject to tolling in particular and highly limited circumstances. *See id*.

The question therefore becomes, had the statute of limitation run prior to the filing of the action? We hold it had not. We agree with the position of SBA that COGS' email to LSC and subsequently SBA did not suffice to trigger the limitations period. Rather, the period was triggered when the Speaker sent his enumerated reasons, citing the basis for his determination which could then be appealed. The difference in the arguments is subtle, since they are made based on dates alone, but the ramifications of the two are vastly different.

COGS' argument is not one without merit, and certainly strong. They are quite correct that the Speaker made a decision at a certain point in time. However, at the time he made his decision, he did not explain in a coherent manner the basis for his decision such that SBA could have grounds to appeal. In other words, SBA did not know what factual basis drove his decision, and this application of fact to law is where an appeal arises. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). More importantly, without this understanding of how the facts were applied to the law, "the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory." *Id*. More simply put, where there exists no record, there is nothing to review. Where there is nothing to review, there is no reasoning which could be said to be reversible. Where there is nothing which could be said to be reversible, the decision below must stand. The problem is, that creates a loophole which cannot stand. One could simply, autocratically, decide a matter based on their own beliefs, not give reasoning, and never have anyone be able to challenge their decision, since there is nothing, other than the words "yes" or "no" to challenge. Accordingly, any decision made would always stand undisturbed, since there must be a sufficient record upon which a review can be made. *See Stanton v. Stanton*, 787 So. 2d 45, 47 (Fla. 2d DCA 2001) ("the record must be sufficient to review the trial court's ultimate determination") (citing *Smith Barney Inc. v. Potter*, 725 So.2d 1223, 1225 (Fla. 4th DCA 1999)).

SBA's reasoning is more sound; it comports more generally with the modern conceptions of a "record" as used in the appellate context, since without a record, it is ordinarily impossible to conclusively establish an asserted error occurred or was harmful. *See Raza v. Deutsche Bank Nat. Trust Co.*, 100 So. 3d 121, 126 (Fla 2d DCA 2012). SBA sought out the Speaker's reasoning, akin to compiling a record for review, which is a burden they alone carry. *See Kobel v. Schlosser*, 601 So. 2d 601, 602 (Fla. 4th DCA 1992) (Mem). While *Kobel* makes plain it is the duty of the appellant to compile the record, it also states an extension of time must be granted by the Court where the record cannot be delivered to the Court in a timely manner, under the rule. Fla. R. App. P. 9.200(e). However, our rules contain no such provision. Sup. Ct. R. P. 5, *et seq*. We construe our rules in a similar but slightly different manner. We find that, given Florida's long-standing tradition of resolving claims on the merits, and the traditional lack of legal sophistication among the parties before our Court, a written record of some sort must be had before an appeal can be initiated. *See Regions Bank v. Buoncervello*, 220 So. 3d 1225, 1227 (Fla. 5th DCA 2017) ("Florida's long-standing policy [is] in favor of resolving civil disputes on the merits") (internal quotations within parenthetical are omitted).

This reading of our own rules comports with the general manner in which the Court

handles appeals taken from it, and brought to it. For example, this Court requires a written decision of the Elections Commission be had at the time an appeal is made, even if twenty-four (24) hours elapses before the close of the meeting and the filing of the appeal. This is because there is no written decision which can be appealed, even though one may be orally pronounced. Additionally, and typically, this Court notices that all parties have the right to appeal its decision(s) to the Vice President for Student Affairs for a final agency determination within three (3) days of when this Court's opinion publishes, even though judgment is typically given orally at the close of the hearing, and the opinion typically comes more than three (3) days after the oral pronouncement is given.

Alternatively, we find that the doctrine of equitable tolling applies.

> The doctrine of equitable tolling was developed to permit under certain circumstances the filing of a lawsuit that otherwise would be barred by a limitations period. The tolling doctrine is used in the interests of justice to accommodate both a defendant's right not to be called upon to defend a stale claim and a plaintiff's right to assert a meritorious claim when equitable circumstances have prevented a timely filing. Equitable tolling is a type of equitable modification which focuses on the plaintiff's excusable ignorance of the limitations period and on [the] lack of prejudice to the defendant.

Machules v. Dept. of Admin., 523 So. 2d 1132, 1133-34 (Fla. 1988) (internal quotation marks and citations omitted). In this case SBA would have been "misled or lulled into inaction" by the actions of the Speaker. *Id*. at 1134. The Speaker made his decision, then invited SBA to sit down with him to discuss the decision. COGS Evidentiary Exhibit 2 ("I would like to offer the chance to meet with [Ms. Brooker] and [SBA] so we can all come to an understanding of why this allocation was denied"). This is the type of action, by the Speaker, which may lead an organization to believe there is no action which needs to be taken at the time, since the Speaker wishes to discuss with them the denial. The organization may think, if they can persuade the Speaker, he may change his mind, even though the clock is ticking in terms of an appeal filing deadline. Moreover, SBA acted prudently in regard to their rights by notifying the Speaker they intended to appeal his decision, and requesting he give them reasoning on which to review and base their appeal. SBA Composite Evidentiary Exhibit 1, at 6-7.

The Court finds for the reasons stated above, the appeal is not time-barred.

II

The second issue for resolution is one which needs to be split into two parts. First, is SBA the actual requesting organization? Second, does SBA have standing to challenge the decision?

A

The question of whether or not SBA is the requesting organization is a matter of fact. Quite obviously from the evidence submitted to this Court and the arguments made to it, there was some mistake which occurred between all parties involved. SBA's primary

assertion was that the mistake which led to the Speaker's denial was based on what amounts to a scrivener's error, also known as a clerical error. *Compare* SBA Composite Evidentiary Exhibit 1, at 2-6, *with* COGS Evidentiary Exhibit 5. The question turns on whether or not the mistake was mutual. "A mistake is mutual when the parties agree to one thing and then, due to either a scrivener's error or inadvertence, express something different in the written instrument." *Circle Mortg. Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994) (citing *Providence Square Ass'n, Inc. v. Biancardi*, 507 So. 2d 1366,1369 (Fla. 1977)). Ordinarily a writing will be looked at as the encapsulation of the parties' intent; however, in equity, parol evidence may be admissible to show the true intent lay outside that which was expressed in the writing. *See Biancardi*, 507 So. 2d at 1371.

When this argument arose, COGS made no objection. Moreover, when SBA put its hearsay evidence before the Court for entry into the record, no objection was made by COGS. While the Florida Rules of Evidence are considered non-binding but rather persuasive in our Court, it remains "well settled that where no objection is interposed to testimony, it will be regarded as having been received by consent and its admissibility will not be considered on appeal." *McCullers v. State*, 143 So. 2d 909, 913 (Fla. 1st DCA 1962); Sup. Ct. R. Proc. 4(f). Here, where COGS did not object the Court was powerless to review the evidence for possible exclusion, since it is deemed to be admitted upon consent of the parties. Thus, before the Court came evidence showing the mutuality of the mistake, and attempts to correct the mistake. *Compare* SBA Composite Evidentiary Exhibit 1, at 2-6, *with* COGS Evidentiary Exhibit 5.

It can only be assumed from the evidence that the initial mistake made regarding the requesting organization was meant to be fixed prior to the Speaker's review of the allocation request. LSC's approved minutes listed "FSU Law Softball" as the requesting organization, which as previously stated is not a registered student organization, graduate or otherwise. The text messages purported to be between some member of SBA and some person of relevance in the funding process show that "Kim" (assumedly Kim Dicks) was supposed to fix the scrivener's error in the request. Moreover, those same messages tend to support the argument that LSC knew that the request was meant to be for the use and benefit of SBA, not "FSU Law Softball." However, perhaps most striking is the Nole Central request showing SBA as the requesting organization, which admittedly conflicts with the minutes approved by LSC, and submitted to COGS and the Speaker. This document reveals and supports the assertion that SBA was the requesting organization and that the parties knew of this true intent.

The Nole Central request will be discussed further in Part III, *infra*; however, at this point it suffices to state that based on the foregoing, SBA was the requesting organization, in-fact, for the purposes of the resolution of this issue.

B

The next question is whether or not SBA has standing to challenge the Speaker's decision. This question of law is reviewed *de novo*, and the answer to it is a resounding yes, and now this question gives the Court the opportunity to codify in its caselaw those reasons set forth in both the majority opinion, and special concurrence in *2018-AO-02 Advisory Opinion on Supreme Court Powers and COGS Funding Process of RSO's*, Fla. St.

Univ. Rep. (Oct. 1, 2018). That Advisory Opinion is fully incorporated herein by reference. However, a brief summary of the Advisory Opinion may be helpful.

This Court is limited in its powers to those vested in it by the Student Body Constitution ("Constitution"). Within those powers is the ability to hear appeals from a lower body's decision where the lower body is within our jurisdiction. COGS is a creature of the Constitution, and therefore falls within our jurisdiction as not only as a student group, but as a creature of Student Government. This makes the body subject to our exercise of "checks and balances," and its acts subject to judicial review. *See Marbury v. Madison*, 5 U.S. 137 (1803). While there exist actions of legislative bodies which are nonjusticiable, a body is not entitled to the cloak of political question by simply asserting "we are the legislature and whatever we do is protected by the delegation of authority found in the constitution." *Compare Baker v. Carr*, 369 U.S. 186 (1962), *with 2018-AO-02*, *supra* at 3 (Moorhead, C.J., specially concurring). Here, there is an action, which is not argued to be a political question, which was properly challenged. SBA, having been found to be the requesting organization is entitled to challenge the Speaker's decision on behalf of the COGS body as a whole. Accordingly, they have *locus standi*.

III

COGS further asserts that the Speaker's decision is supported by the fact that "the funds were requested by [FSU Law Softball], which is not a Registered Student Organization." Brief of Respondent, at 4 (case of letters modified). However, that rationale simply cannot stand, based on the Nole Central showings.

For any A&S Fees to be sent to an organization, Nole Central requests must accompany the allocation application, after the initial grant of funds. As applicable here, a requesting organization would apply to LSC for an allocation of funds through the COGS adopted forms. *COGS Organizations Request/Allocations Form*, (April 29, 2019) https://fsu.qualtrics.com/jfe/form/SV_3Jk4FWcAc4jFtSR?Q_JFE=qdg. Once a request is submitted, it will be forwarded to the correct funding board for review, here LSC. Generally, a Nole Central request is submitted for pre-approval and accompanies this form, since without a purchase request in Nole Central, A&S Fees cannot be disbursed upon allocation. Florida State University Recognized Student Organization Financial Manual 2018-2019, (April 29, 2019), http://sga.fsu.edu/financial/sga_financial_manual_2018_2019.pdf. At the end of the day, what matters most when ensuring a requesting organization receives its funding is the Nole Central request. There is conflicting evidence as to which date the Nole Central request would have reflected SBA as the requesting organization. There was an assertion by SBA that as of February 6, 2019 the request would have been fixed, and COGS submitted evidence that Nole Central accurately reflected SBA as of February 27, 2019. *Compare* SBA Composite Evidentiary Exhibit 1, at 3-4, *with* COGS Evidentiary Exhibit 5. The problem in the discrepancy between the two dates is best seen in the Speaker's notes regarding the allocation. COGS Non-Admitted Exhibit A. The Speaker, who testified as such, was unclear on who the requesting organization was at the time he made his decision, whether it was SBA or FSU Law Softball. "[T]he substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences." *Fla. Rate Conference*, 108 So.2d at 607. Here, the Speaker had two

conflicting pieces of evidence before him: LSC's approved minutes listing "FSU Law Softball" as the requesting organization, and something else, possibly the Nole Central request, stating it was SBA. However, the decision to favor one of these pieces of evidence over the other is not enough to clear the substantial evidence hurdle.

In an effort to guide those similarly situated in the future, the responsible thing to do in this situation would have been to *clarify with the accounting office* who the organization requesting the funds actually was based on the Nole Central requests since those are a prerequisite to an organization receiving allocated funds, to reach out to the requesting organizations for clarification where confusion exists, or to seek a vote on the issue where a body's rules of procedure allow. However, it does not suffice to simply be confused and allow a gut instinct to control, to not seek further guidance on an issue, or to ignore that guidance.

IV

An example of ignoring guidance on an issue of fact to which one was confused about is easily seen in this next issue: whether or not alcohol would be incorporated into the event in such a way where A&S Fees were directly used to pay for the alcohol used. It plainly was not; however, the Speaker decided to the contrary, despite the direct evidence otherwise.

In this case, the Speaker's decision was based merely and squarely on either a hunch or the stacking of inferences, both of which are impermissive. However, what is perhaps most confusing in this case is the timeline on which the denial, solely as it relates to the incorporation of alcohol in the event, takes place. The timeline is as follows:

February 21, 2019, at 9:21 a.m. – the Speaker emails LSC, specifically Lauren Brooker, stating, "[i]n order to comply with FSU drinking policies we need confirmation that no registration fees are being used to support the purchase or discount of alcohol." COGS Non-Admitted Exhibit F

February 23, 2019, at 2:43 p.m. – LSC through Ms. Brooker replies to the Speaker, "I am unsure if the registration fees go towards alcohol. Since the registration party includes a happy hour, *I would assmue* some of the registration fees go towards alcohol." COGS Evidentiary Exhibit 1 (emphasis added).

February 26, 2019, at 8:02 a.m. – the Speaker emails LSC, "[b]ased on this new information we must deny the allocation of these funds…that some of the funds go to alcohol related purchases/discounts means that the content of this request is inconsistent with how COGS allocations of A&S funds should be used, per the COGS Code." COGS Evidentiary Exhibit 2.

February 27, 2019, at 11:53 a.m. – the Speaker emails the directors of the organization hosting the event which funds were requested for asking "[o]ne quick question regarding the drink specials you mentioned. How are those paid for?" The Speaker then stated no school funding could go to alcohol asking "[w]ill this stipulation be a problem?" SBA Evidentiary Exhibit 1.

February 27, 2019, at 12:02 p.m. – the organizers respond to the Speaker and state "[n]one of your registration fee is going to alcohol." The organizers then explained that a portion of the registration fee covers a wristband which is required to be worn at the tournament to receive a lunch one day of the event, and that the wristband may get the wearer specials on drinks, but no registration

fees are used to secure a discount on a drink, nor do they in any way pay for any alcohol which may be purchased by a participant in the event. *Id*.

March 4, 2019, at 9:19 a.m. – the Speaker cites "access to an alcohol package offered to attendees" as a reasons supporting his denial of the allocation request. SBA Composite Evidentiary Exhibit 1, at 7.

So, to summarize, the Speaker first asked LSC for clarification on the use of A&S Fees to purchase alcohol. He next decided alcohol was purchased with A&S Fees based on Ms. Brooker's "I would assume" reasoning. Then, he denied the funding; however, he must have then reconsidered, since the next day he sought the clarification referred to in his initial email to Ms. Brooker from the event organizers, who stated "[n]one of your registration fee is going to alcohol." After reading the direct evidence from the event organizers, and weighing their statement with the hunches of a person who has had no contact with the event organizers, he decided that his initial decision was correct regarding the incorporation of alcohol, and left his denial in place. Again, it is important to note, *all* of this evidence, with the exception of the February 21 email, was admitted *without any* objection being made by COGS. *See McCullers*, 143 So. 2d at 913.

Confusion over this timeline was a matter which the Speaker was heavily examined about at oral arguments. What the Court was able to glean from his testimony was that the minutes and request were initially approved, that the Speaker then was confused as to the alcohol issue and subsequently denied the allocation after speaking with Ms. Brooker (who was the only vote against the allocation), but then after his denial sought clarification again from the event organizers as if the matter was being reconsidered, only to disregard those statements and deny the allocation.

The only way the Speaker could come to his conclusion and decision, other than acting on his own hunches about what he thought was really happening with the A&S Fees would have been to stack the inferences he would have been making about how the registration fee can be seen as supporting the purchase of alcohol.

Florida law has long been clear: one may not stack inferences in order to establish an end fact. *See Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960). While the "rule" against stacking inferences has had numerous critics, it remains "good-law" in Florida. *See Voelker v. Combined Ins. Co. of America*, 73 So. 2d 403, 406 (Fla. 1954). In order to be permissive as an inference, the inference must "accord with logic, reason or human experience". *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So. 2d 1264, 1279 (Fla. 2003). However, for a fact finder, such as the Speaker was here, to employ the inference in a permissive manner, one must base the inferences on direct evidence. *Inmon v. Convergence Employee Leasing III, Inc.*, 243 So. 3d 1046, 1049 (Fla. 1st DCA 2018). Most importantly however, when a party's position requires "inferences to be drawn from circumstantial evidence as proof of one fact, it cannot construct a further inference upon the initial inference in order to establish a further fact unless it can be found that the original, basic inference was established to the exclusion of all other reasonable inferences." *State Farm Mut. Automobile Ins. Co. v. Hanania*, 261 So. 3d 684, 687 (Fla 1st DCA 2018) (quoting *Davie Plaza, LLC v. Iordanoglu*, 232 So.3d 441, 445 (Fla. 4th DCA 2017) (quoting *Nielsen*, 117 So. 2d at 733)). The purpose of this rule "is to protect litigants from verdicts based on *conjecture and speculation*." *Broward*

Executive Builders, Inc. v. Zota, 192 So. 3d 534, 537 (Fla 4th DCA 2016) (internal quotation marks omitted) (emphasis added). The Speaker here stacked inference on inference which caused him to make a decision based on an assumption he later was told was incorrect. SBA Evidentiary Exhibit 1. He then doubled-down on his "conjecture and speculation" and echoed his previous incorrect sentiments. This decision required him to first assume that a bar would actually offer a discount to *only those patrons* wearing a wristband. Second, he had to assume that the FSU student wearing a wristband would go to that bar offering a discount. Third, he has to assume the FSU student would have been wearing the wristband, since the stated purpose of the wristband was to secure a lunch *on a different day* where there was no alcohol served. Fourth, he had to assume that the FSU student bought a drink. Fifth, he had to assume the drink contained alcohol. Sixth, he had to assume that the bar then actually discounted the cost of the drink. Finally, but most importantly he had to assume that the bar received some economic benefit based on the A&S Fee generated funds it disbursed. In other words, the cost of registration had to, in some way, recover the discounted cost or cause the cost to be discounted.

Section 802.8, Student Body Statutes, provides that "[a]lcohol may not be purchased with A&S monies, either specifically or as part of a facility rental agreement or any other package." The Speaker decided that based on the stacking of the seven inferences above, the event organizers created a "package" whereby the purchase of a wristband with the registration fees gave the event and its organizers the money needed to secure some discount on alcoholic beverages such that it violated the statute. In other words, the registration fees passed through the event organizers and directly to some bar, which the bar then used offset the loss on any discount it might offer, if it was to offer one. What is also important is that the statute does not provide for the *discount* of alcohol as the Speaker suggests it does. The statute only speaks to the *purchase* of alcohol with A&S Fees. While it may be said a discount amounts to a purchase, here any discounts which may have existed were not obtained via A&S Fees allocated to an organization which were then passed on to an event organizer as registration. Here any alleged discounts were given solely at the discretion of the establishments and to the economic detriment of the establishment. "None of [FSU's] registration fee [would go towards] alcohol," plain and simple. SBA Evidentiary Exhibit 1.

The basic inference here, that the wristband amounts to an alcohol package, as section 802.8, Student Body Statutes, prohibits is not the type of inference which passes the test given in *Hanania*. *Hanania*, 261 So. 3d at 687. That is not an inference which "was established to the exclusion of all other reasonable inferences." *Id*. The reasonable inference which cannot be excluded is that the registration fees paid for the Saturday lunch which was planned by the organizers, and which the wristband was required to obtain. Since the Speaker's initial inference did not pass the initial test required for him to base further inferences on it, the stacked inferences which were required to link the use of registration fees to purchase wristbands in such a way it violated section 802.8, Student Body Statutes, cannot stand, especially where the Speaker ignored the direct evidence which facially disproved his initial inference.

Accordingly, it cannot be said that the Speaker's decision to deny the allocation request based on the incorporation of alcohol was supported by substantial evidence, in fact it was based on the indifference towards it.

V

COGS' final assertion in support of its denial is that the travel violated prohibitions on community outreach outside Florida State University, or did not show a benefit to the "FSU Graduate student body." SBA Composite Evidentiary Exhibit 1, at 7. The Court construes this final assertion to cover those items not previously addressed in what SBA asserts, and the Court agrees, amounts to the Speaker's formal denial. We address all items in the formal denial, found in the Speaker's March 4, 2019 email in turn.

A

The Speaker's first point is "Registration fees are donated in part to ReadyKids, non-profit organization, and to UVA's Public Interest Law Association…[in violation of] 803.5-B [sic]." *Id.*

Section 803.5(B), Student Body Statutes deals with how entities are to make changes to wage distribution for OPS positions within the sub-entities of SGA. The Court is quite certain the statute cited was only the result of a typographical error and section 802.5(B), Student Body Statutes, applies; it states "[i]tems/services purchased with A&S money may not be used for the primary benefit of community programs outside of FSU, or for donations to such programs. This provision shall not be construed so as to prevent organizations from receiving funding as outlined in Chapter 811 of the Student Body Statutes."

SBA certainly does not qualify for the protections found in section 811, *et seq*., Student Body Statutes. However, SBA has not purchased an item or service which has the "primary benefit of benefiting community programs outside FSU." §802.5(B), Student Body Statutes. What it had purchased was technically nothing, since no money was allocated to it for this event. While that answer seemingly seems unsatisfying, the statute is written in the past tense, and that tense must be given effect. *See Aetna Cas. & Sur. Co. v. Huntington Nat. Bank*, 609 So. 2d 1315, 1317 (Fla. 1992). Had the legislature's goal been to write a statute prohibiting an allocation before it occurs, they easily could have done so, however, they did not. "The legislature is presumed to understand, and to know how to express itself by use of, the English language." *Hoyt v. State*, 119 So. 2d 691, 699 (Fla. 1959). Where the statute is written in the past tense, its plain and ordinary meaning cannot be ignored, and must be given effect; accordingly, since no money had been allocated, no money could be spent in a manner which violated the statute. *See Huntington Nat. Bank*, 609 So. 2d at 1317.

Alternatively, we find that the primary benefit of any A&S Fees allocated would not have been for the benefit of community service organizations outside FSU. Rather, we agree with SBA's contention that the primary purpose of the registration fees, and travel costs was travel to and from Charlottesville, Virginia to attend the event in question. Additionally, we agree that to the extent A&S Fees did trickle into community programs outside FSU, the effect was *de minimis*, and again was not the *primary purpose* the statute speaks of.

B

The second point in the Speaker's reasoning is that "[r]egistration fees grant access to an alcohol package offered to attendees," and in support thereof cites section 802.8, Student Body Statutes.

This issue was disposed of in the discussion found in Part IV, *supra*, and again, the Court

cannot agree with the contention. Here, however, it may be novel to note the reasoning has changed between the February 26 and March 4 emails. COGS Evidentiary Exhibits 1-2. The February 26 email states there was a finding the alcohol would be purchased or discounted, whereas the March 4 email states it would be "access[ible]." *Id.* The reason this point becomes important has to do with the various illustrations fleshed out at oral arguments, which will not be readdressed here. The point is, it does not suffice that *access* to a drink special potentially existed, it matters if there was an actual *purchase*. Moreover, this statute is again a past tense statute, it is not meant to be a bar to funding at the outset.

For these reasons and those in Part IV, *supra*, the Court cannot agree with the reasoning set forth regarding the "alcohol package." SBA Composite Evidentiary Exhibit 1, at 7.

C

The third reason articulated reason sent to SBA was that "FSU [Law] Softball is not a Register [sic] Student Organization with Florida State University (In the LSC February minutes the group was listed in the same manner as other Graduate RSO's)," citing sections 801.1 and 806.3(A), Student Body Statutes, and section 306.6(E)of the COGS Code as the basis of his determination. SBA Composite Evidentiary Exhibit 1, at 7.

Section 801.1, Student Body Statutes states, "Organizations must either be recognized by the University or affiliated with Student Government Association to receive or expend A&S fees." Section 806.3(A), Student Body Statutes states, "To receive funds an organization must officially be recognized with the Florida State University Student Activities Center." Finally, Section 300.6(E), COGS Code, states, "LSC shall only sub-allocate funds to law school organizations which have been registered, in accordance with COGS guidelines." COGS Code is not statutory authority, rather an administrative code. In other words, it does not bind this Court as the statutes do, nevertheless, it is given legal weight.

The Speaker's assertions regarding FSU Law Softball are not incorrect, that is the organization listed on the minutes and the statues prohibit A&S Fees being allocated to non-Registered Student Organizations, graduate or otherwise. However, this was an issue addressed in Parts II and III, *supra*. While the minutes stated "FSU Law Softball," the actual organization requesting funding was SBA. This clerical error was known to LSC and SBA, but was not corrected before the minutes were sent to the Speaker. It is not the Speaker's fault his decision was made based on a clerical error; however, the decision affected a Registered Student Organization, unbeknownst to him.

Having resolved the issue in Parts II and III, *supra*, the Court merely reiterates its reasoning, and stresses the importance of SBA, a Registered Student Organization, being shown as the organization requesting funding in Nole Central.

D

The final reason given for the denial is that "[t]here has not been information provided to show a benefit from this travel to the greater FSU Graduate student body." Sections 803.1(B)(1) and 806.4(C), Student Body Statutes, and sections 201.2, 206.4, and 300.6(A), COGS Code, are cited in support of this determination. SBA Composite Evidentiary Exhibit 1, at 7.

Section 803.1(B)(1), Student Body Statutes, does not exist, however, the Court think it likely the Speaker meant section 803.10(B)(1), Student Body Statutes, which does exist, and states, "Travel expenses may only be incurred in the performance of official duties of the Florida State University Student Body."

Section 806.4(C), Student Body Statutes, states, "All monies shall be spent in accordance with the Finance Code and A&S Fee Guidelines."

Section 201.2, COGS Code, states, "All Funds allocated by COGS or its sub-allocation authorities, such as graduate funding boards, shall be offered in an effort to nurture the highest levels of scholarship, research, creativity, and social activities necessary to support a comprehensive graduate research university."

Section 206.4, COGS Code, states, "All expenditures shall include a justification identifying benefit(s) of the expense to all students at Florida State University."

Section 300.6(A), COGS Code, states, "LSC shall allocate those funds granted to it by COGS to the Recognized Student Organizations at the Law School in a fiscally responsible manner, keeping in mind the purpose of the allocation, which is to provide activities and services for the benefit of the maximum number of students."

The Court agrees that the Speaker correctly emphasized the importance of following the statutory and administrative guidelines in the A&S Fee allocation context. Additionally, the reasoning implicit in these citations is logical, that FSU Law Softball (as writing on the LSC minutes) is not a Registered Student Organization. Therefore, they cannot receive money, because they cannot represent the Florida State University in an official capacity. Additionally, he is correct that COGS requires a justification for the allocations made by LSC, and those justification must comport with the requirements of section 201.2, COGS Code. However, the reasoning fails because it does not take all the justification factors into consideration. §201.2, COGS Code. This section requires the allocation of funds "nurture the highest levels of scholarship, research, creativity, *and social activities* necessary to support a comprehensive graduate research university." *Id*. (emphasis added).

COGS also asserts the funding did not contain a "legitimate academic purpose in the event." Brief of Respondent, at 10. However, neither the COGS Code nor Student Body Statutes place this requirement on A&S Fee allocations. Rather the statutes require the funding occur in a manner consistent with the numerous provisions of Chapter 800, Student Body Statutes, and the COGS Code provides that funding may go directly towards purely "social activities." Based on the plain text of the statutes and code provisions, we cannot agree that the allocation required the extra burden COGS asserts, especially where COGS concedes "the event is purely a social event," and that meets COGS Code's facial requirements. Brief of Respondent, at 11. Moreover, and although these materials were not before the Speaker when he made his decision, we are hard pressed to ignore the affidavits and statements submitted to the Court by SBA from various administrators including the Dean of the College of Law regarding the benefits of the softball tournament. Suffice it to say they are persuasive and we take them at face value, but we are exceedingly cognizant of the fact our review is of the materials available to the Speaker at the time he made his decision, and

these were not submitted to the Speaker nor considered by him in his decision.

Alternatively, COGS contends that even if all requirements are met, this nevertheless lacks "appropriate purpose in travel" as outlined in section 803.10(B)(1), Student Body Statutes, specifically that travel to a softball tournament is not travel "incurred in the performance of official duties of the Florida State University Student Body." This only begs the question, "what is an official duty?" The term "official duty" is not defined anywhere this Court can find in the Student Body Statutes. The question then for our resolution became, what is an "official duty?" We think it best not to make an exhaustive list, or require a case by case analysis. This Court finds that travel in the "official duties of the Florida State University Student Body" means travel representing Florida State University. Good examples, albeit a non-exhaustive list, would be: a student group traveling to a conference, like the FSU World Affairs Program traveling to New York for participation in a model United Nation Conference; a SGA bureau traveling to carry out its mission, like the Office of Governmental Affairs traveling to Washington, D.C. to aid in lobbying the United States Senate and House of Representatives for programs aiding Florida State University; or a sports club, like the Tennis Club traveling to Miami to compete in a tournament. Here we find that SBA's renewed interest in attending an annual softball tournament would qualify as an "official duty" since SBA would represent Florida State University, as a whole, at the tournament. The actions of the participants reflect positively or negatively, as however the case may be, on Florida State University as a whole. That ability to create a reaction to the University because of travel occurring on behalf of the University creates the "official duty."

Finally, as a catch-all COGS asserts the money must be spent in accordance with the guidelines of Chapter 800, Student Body Statutes. *See* §801.1, Student Body Statutes. However, having found no violation of any of the cited provisions in Chapter 800, Student Body Statutes, we decline to invoke the catch-all, or conduct our own independent search beyond our review of the record before us.

CONCLUSION

This is not the first time the unilateral power of the Speaker to approve or deny allocations from a funding board has come into question. We will not speak to this power, but do recognize that there clearly is confusion as to how the power needs to be exercised, and how the Speaker can best protect himself or herself from successful challenges to their decisions. When making decisions, the Speaker must be able to point to substantial evidence supporting a finding of fact, not merely evidence which creates a suspicion, or gives equal weight to two varying inferences. *Fla. Rate Conference*, 108 So.2d 607 (Fla. 1959). Hopefully this opinion serves to guide those exercising this discretionary power in the future.

Florida State University undoubtedly fosters the highest level of academic achievement, but it most certainly recognizes the balance which must be had between academics and the collegial relationships formed through social activity. COGS own administrative code recognizes this need, that social activities are part of a healthy graduate student's academic career. Hopefully this opinion serves to guide those exercising this discretionary power in the future.

We reverse the decision of the Congress of Graduate Students, by and through its Speaker, Adam O'Neill, and remand this

matter for the Speaker's reconsideration *nunc pro tunc* consistent with this opinion.

It is so ordered.

Drake, J. and Lagos, J. took no part in the consideration or decision of this case.