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

STUDENT BAR ASSOCIATION, a
Graduate Registered Student Organization,

Petitioner,

v.

Mr./Ms. Doe, as Speaker, CONGRESS
OF GRADUATE STUDENTS,

Respondent.

_____/

Sills, C.J., for the Court

SYLLABUS

This case comes before the Court for a second time on an appeal by the Student Bar Association, ("SBA"), a graduate registered student organization, from a decision by the Congress of Graduate Students, ("COGS"), through its former speaker, Adam O'Neill ("former Speaker"), to, for a second time, 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 is the second time this Court has had this case before it. On May 3, 2019, this Court held that the original appeal was not time-barred, SBA had standing to challenge the former Speaker's decision, SBA was the actual organization requesting funding, the event in question did not incorporate alcohol in a manner justifying the former Speaker's decision, and the former Speaker's justifications for denying funding were insufficient. *See 2019-AP-02 Student Bar Ass'n v. COGS*, Fla. St. Univ. Rep., 1 (2019). Former Speaker appealed this Court's decision to

the Vice President of Student Affairs, Dr. Hecht. Dr. Hecht agreed with this Court but pointed the former Speaker to a different provision within the COGS Administrative Code. *See Dr. Hecht's Decision Regarding SBA v. COGS*, Fla. St. Univ. Rep. (2019). The former Speaker relied on that section of the FSU Congress of Graduate Student Code to again deny the funding SBA requested.

This secondary appeal involves a question of the constitutionality of the previously stated provision. This Court finds this provision to be unconstitutionally vague and no material issues of law. Therefore, this Court declares the provisions unconstitutional and remands the issue to COGS.[1]

ISSUES

I. Is Section 300.6(C) of the FSU Congress of Graduate Student Code unconstitutionally vague?

HOLDING

I. Yes.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 6, 2019, Petitioner, SBA, applied to LSC for an allocation of funds for the "2019 UVA Law Softball Invitational." *2019-AP-02* at 2. There was a correction made to the requesting party to reflect that it was SBA requesting the funds. *Id.* On February 8, 2019, SBA received an email from LSC stating the minutes from the meeting were approved. *Id.* Approximately two weeks after the decision, the former Speaker reached out to LSC for clarification regarding the specific details of the event. *Id.* LSC responded that the event was

[1] The Speaker at the beginning of this action, Jacqueline LaBayne, resigned shortly after notice of this appeal.

purported to be a networking opportunity, in addition to the softball tournament. *Id.* LSC was unsure about the use of the fees for alcohol. *Id.* On February 26, 2019, COGS, through the former Speaker, denied the funding. *Id.*

COGS offered to meet to clarify why the request was denied. *Id.* An email was exchanged between the former Speaker to event organizers about the alcohol related events. The organizers responded that "[n]one of your registration fee is going to alcohol." *Id.* (alteration in original). A meeting occurred between an SBA representative and the former Speaker, where the former Speaker was asked to prepare a list of reasons why the funds were denied. *Id.* The formal denial document was delivered to the representative on March 4, 2019. *Id.* The appeal was filed that same day. *Id.*

On May 3, 2019, this Court held that the original appeal was not time-barred, SBA had standing to challenge the former Speaker's decision, SBA was the actual organization requesting funding, the event in question did not incorporate alcohol in a manner justifying the former Speaker's decision, and the former Speaker's justifications for denying funding were insufficient. *See 2019-AP-*02. Former Speaker appealed this Court's decision to the Vice President of Student Affairs, Dr. Hecht.

Dr. Hecht agreed with this Court but pointed the former Speaker to a different provision within the COGS Administrative Code that would allow him to deny funding. *See Dr. Hecht's Decision*. The former Speaker relied on that section of the FSU Congress of Graduate Student Code to again deny the funding SBA requested. That provision provides: "All LSC allocations, whether original allocations, or after the fact amendments to the budget, shall require the signature of either the Speaker of COGS, or the Deputy Speaker of Finance. The Speaker or Deputy Speaker may deny allocation or amendment *deemed excessive or irresponsible*." The

Admin. Code of the Congress of Graduate Students Fla. St. Univ. Student Gov't Ass'n, § 300.6(C) (2018) (emphasis added). Petitioner alleges that they were officially notified of this denial on July 12, 2019 by former Speaker. *Brief for Appellant*, at 2.

On January 14, 2020, SBA petitioned this Court to hear this case for a second time. Chief Justice Keller and Justices Drake and Lagos promptly recused themselves. Chief Justice Keller appointed me as Acting Chief Justice. *See 2020-Admin-1*. I appointed a third justice, Justice Timis. *See 2020-Admin-02*. This Court granted certiorari. A hearing date was set for January 31, 2019. Respondent submitted a brief the day before the hearing, after informing the Court that Respondent would be unavailable on said hearing date. This Court found that the brief presented no issues of material fact and therefore suspended the hearing and voted on whether to hear this case in the future.[2] This Court declined to hear this case because it felt there were no material issues of fact and further felt that judicial resources[3] would be better spent on focusing on looming election appeals.

ANALYSIS

This appeal does not present any material issues of fact and merely presents an issue of law. This Court reviews questions of law de novo. Sup. Ct. R. P. 5(d); *see also State v. Weeks*, 202 So. 3d 1, 4 (Fla. 2016); *State v. Catalano*, 104 So. 3d 1069, 1075 (Fla. 2012) ("A court's decision regarding the constitutionality of a statute is reviewed de novo as it presents a pure question of law."); *State v. Rubio*, 967 So. 2d 768, 771 (Fla. 2007) ("Because each of these

[2] The Attorney General made this Court aware of her unavailability two days before the hearing. Regardless of the Court's thoughts on this case, the hearing date would have had to be changed.
[3] As stated at the beginning of this order, the Court is not at full functioning capacity as Chief Justice Keller and Justices Lagos and Drake recused themselves from this appeal.

issues concerns a question of statutory constitutionality or construction, we review each issue de novo.").

"Legislation is unconstitutionally vague when it fails to give adequate notice of what conduct is prohibited or when it invites arbitrary and discriminatory enforcement." *State v. Bryant*, 953 So. 2d 585, 587 (Fla. 1st DCA 2007) (citing *Simmons v. State*, 944 So. 2d 317, 324 (Fla. 2006). As the United States Supreme Court has explained, when a statute or ordinance "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute and because it encourages arbitrary and erratic [consequences]" it is void for vagueness. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (internal citations omitted). In order to satisfy the first prong, the statute needs to set forth relatively clear guidelines as to prohibited conduct. *Gonzales v. Carhart*, 550 U.S. 124, 149 (2007). As for the second prong, there needs to be minimal guidelines to govern the enforcement of the statutes. *Id.*

The Court will look at "excessive" and "irresponsible" in turn. The term excessive itself is a rather vague and is defined in the eyes of the beholder. *See Moakley v. State*, 547 So. 2d 1246, 1247 (Fla. 5th DCA 1989); *see also The Fla. Bar v. Richardson*, 574 So. 2d 60, 62 (Fla. 1990) (emphasizing that the statute defined the word "excessive" in the following provision). Further, the Court of Appeals for the Seventh Circuit has stated that a vague condition was "refrain from excessive use of alcohol where excessive use is not defined, though it could readily be defined[.]" *United States v. Thompson*, 777 F.3d 368, 376 (7th Cir. 2015) (internal quotations omitted); *see also United States v. Hudson*, 908 F.3d 1083, 1084 n. 1 (7th Cir. 2018) (stating that there is no default definition of excessive use of alcohol).

Here, Section 300.6(C) of The Administrative Code of the Congress of Graduate Students does not define excessive. As Petitioner points out in their brief, the statute in question has no

cross references to the definition of either word. Thus, it seems unlikely that a student organization, who is seeking funding to attend an event, would be able to easily identify what "excessive" means in the eyes of COGS. Dean B. Thomson, *Can Vague Regulations Be "Narrowly Tailored"? An Analysis of the U.S. Dept. of Transp.'s DEB Regulations*, 6 NO. 1 J. AM. COLL. OF CONSTR. LAWYERS 1, 20 (2012) (stating that the United State Supreme Court has found words like excessive especially vague in monetary contexts). Moreover, the statute does not give adequate notice of what conduct is prohibited. What is "excessive"? Even in the Florida Bar Code of Professional Responsibility the Florida Bar gives some definition to the word excessive. *See Richardson*, 574 So. 2d at 62. Respondent's argument is without merit. Respondent cites to *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996), in hopes to give some meaning to the word "excessive." What Respondent fails to realize, though, is that the United States Supreme Court did not reach the vagueness constitutional argument and instead rested on the First Amendment for their ruling. *See id.* at 619. If the COGS statute gave some guidance on what the term "excessive" means, then it would give notice.

Next, the Court turns to the word "irresponsible." The word irresponsible can have multiple interpretations, but what is so concerning is the broadness of the word. The Supreme Court of Louisiana found that the word "irresponsible" was so broad as to include both true and false speech, and therefore was unconstitutionally vague. *State v. Burgess*, 543 So. 2d 1332, 1335 (La. 1989); *see also Williams v. State*, 492 So. 2d 1171, 1173 (Fla. 5th DCA 1986) ("Everyone is sometimes 'irresponsible' in some way or another. Such a vague and undefinable and hardly qualifiable reason should not be a basis for departure.") (Dauksch, J., dissenting).

Further, what the court in that case found particularly disturbing was the impact that the statute had. *Id.*

In Petitioner's brief, Petitioner points out that the word irresponsible is subjective—it could be irresponsible to spend $2,000 on travel expenses, while to others it may be a worth-while trip. Petitioner relies on the same argument cited above; it is impossible to be on notice of what type of behavior is prohibited. Respondent argues that the because the term irresponsible has been used to describe someone's spending habits in a bankruptcy case that clearly defines what irresponsible means. Respondent is incorrect.

More importantly, this Court finds that the terms, when taken together or separately, invite arbitrary and discriminatory enforcement. Being able to deny student funding because one subjectively deems it excessive or irresponsible, without having guidelines or explanations for such language, is in and of itself an excessive use of power and irresponsible. How can a student organization have any sort of idea of what kind of funding will or will not be approved if there are no guidelines as to what excessive or irresponsible means? More to the point, how does the speaker deem what is excessive or irresponsible? It has to be that it is the speaker's subjective viewpoint that determines what organizations do and do not get funding; the speaker can hide under an overly broad and poorly worded statute that protects them from any sort of questioning. This most certainly is inviting arbitrary and discriminatory enforcement. When left unchecked, the speaker's powers are endless. The speaker has endless power to deny graduate student organizations, which rely so heavily on networking events to meet people in their respective industries, form connections with the greater Tallahassee community, and provide important experiences, funding to attend events that can ultimately lead to full-time positions upon graduation. *See 2019-AP-02*, at 14 ("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.").

In Respondent's brief, they try to re-litigate already settled issues. *See 2019-AP-02*. Addressing the issues that this Court has previously settled is not something to be revisited. Moreover, the COGS speaker did not rely on the provision Respondent cited in making the current decision being appealed.

Finally, the Court wants to take the time to address any timeliness arguments that may be raised. First and foremost, The Supreme Court Rules of Procedure allow this Court to waive any procedural requirements upon showing or cause *or at the Court's discretion*. Sup. Ct. R. P. 1. However, this Court also wants to point to Florida case law which provides for an exception if appeals are untimely based on due process concerns. *See generally Talavera v. Royal Am. Mills, Inc.*, 24 So. 3d 738, 739 (Fla. 3d DCA 2009). Florida case law also provides an exception for good cause. *See Linden v. Reemployment Assistance Appeals Comm'n*, 232 So. 3d 537, 538 (Fla. 5th DCA 2018). Additionally, and most importantly, Respondent has conceded that Petitioner timely appealed. *Brief for Appellee*, at 2.

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." *2019-AP-02*, at 14. Again, this is not the first time this has come into question and this is certainly not the last. We reverse the decision of the Congress of Graduate Students, by and through its Former Speaker, Adam O'Neill, and remand this matter for the Speaker's reconsideration consistent with this opinion

and declare Section 300.6(C) of the Administrative Code of the Congress of Graduate students unconstitutional.

It is so ordered.

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