STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1311

Collegians for a Constructive Tomorrow,
Relator,

vs.

University of Minnesota, Board of Regents,
Respondent.

Filed May 21, 2018
Affirmed
Jesson, Judge

University of Minnesota

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for relator)

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Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

JESSON, Judge

Respondent University of Minnesota (the University) collects a fee from its students to fund student groups on its campus. Relator is a student group called Collegians for a Constructive Tomorrow (CFACT) that requested student-fee funding. The University partially granted CFACT's funding request and CFACT appealed to the University's

appeals committee, arguing that recent changes to the University's funding system were not viewpoint neutral and lacked due process. The University denied CFACT's appeal, claiming that it was not biased in its fee distributions and that some of CFACT's grievances were unrelated to the fee-distribution process.

CFACT petitioned for a writ of certiorari from this court, arguing the University violated its due-process rights for multiple reasons, including use of the form to submit student-funding appeals, elimination of direct appeals to the vice provost, and lack of a verbatim record in the process. CFACT also argued that several University decisions were not viewpoint neutral, including decisions to cap overall student funding, to designate media groups for separate treatment, and to allow a small number of student groups to use rent-free space in the student union. We affirm the determinations of the University's appeals committee.

FACTS

The University collects a services fee from its student population. This fee is used to fund non-instructional programs such as student groups and administrative units. In 2017, the University redesigned some of the procedures for distributing this funding. One of the changes was to split the types of funding that student groups can request into two categories: operational and programming funds.[1] These funds are capped at a possible $25,000 per year for each student group and programming funds are capped at $30,000 per year per student group.

[1] Operational funds are for items like equipment, meeting space, stipends, insurance, and travel.

At the same time these procedures were being redesigned, the University also designated a new category of student group called media groups. These media groups were required to have "a mission that indicates that the group's primary focus is to provide a media-related service (not exclusive to social media) to campus." And media groups had a unique feature distinguishing them from other student groups: media groups did not have a cap on operational-funding requests.

To apply for either operational or programming funds, every student group must meet various minimum requirements and submit an application. Once funding applications are received, the Student Services Fee Committee (Fee Committee) holds public deliberations on each request.[2] After public deliberations close, the Fee Committee begins internal deliberations where it decides on its funding recommendations. Once the Fee Committee makes its recommendations and notifies the applicants, a student group may appeal that recommendation to the University's Student Services Fee Appeals Committee (Appeals Committee) under three circumstances: (1) the Fee Committee violated its own rules, (2) the Fee Committee exhibited bias, or (3) the Fee Committee's decision was not viewpoint neutral.

In early 2017, CFACT submitted a funding request for $25,000 in operational funds (the maximum allowed) and $15,000 in programming funds (half the maximum allowed) to the Fee Committee. After deliberating, the Fee Committee recommended that CFACT receive $15,300 in operational funds and $12,950 in programming funds. CFACT

[2] The record is unclear if the Fee Committee considers funding requests from media groups.

appealed these recommendations, arguing that the University was not acting in a viewpoint-neutral manner because it allowed a small number of student groups to use rent-free space in the student union—which allowed these groups to spend their student funds elsewhere—and the University lacked a procedure for outside groups to challenge this arrangement. CFACT also complained that the University's recent decision designating media groups was not viewpoint neutral because these new media groups did not have a cap on their operational funding requests.

After reviewing CFACT's claims and consulting with the vice provost, the Appeals Committee denied CFACT's appeal. The Appeals Committee explained that it did not believe the Fee Committee acted in a biased manner against CFACT, that the Fee Committee had no power to grant or deny space in the student union to student groups, and the Fee Committee did not play a part in creating the media/non-media group classification.

CFACT petitioned for a writ of certiorari from this court, arguing that the University's funding procedures violate due process and that several University decisions were not viewpoint neutral. As for how the University violated due process, CFACT claimed the funding appeals form lacked adequate space, the University wrongly eliminated direct appeals to the vice provost, and the funding process lacked a verbatim record. The decisions CFACT claims were not viewpoint neutral include capping overall student funding, designating media groups without funding caps, and allowing certain student groups to use rent-free space on campus.

D E C I S I O N

CFACT appeals the University's student-fee decisions using a procedure known as a writ of certiorari, found in Minnesota Statutes sections 606.01 to 606.06 (2016). Our review under a writ of certiorari is not as expansive as it would be under a typical appeal from a district court decision. We are confined to an inspection of the University record and narrowly focused on addressing two types of questions. The first type are questions that affect the regularity of the University's funding process. *Chronopoulos v. Univ. of Minn.*, 520 N.W.2d 437, 441 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). The second type are questions that affect the actual merits of the University's decisions—and even here, due process only requires that the University's decisions cannot be "arbitrary, oppressive, unreasonable, fraudulent, made under an erroneous theory of law, or without any evidence to support it." *Id.*

We generally defer to the University's decisions and we are reluctant to interfere with its governing body "as long as it properly executes its duties." *Tatro v. Univ. of Minn.*, 800 N.W.2d 811, 815 (Minn. App. 2011), *aff'd*, 816 N.W.2d 509 (Minn. 2012); *Bd. of Regents v. Reid*, 522 N.W.2d 344, 346 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). But this deference is not absolute. Besides requiring that decisions not be arbitrary, oppressive, or unreasonable, we also require the decision-making itself to be "reasoned" and supported with "legally sufficient reasons" based on factual support from the record. *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012).

CFACT uses our certiorari jurisdiction to make two types of challenges to the University's funding procedures. The first type are procedural due-process challenges to

the student-funding procedures. The second type are challenges to specific University decisions that CFACT claims are not viewpoint neutral. We address each type of claim in turn.

I. The University's funding procedures contain adequate due process.

CFACT first claims that the University's procedures violate due process for three reasons: (1) the word limit in the student-funding appeals form lacks adequate space, (2) the University eliminated direct appeals to the vice provost, and (3) there is no verbatim record of the deliberations in the Fee Committee. We review whether the University violated CFACT's procedural due process de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). The essential idea underlying procedural due process is straightforward: the government—in this case, the University—is required to give CFACT both notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Id.*

The appeals form's word limit does not violate due process.

CFACT first claims the word limit in the University's appeals form did not provide the group with an adequate opportunity to be heard. The appeals form is an online form that is split into three sections. The first section gives the appealing student group 250 words to articulate the grounds for the appeal, the second section provides 750 words to provide evidence, and the last section allows 500 words for the group to propose a solution to the problem.

Although CFACT argues these word limits are not sufficient, it fails to explain how. We recognize that word limits help streamline the machinery of any appellate process

because they require parties to fine-tune their arguments and be economical with their space. Even this court imposes word counts in its briefing requirements. *See* Minn. R. Civ. App. P. 132.01, subd. 3 (outlining length limits for written briefs).

Altogether, CFACT had 1,500 words to explain its funding issues, outline the evidence supporting its appeal, articulate its reasoning, synthesize the evidence, and then offer solutions to the dispute. Nothing in this limitation hindered these objectives and CFACT's complaints were adequately heard.[3] Without evidence in the record suggesting that this word limit created an obstacle for CFACT, we conclude that the University's word limits do not violate due process.

The decision to eliminate direct appeals to the vice provost does not violate due process.

Before 2017, student groups could appeal their funding recommendation directly to the Vice Provost for Student Affairs. But this layer no longer exists under the 2017 revisions to the University's procedures. CFACT claims this elimination of the vice provost's role illustrates the "lack of safeguards in the appeal process," but the University counters that the vice provost still oversees and reviews all funding appeals, even if this is no longer an explicit step on its appellate ladder.

There is no bright-line rule mandating how many layers the University's funding appeals process must contain. Even without direct appeals to the vice provost, groups like CFACT may still send their funding disputes through the University's appellate chain. And the record shows that the University continues to respond to these appeals with adequate

[3] Although not determinative, we do note that CFACT did not use much of the available word count to articulate its appeals.

support for its decisions. All that the law requires is that the University's decisions be based on "legally sufficient reasons" grounded in factual support from the record. *Williams*, 820 N.W.2d at 813. Nothing in our review of the record suggests that removing explicit review by the vice provost from the appeals process erodes these basic safeguards nor prevented CFACT from being heard by the University. For these reasons, we conclude that eliminating direct appeals to the vice provost does not violate due process.

The lack of a verbatim record does not violate due process.

CFACT's final argument alleging a due-process violation concerns the lack of a verbatim record in the Fee Committee's decision-making process. An administrative body like the University is required to maintain a record in its decision-making processes. *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 192 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). But this does not mean a *verbatim* record. *See, e.g.*, *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981) (holding a city's non-verbatim record of public proceedings was sufficient where the reasons for decisions were put in writing and made in more than just a "conclusory fashion"). It is not necessary for the exact words spoken in a decision-making process to be preserved in the amber of a stenographer's pad or electronic equipment. Instead, the record must show that the University's decision was made with enough "clarity and completeness" so that this court can determine if the facts justify that decision. *Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492*, 271 Minn. 445, 450, 136 N.W.2d 105, 108 (1965).

Although the Fee Committee did not maintain a verbatim record, it did explain its funding decisions for every item of CFACT's funding request in a detailed spreadsheet.

That spreadsheet itemizes CFACT's specific funding requests, provides a recommended amount of funding for each item, and then lists justifications if the recommendation falls below CFACT's request. To illustrate the level of detail, at one point the spreadsheet shows that the Fee Committee recommended approving CFACT's request for $50 worth of chalk, while at another point, recommended denying a request for online advertising since advertising funds were already being used for physical posters.

Although the Fee Committee's recommendations were not preserved in a verbatim record, there is enough "clarity and completeness" in the record that on review, we can see how the unique factual threads tie into the final funding recommendations. *Id.* Because the Fee Committee's decisions were made with sufficient clarity and completeness, we conclude that the University's decision to not use a verbatim record for the Fee Committee's recommendations does not violate due process.

II. The University's funding cap, designation of media groups, and use of student-union space are not reviewable under certiorari.

CFACT also claims that the University violated the requirement of viewpoint neutrality in its student-funding decisions. This concept of viewpoint neutrality is derived from the First Amendment's guarantee that the government may not "restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't. of City of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S. Ct. 2286, 2290 (1972). At the heart of this principle is ensuring open speech and debate, and allowing the government to handpick its preferred messages at the expense of those it dislikes would undercut the "profound national commitment to the principle that debate on public issues should be uninhibited,

robust, and wide-open." *Id.* at 96, 92 S. Ct. at 2290 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 721 (1964)). This is the essence of viewpoint neutrality: the requirement that the government may not regulate expression based on a disagreement with the speaker's ideology, opinion, or perspective. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 2516 (1995). And the United States Supreme Court has applied this principle to public universities as well, stating that the proper measure to protect objecting students is to require "viewpoint neutrality in the allocation of funding support." *Bd. of Regents of Univ. of Wisc. Sys. v. Southworth*, 529 U.S. 217, 233, 120 S. Ct. 1346, 1356 (2000).

CFACT claims that three decisions by the University violated the requirement of viewpoint neutrality. First, imposing a cap on overall student funding because the cap creates a "zero-sum game" for student groups, which fosters competition among them and necessarily means that some groups will receive more funding, while others receive less. Second, designating media groups because, unlike typical student groups, media groups do not have a cap on operational-funding requests. And third, allowing a few groups to use rent-free space in the student union because these groups do not need to spend money on rent and are then free to use their funding to promote their ideologies and messages above and beyond what the typical student group can accomplish.

Before we can address CFACT's claims, we must first examine whether they fit into our limited jurisdiction. CFACT brings this appeal under our certiorari jurisdiction. Certiorari is described as an "extraordinary remedy" that is only available to review judicial or quasi-judicial proceedings and actions—it is not available to review legislative or

administrative actions. *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (quotation omitted). Distinguishing between judicial and legislative decisions is often more an art than a science, but generally, legislative actions affect the rights of the public generally. *Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). This is in contrast with judicial actions, reviewable on certiorari, which affect the rights of a few individuals, similar to the way adversarial parties are uniquely affected by a court proceeding. *Id.*

Not all decisions can be neatly packaged into these legislative and judicial boxes. In order to distinguish between these quasi-judicial and quasi-legislative decisions, we look to three indicators: quasi-judicial actions are distinguished by "(1) an investigation into a disputed claim and weighing of evidentiary facts, (2) application of those facts to a prescribed standard, and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Envtl. Advocacy*, 587 N.W.2d at 842. In contrast, while quasi-legislative decisions often involve research and public comments, there is usually no formal admittance of evidence, taking of sworn testimony, and no formally identified opposing parties. *Id.* at 842-43.

The question then is whether the University's decisions imposing an overall funding cap, creating a new media-group classification, and allowing certain student groups to use rent-free space in the student union are quasi-judicial decisions. We conclude they are not. Nothing in the record indicates that these decisions were made with the typical characteristics indicative of judicial decision-making. The University was not presented with a disputed claim, it did not weigh evidence, and it did not investigate the facts. No

findings were made and then applied to a settled standard, and there was no binding decision connected to the underlying dispute. All of these indicators signal quasi-judicial decision-making, and none are present in this case. *Id.* at 842.

Additionally, the administrative record contains almost no information discussing these decisions, and this is what ultimately strikes at the heart of why these decisions are not appropriately before us. We cannot use the limited scope of certiorari to analyze CFACT's challenges without a developed record detailing why and how these decisions were made because our certiorari jurisdiction does not allow parties to try issues of fact de novo. *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 371 (Minn. App. 2009).

Our certiorari review is necessarily limited. Certiorari is designed to address only fine-grained issues within a limited record—it is not equipped to address the larger, more complex quasi-legislative decisions that CFACT raises in its final three challenges. How and why the University came to its decisions imposing its funding cap, designating media groups, and allowing certain groups to use student-union space do not implicate any judicial decision-making. They are quasi-legislative or administrative in nature and necessarily fall outside the reach of our current review.[4]

[4] This does not mean that CFACT is left without a remedy. We have previously stated that a party who wishes to challenge a legislative or quasi-legislative decision must first litigate the question in district court. *Watab Twp. Citizen Alliance v. Benton Cnty. Bd. of Comm'rs*, 728 N.W.2d 82, 93 (Minn. App. 2007), *review denied* (Minn. May 15, 2007). And as for the specific mechanisms to challenge these quasi-legislative decisions, the supreme court in *Honn* provides an answer: mandamus, injunction, or a declaratory-judgment action. 313 N.W.2d at 413.

In sum, despite the fact that CFACT's viewpoint challenges to the University's funding cap, media-group designation, and the student-union space fall outside our jurisdiction, we are well-equipped to address its remaining claims. With respect to CFACT's due-process claims, we conclude that the University's decision to impose a word limit in its funding appeals does not violate due process. The limit served a reasonable goal of forcing student groups to streamline their grievances and making the overall appeals process more efficient. We also conclude that the University's decision to eliminate direct appeals to the vice provost does not violate due process. Groups may still appeal their funding recommendations to the Appeals Committee and the vice provost continues to review these cases. Nor does the lack of a verbatim record violate due process since the law only requires that the record be clear and complete, which the Fee Committee demonstrated. CFACT's remaining claims regarding the University's funding cap, media groups, and rent-free space in the student union are quasi-legislative or administrative decisions that fall outside our limited review under certiorari.

For all these reasons, we affirm the determinations of the Appeals Committee.

Affirmed.