March 26, 2014

University of Minnesota
Student Services Fees Committee

Re: Appeal of CFACT Fee Decision

CFACT appeals the following decisions of the SSFC Student Organizations Committee:

1. The allegation of “plagiarizing another group’s past application,” [SSFC Final Rationales] resulting in an “80% penalty” ($70,000) [SSFC final deliberation audio 3.7].

2. Dismissal of CFACT’s clarification materials regarding initial recommendations, which was a denial of the due process protections, afforded all groups that resulted in an unfairly low award.

Per the email supplied by SSF Appeals Committee Chair Sprangers, CFACT will show

- **Misinterpretation by the Committee:** The committee incorrectly concluded that CFACT plagiarized MPIRG’s application. To the extent that CFACT modeled its organization and employee descriptions after MPIRG, this modeling is not historically unusual for CFACT or for the SSFC process.

- **Misapplication of a rule:** The committee incorrectly applied a penalty for this erroneous plagiarism allegation. The SSFC has neither authorization nor precedent for such a penalty.

- **Misconduct of the Committee:** By applying the penalty in this manner, the committee violated principles of viewpoint neutrality and denied CFACT its due process protections required under the rules of the process.

Furthermore, the committee’s plagiarism misinterpretation caused the committee to lose all objectivity regarding CFACT’s application. The SSFC did not review CFACT’s clarifying materials and did not participate in a meaningful final deliberation regarding the merits of the request. Because the plagiarism penalty was assessed as a percentage (80% of the initial recommendation), the failure to properly and fairly determine CFACT’s initial allotment cannot be uncoupled from the plagiarism penalty. Hence, the misconduct of the committee has magnified the adverse consequences for CFACT. Both of these issues will be addressed in this appeal, and it is CFACT’s expectation that these injustices can and will be resolved fairly by the Appeals Committee.
I. Summary of SSFC Actions

Initially, SSFC allocated $88,000 to CFACT for the 2014-2015 academic year. But during the final review process the SSFC applied a specific $70,000 penalty on the budget approved during Initial Deliberations for “plagiarizing another group’s past application.” (SSFC Final Rationales). During Final Deliberations, the SSFC noted the specific amount used was based on an “80% penalty” (SSFC final deliberation audio 3.7).

II. CFACT Did Not Violate Any Written SSF Rules or Regulations.

A. Imitation and Modeling vs. Plagiarism

There are stark differences between plagiarism, as generally accepted, and what CFACT has done. CFACT did use MPIRG as a model, but this modeling does not rise anywhere near the level of plagiarism. We must clearly state that CFACT did not plagiarize MPIRG.

CFACT has been using MPIRG as a model since 2002, and has imitated many of their programs, events and descriptions. As CFACT notes in its SSFC requests going back to 2002, CFACT provides many of the same services, programs and mission as MPIRG, but from a different point of view. The specific examples of alleged “plagiarism” cited by MPIRG refer only to programs, job descriptions and benefits provided by MPIRG in 2012; these items were successfully funded by that SSFC with a budget of over $150,000.

Despite arguing that several of CFACT and MPIRG’s services and benefits were the same, the SSFC rejected these claims. The 2012 SSFC refused to fund many of the same items, providing little more than half the funding to CFACT that they provided MPIRG. CFACT’s fees authors were exasperated by the SSFC’s refusal to acknowledge the similarities and sought to provide clarity. In 2013, they reviewed MPIRG’s request and imitated MPIRG’s successful model where CFACT already offered or could offer the same benefits, descriptions and programs. CFACT’s leaders did not copy the full request, only the items that were true about CFACT.

B. The University Does Not Consider this a Case of Plagiarism

The University does not consider this a case of plagiarism. The Assistant Dean of Student Affairs stated in a letter to CFACT that the allegation is “not a violation of the Student Conduct Code due to the academic context of plagiarism.” He refused to submit the allegation to the Office for Student Conduct and Academic Integrity. The OSCAI has stated that no charges have been brought up against CFACT or its members. As the Student Fees Advisor clarified, the “SSFC is not an academic exercise.” (SSFC Final deliberations audio 3.7).
It should be noted that only the OSCAI has the authority to adjudicate and enforce plagiarism rules. The fact that they have not found CFACT or any of its officers guilty of plagiarism, or even taken up the case, is significant.

University Rules regarding Academic Integrity do not apply to SSFC. To say they do is to change the rules in the “mid-stream,” which is a practice that was banned by the Vice-Provost of Student Affairs in 2010.

It is important to note that the inapplicability of academic integrity rules to this situation is not merely some kind of loophole. There are fundamentally different issues at stake than those encompassed by university regulations. First, there is no intellectual property at stake. The applications presented to the SSFC are reports on the history, organization, activities, and finances for individual groups. They do not represent any kind of original intellectual contribution as academic works are. Additionally, CFACT did not falsify anything in its report – much academic dishonesty arises from the falsification or ‘fudging’ of data to reach a desired conclusion. Finally, unlike a classroom setting, applications are not graded competitively. Modeling and imitating another successful organization in an effort to maximize funding awards is a legitimate behavior. In the real world, companies model and imitate each other regularly – especially when it comes to writing job descriptions for personnel.

Finally, the committee should reflect on the harm, or lack thereof, done to MPIRG. Nobody was materially harmed by CFACT’s decision to use the same job descriptions for its personnel.

C. Modeling is Historical and Pervasive

This modeling is not, in any meaningful sense, a departure from the norm for our group or for the process.

Modeling and imitating successful student groups is historical, pervasive and officially encouraged by the SSFC process. Every group is required to fill out the same budget sheet and answer the same questions. Minimum Requirement 12 specifically forbids deviation from these forms. CFACT is not guilty of “plagiarism,” an allegation not prohibited by SSF policies, it simply models itself on another successful student group and provides similar student services as that student group but for a different segment of the UM community. Even if “plagiarism” was a valid allegation, and it clearly is not, CFACT would not be guilty of it for several reasons.

First, CFACT has clearly stated for years that they are modeled after MPIRG. CFACT has stated explicitly in its fee requests since 2002 that they employ the MPIRG model, but with a different point of view.
Second, several Cultural Centers used the same template to apply for fees in 1992 and provided nearly identical organization charts – See Appendix c.

Third, student groups frequently cut and paste large chunks of their previous requests into their current requests. MPIRG is a prime example. The allegation of plagiarism MPIRG leveled against CFACKT stem from a request written and signed by Ryan Kennedy and Sydney Jordan in 2012. MPIRG’s request this year used much of the same language, but was signed by Katherine Dobson and Cora Ellenson-Myers, yet no attribution was made to Kennedy or Sydney in the current MPIRG request. Under the SSFC’s unwritten “plagiarism” standard, MPIRG should be guilty of the same.

Fourth, student groups, such as the YMCA, are modeled after parent organizations. MPIRG is modeled after the national PIRG model set up by Ralph Nader in his book “Action for a Change”. In fact, MPIRG is a purveyor of “model legislation”. Model legislation is copied from one state and submitted in another.

D. The SSFC rules do not prohibit Copying, Imitation, Modeling or Plagiarism

The SSFC handbook does not prohibit, discourage or address modeling, imitation, copying or “plagiarism.” MPIRG itself states in its complaint against CFACKT that, “There is no direct policy in the Fees Handbook to address instances of student group plagiarism such as these.” MPIRG then recommended the passing of a resolution that would apply such a rule to future SSFC applicants.

During the Final deliberations, the SSFC quickly agreed that there was no specific rule to apply. They then attempted to apply a rule regarding plagiarism. The SSFC eventually settled on the idea promoted by the SSFC Advisor that plagiarism is equivalent to embezzlement (1:06:00; SSFC Final Deliberation audio, 3.7) and orally referenced rule #9, but did not reference the rule in the written justification. While rule #9 was orally referenced, it is unclear whether the SSFC is referring to Minimum requirement #9 or Decision Guideline #9.

Minimum Requirement #9 requires all student groups to be audited (Appendix A). During the SSFC discussion and justification for equating “plagiarism” to embezzlement, the fees advisor suggested that “plagiarism” would be the same as a group failing an audit. This spurred to the SSFC to review CFACKT’s audit, where they found no issues.


2 http://www.pirg.org/consumer/credit/model.htm
It should be noted that CFACT was audited and the SSFC acknowledged a clean audit report. Minimum Requirement #9 has no bearing on the allegation of “plagiarism”.

Guideline for Decision Making #9 says that groups must “fully justify their fees request”. The SSFC chair attempted to equate plagiarism to DM #9 stating, “this isn’t a stealing issue, this is an honesty and integrity issue.” (3.7 audio). According to the Chair, it’s not that CFACT imitated another group, it’s whether CFACT actually did the things it claimed to do. In fact, the job of the SSFC is to evaluate all of the claims CFACT (and every other group) make in their requests. Whether the claims made imitate another group are immaterial. The primary question is whether CFACT “demonstrate expenditures in general compliance with their submitted budgets.” (Minimum requirement #7). Embezzlement would be a clear violation of MR #7.

CFACT reached out to former SSFC members regarding this interpretation of the SSFC’s duties. Former SSFC chairman Paul Freeman noted,

“It's not about creativity, ideas or original insight, it's about the verbs and what organizations do. The Role of the SSFC is to decide whether what they do can/should be funded, and as long as the description is accurate, you've accurately represented yourself before the committee. This is what guideline #9 requires.”

The SSFC had a discussion of how they could verify or trust CFACT’s request. It was remembered that CFACT had been audited and the SSFC spent several minutes reviewing the audit. The SSFC came to the conclusion that the audit fully verified every transaction selected by the auditors, including the selections that were associated with the 'plagiarized' statements. The audit confirmed CFACT’s ability to represent itself to the SSFC.

CFACT fulfilled both Minimum Requirement #9, Decision Making Guideline #9, and did not violate any other rule or Guideline in the SSFC handbook.

III. The SSFC Violated Viewpoint Neutrality by Exercising Unbridled Discretion to Penalize CFACT According to an Unwritten and Vague “Plagiarism” Standard that Is Not Contained in Any SSF Rule or Regulation

The constitutional requirement of viewpoint neutrality in the mandatory student fee funding process requires that the process is free from unbridled discretion. “Without standards governing the exercise of discretion, a government official may decide who may speak and who may not based on the viewpoint of the speaker.” City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 763-64 (1988). In the student fee context, federal courts have declared that “the prohibition against unbridled discretion is a
component of the viewpoint-neutrality requirement.” Southworth v. Board of Regents of the University of Wisconsin System, 307 F.3d 566, 579 (7th Cir. 2002). Unbridled discretion is a paramount concern when a public university enforces an unwritten rule against a student group and the university can be held liable for such actions. See OSU Student Alliance v. Ray, 699 F.3d 1053, 1066 (9th Cir. 2012) (holding Oregon State University’s unwritten policy was unconstitutional because it allowed for content and viewpoint discrimination against students).

A viewpoint neutral process does not allow the SSFC to apply different rules and standards to different groups. The SSFC did not apply SSFC rules or guidelines to CFACT, the SSFC applied an unwritten, ad hoc rule to CFACT that “materialized like a bolt out of the blue to smite” CFACT but not MPIRG. OSU Student Alliance, 699 F.3d at 1064. This is the equivalent of making up the rules of baseball as the game is being played.

Furthermore, the SSFC may claim that it tried to apply academic rules to CFACT, but these rules don’t apply to the fees process, as the Assistant Dean of Student Affairs stated in his letter. SSFC’s actions are the equivalent of applying baseball rules to a football game. A referee can’t simply declare after the third penalty flag, “That’s three strikes, you’re out of the game!” Academic rules do not apply to the SSFC, and the SSFC should not apply them to CFACT or any other group.

The application of rules that do not exist, the application of rules that exist in other venues but not in the fees process, or the application of rules that are created mid-stream, is proof of unbridled discretion. A fees process that has unbridled discretion is by definition of the U.S. Supreme Court, not viewpoint neutral.

IV. The SSFC Violated Viewpoint Neutrality by Exercising Unbridled Discretion to Penalize CFACT with an 80% Cut in its Budget Based on an Unwritten and Vague “Plagiarism” Standard that Is Not Contained in Any SSF Rule or Regulation.

Besides the application of rules that don’t exist to CFACT, the SSFC also strayed far from precedent of other Committees and their own decisions in applying their 80% penalty to CFACT.

A. Original Budget vs. Initially Approved Budget

There are multiple instances in the past three years of student organizations violating Minimum Requirement #15 (Appendix A) regarding application deadlines. In every case that the group appealed, they were granted 50% of their original requested budget.
Had the SSFC followed precedent and applied their penalty to CFACT’s requested budget and not the Initially approved budget, CFACT’s allocation would be 100% greater. It should also be noted, that the SSFC did not consider or discuss any of the materials provided to the SSFC between Initial and Final Deliberations. The SSFC exercised unbridled discretion to inflict a greater penalty on CFACT.

B. Unprecedented 80% Penalty

The SSFC plucked out of the air a penalty of an 80% budget cut to punish CFACT according to the unwritten, ad hoc “plagiarism” standard. There is no precedent for this level of penalty for a student group, particularly for violating a rule that is not found in the SSFC Handbook.

When groups violate Minimum Requirement #15, the penalty is a 50% cut to the requested budgets. Many SSFC’s have argued that violating the “Minimum Requirements” should be a 100% cut, but the SSFC advisor and previous Vice-Provost have declared that the Minimum Requirements are actually guidelines and not rules.

Last year’s SSFC applied several penalties of 10%-20% budget cuts to groups whose audits showed one or more violations of Minimum Requirement #7.

This year’s SSFC applied a 5% penalty during initial deliberations to the QSCC for multiple violations of Minimum Requirement #7 discovered in the audit, and the organization admitted embezzlement of funds by previous leaders. (3.7 Deliberations audio). The SSFC removed the penalty during final deliberations arguing that the cut would punish next year’s students and not the previous leadership, which had graduated. It is not known whether the QSCC or the SSFC have sought to retrieve the embezzled funds or pursue action against the previous QSCC leaders for committing a felony with Student Fees. (Embezzlement over $1000 in Minnesota is a felony subject to a 1-year prison sentence).

It is unclear from the Final Deliberations how the SSFC came up with the 80% penalty for CFACT. The earlier discussion of the SSFC equating “plagiarism” to embezzlement would suggest a similar penalty of 5%. However, the penalty was not drawn from precedent for violating “Minimum Requirements,” nor was it drawn from the rulebook on Academic Plagiarism, which suggests a punishment of “a written reprimand for first-time offenders.”\(^3\) The SSFC exercised unbridled discretion when choosing a penalty of 80% of the Initially Approved Budget.

The SSFC also exercised unbridled discretion by dismissing a penalty for violating Minimum Requirement #7 using the rationale that the penalty would not punish the officers responsible since they had graduated, and would only impact students in the

\(^3\) [http://sjmc.umn.edu/about/plagiarismfabrication.html](http://sjmc.umn.edu/about/plagiarismfabrication.html)
future who were not responsible for the violation. (2:51:20, 3.7 Deliberations). The SSFC briefly considered but dismissed this for CFACT, however their dismissal is not consistent.

As is the case with QSCC, none of the authors of CFACT’s budget request will be students next year. The primary author of the “plagiarized” request graduated last year and is no longer involved with CFACT. The co-author of last year’s request graduates this year. The other three executive officers involved with the fees request will also graduate this year. The penalty applied to CFACT will be applied to next year’s organization and the “plagiarizers” will escape all punishment. The penalty will be incurred by current freshmen, sophomores and juniors who had no knowledge and no role in the budget request.

The SSFC also applied a “learning process” standard to CFACT for imitating another group. While this standard can’t be found anywhere in the SSFC Handbook, it was stated as a rationale during CFACT’s deliberation to impose a penalty. The cutting and pasting of large chunks of MPIRG’s previous requests into their current request also robs current MPIRG students of the “learning process” of the SSFC. The SSFC applied a “learning process” standard to CFACT that was not applied to any other group.

To recap, an organization that explicitly and admittedly violated a Minimum requirement was absolved of any penalties, while a group accused of a rule/guideline/minimum requirement that does not exist is not excused from a penalty. The SSFC exercised unbridled discretion by giving another group a pass, but not CFACT when the standard was equally applicable to both groups.

V. The SSFC Violated Viewpoint Neutrality by Discriminating Against CFACT’s Point of View

“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.” Board of Regents of the University of Wisconsin System v. Southworth, 529 U.S. 217, 233 (2000). “Viewpoint neutrality is the justification for requiring the student to pay the fee in the first instance and for ensuring the integrity of the program’s operation once the funds have been collected.” Id.; see also Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819 (1995) (requiring viewpoint neutrality in mandatory student fee funding system).

The SSFC provided MPIRG with funds of $128,560 and CFACT with $18,700. CFACT is modeled after MPIRG but with a different point of view. The SSFC is discriminating against CFACT’s point of view relative to MPIRG’s point of view.

Viewpoint discrimination is present not only when the government intentionally excludes a speaker from a forum because of the message he intends to convey, but also (1) when the government excludes a speaker but allows similar speakers into the forum, or (2)
when the government would allow such speech in the forum according to its policies and procedures. In other words, a complaining party need not demonstrate discriminatory intent to prove a viewpoint discrimination claim.

The appropriate focus of the viewpoint inquiry examines whether the proposed speech dealt with a subject that was “otherwise permissible” in a given forum. See *Airline Pilots Ass’n, Int’l v. Dep’t of Aviation of City of Chi.*, 45 F.3d 1144, 1159 (7th Cir. 1995) (“The appropriate focus of the viewpoint inquiry examines whether the proposed speech dealt with a subject that was ‘otherwise permissible’ in a given forum.”); see also id. at 1160 (“the proper focus concerns whether or not the forum has included speech on the same general subject matter. If this is the case, then suppression of a proposed but distinct view because of some content element included in it is impermissible.”).

Viewpoint discrimination is present in a speech forum like the SSF when the government excludes a speaker but allows, or would allow, many other similar speakers into the forum. In *Good News Club v. Milford Central School*, 533 U.S. 98, 107 (2001), the Supreme Court examined whether a public school committed viewpoint discrimination when it refused to permit an afterschool Bible club to use its facilities. When examining the allegations of viewpoint discrimination, the Court did not only examine the record in search of a similar group that was permitted in the forum already. The Court also looked at the types of expression that the school would permit in the forum based on its policy and practice:

Milford has opened its limited public forum to activities that serve a variety of purposes, including events “pertaining to the welfare of the community.” Milford interprets its policy to permit discussions of subjects such as child rearing, and of “the development of character and morals from a religious perspective.” For example, this policy would allow someone to use Aesop’s Fables to teach children moral values. Additionally, a group could sponsor a debate on whether there should be a constitutional amendment to permit prayer in public schools, and the Boy Scouts could meet “to influence a boy’s character, development and spiritual growth[.]” In short, any group that “promote[s] the moral and character development of children” is eligible to use the school building.

*Id.* at 108 (internal quotation marks and citations omitted). Regardless of whether Milford actually permitted the Boy Scouts, Aesop’s Fables, or a debate on prayer in schools into the forum, the fact that it would have done so and that such activities were similar to the Good News Club’s proposed activities, which were excluded, was evidence of viewpoint discrimination. The Court did not require proof of discriminatory intent. The mere prospect that such speech would be permitted in the forum illustrated the viewpoint discrimination in excluding the Bible club. *Id.* at 109; see also *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 391-92 & n.5 (1993) (noting the government’s “property is heavily used by a wide variety of private organizations,” providing a list of those users, and holding that the exclusion of a speaker who desired to
discuss a permitted forum topic from a religious viewpoint constituted viewpoint discrimination; no proof of discriminatory intent required).

The Seventh Circuit applied this principle in two cases involving the University of Wisconsin. In *Southworth v. Board of Regents of the University of Wisconsin System (Southworth II)*, the Seventh Circuit said: “[I]f the SSFC or the ASM Finance Committee were to treat one RSO’s speech and expressive activities as a student service, but conclude that another RSO’s speech and expressive conduct did not constitute a student service, that would constitute **proof of viewpoint discrimination**.” 307 F.3d 566, 590 (7th Cir.2002) (emphasis added). Or “if one RSO applied for funding following the blueprints of another RSO, i.e., similar organizational structure, similar types of activities, similar goals, and similar budgets, but received a lower amount of funding,” such circumstances would constitute evidence of viewpoint discrimination. *Id.* at 591. In other words, a plaintiff is not required to prove that an individual member of the SSF applied the policies inconsistently. All that is required is evidence of one student group that is granted funding, and a similar student group that is not granted an equivalent amount for no good reason. The individual predilections and intentions of SSFC members are irrelevant for this type of viewpoint discrimination.

Similarly, in *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 777 (7th Cir. 2010), Badger Catholic sought GSSF funding. The University denied it access to the funds because it engaged in prayer, worship, and religious instruction during its expressive activities. When analyzing the group’s viewpoint discrimination claim, the Seventh Circuit described how to properly analyze a speech forum, like SSF, by focusing on what type of speech the forum permits. The court said:

The [district] court entered a declaratory judgment providing that the University must reimburse Badger Catholic’s activities on the same basis as it reimburses other student groups. The University is free to decline funding for all summer retreats; if it does not pay for training workshops over the summer for members of FH King, it need not pay for Badger Catholic’s retreats either. Likewise, if the University refuses to fund a group such as Sex Out Loud that counsels students to engage in “healthy sexuality” (and distributes contraceptives to reduce the risk), it need not fund a group that counsels from a religious perspective. . . . But having decided that counseling programs are within the scope of the activity fee, the University cannot exclude those that offer prayer as one means of relieving the anxiety that many students experience.

*Id.* at 777-78. The court reinforced this analytical framework again when it said that the University “has chosen to pay for student-led counseling, [so] its decision to exclude counseling that features prayer is forbidden under *Widmar* and its successors.” *Id.* at 779. In fact, “[t]here can be no doubt . . . that the University’s activity-fee fund must cover Badger Catholic’s six contested programs, if similar programs that espouse a secular perspective are reimbursed.” *Id.* at 781.
As stated above, CFACT and MPIRG are similar organizations that differ mainly on their point of view. The difference in funding between CFACT and MPIRG is due to the SSFC applying an unwritten, ad hoc rule forbidding the modeling or imitation of programming and services of another organization. The SSFC is outlawing the very protections granted to minority points of view that organize themselves in a manner consistent with successfully funded majority points of view. The SSFC does not have the discretion to outlaw minority protections granted by the First Amendment.

Further, the SSFC discriminates against students who hold CFACT’s point of view by not holding non-perpetrators of the alleged infraction harmless. The SSFC applied this standard to QSCC, arguing that any punishment would not punish the guilty who had graduated, only future students who had no involvement. As noted above, none of CFACT’s leaders or members next year will have had any knowledge or involvement of the allegations. Yet the SSFC is discriminating against CFACT members versus QSCC members by not holding them harmless for the acts of others. Favoritism towards one group is effectively discrimination against another group, thus the SSFC has violated Viewpoint Neutrality.

VI. The SSFC Violated Viewpoint Neutrality by Failing to Give CFACT Due Process.

SSFAC Chair Sprangers noted in his email to all groups, “At this point, ideally your organization has already:

– Presented to the appropriate SSF Committee.

– Voiced your opinion at one or more public forum(s).

– Had the opportunity to submit supplementary documentation and/or have a follow up meeting with the appropriate SSF Committee.

- Received initial and final funding recommendations and rationales from the appropriate SSF Committee.”

Regarding the allegation of “plagiarism”, CFACT did not have access to three and a half of the ‘ideal’ conditions noted above. The finale rationale is the only notice CFACT had of the allegation and punishment of “Plagiarism”, thus the Appeals Committee is the only venue CFACT has to respond.

A. No Notice or Representation of Allegations Against CFACT

The first time CFACT was notified of the “plagiarism” allegation was Monday March 24, 2014, or 17 days after Final Deliberations. On February 26th, 10 days before the Final Deliberations, the Fees Advisor was made aware of the allegations against CFACT. At no point did the SSFC or the Fees advisor make any attempt to inform CFACT that a rules violation was being brought against them.
It is unprecedented for one student group to use its follow up meeting to blindside another fee applicant. In the past, complaints about other student groups were relegated to the open hearings where groups could respond to the allegations.

The SSFC tried, convicted and punished CFACT in absentia, without representation, and without notice. This concern was briefly raised during the Final deliberations and dismissed with “let them go to appeals” (50:00; 3.7 Deliberations).

B. SSFC Advisor Violated CFACT’s Due Process

The Fees Advisor had prior knowledge of MPIRG’s complaint against CFACT before the Final Deliberations, but made no effort to inform CFACT so they could provide some representation at the Final Deliberations.

While the meetings are open to the public, and a CFACT member could have attended, they would have been ambushed by the complaint and completely un-prepared to answer the allegations. The Fees Advisor could have forestalled this with a simple email of the complaint to a CFACT officer before the Final Deliberations started. By failing to do this, the Fees Advisor denied CFACT due process and violated viewpoint neutrality.

CFACT was not provided the complaint leveled against them until the day before the appeal was due to the Appeals Committee.

C. CFACT Denied a Final Deliberation

It should be noted that the SSFC did not address or discuss any of the concerns brought up by CFACT between Initial and Final Deliberations regarding the cuts applied during Initial Deliberations.

CFACT had many disagreements with the SSFC regarding their initial budget recommendation. CFACT was harshly handled by the SSFC who imposed a 50% cut during initial deliberations. CFACT attended the public hearings, submitted a written response (Appendix D) and offered to meet the SSFC before Final deliberations. The two largest grievances brought up by CFACT was 1) the SSFC’s viewpoint discrimination in funding MPIRG’s staff and failure to fund CFACT’s staff despite providing materially similar services (so similar that MPIRG alleges plagiarism, we allege modeling and imitation), and 2) the 50% cut to the Ron Paul event. CFACT raised several other issues as well.

The SSFC did not address or discuss a single item brought up by CFACT during Final Deliberations. The entire time was used to try and convict CFACT of ‘plagiarism’ and apply a penalty on the initially approved budget – a budget CFACT contested.
The similarity between CFACT’s staff positions and MPIRG’s staff positions is evidence of the SSFC violations of viewpoint neutrality. “[I]f the SSFC or the ASM Finance Committee were to treat one [student group]’s speech and expressive activities as a student service, but conclude that another [student group]’s speech and expressive conduct did not constitute a student service, that would constitute proof of viewpoint discrimination.” Southworth, 307 F.3d at 590.

Yet the SSFC turned that on its head and declared “plagiarism” and penalized CFACT. The SSFC punished CFACT for seeking its First Amendment rights guaranteed by the Southworth decision.

**D. Ron Paul Event**

While the SSFC did not address CFACT’s concerns with the 50% cut to the Ron Paul event, the SSFC did address those concerns for our partner organizations and restored the funding for both groups. The SSFC found the arguments for funding the Ron Paul event persuasive and acted during final deliberations for YAL and SCV. Yet they ignored the same arguments and didn’t even consider them during Final Deliberations for CFACT. This is proof that CFACT was denied a true Final Deliberation, and instead was subjected to a kangaroo court in absentia and without notice of the allegations.

**E. “Just Send them to Appeals”**

The SSFC justified their actions without notifying CFACT or having them present by saying, “Just send them to Appeals”. This statement is too cavalier for something this serious and indicative of a disregard for reaching the fairest outcome. The SSFC shouldn't use the fact that further appeals exist to short-circuit deliberation and analysis. The focus needs to be making the right call during the deliberations, not relying on another group or person to correct their work.

While we appreciate the opportunity to have our case heard, we are quite dismayed to be shunted into a flawed appeals process.

First, the Appeals Committee is comprised of the same SSFC committee members who CFACT is accusing of gross viewpoint neutrality violations, and advised by the same SSFC Advisor who already denied CFACT due process by failing to notify them of the allegations being brought against them, or providing a copy of the complaint.

It would be very convenient for the SSFAC and the SSFC Advisor to find themselves ‘innocent’ of viewpoint neutrality violations.

Second, the SSFAC is not an expert body or well versed in First Amendment case law or non-partisan organization law. The body is a random sub-set of the sitting SSFC and has no particular training or expertise beyond the training provided to all SSFC members. For instance, last year’s SSFAC had a member who declared CFACT was a ‘partisan’ group, which was, 1) not germane to CFACT’s appeal, 2) factually inaccurate
since CFAC is a non-partisan 501c3 in good standing with the IRS and the state of Minnesota, and 3) viewpoint-based because that member obviously had to consider CFAC’s viewpoints to reach such a conclusion. Such ignorant pronouncements from untrained and personally vested members of the SSFAC do not give us confidence for a fair hearing.

Third, the actual work product of the SSFAC is little more than a form letter. The SSFAC rarely responds to specific points and ignores whole sections with little or no comment.

Fourth, several individual students and supporters of CFAC will be impacted by this decision. If individual students wished to appeal this or any other decision, they must submit their appeal by March 28, 2014. Yet according to the SSFC timeline, the Final Recommendations will not be provided to the Daily till March 31st. The Final recommendations and rationales were not posted till March 28th, the day that appeals are due to the SSFC. A typical student would not discover their Southworth rights had been violated until after the appeals deadline.

**Conclusion**

The SSFC used an unwritten, ad hoc standard that is not contained in any SSF rule or regulation to cut 80% of CFAC’s budget. That is unbridled discretion. The SSFC’s actions also demonstrate viewpoint discrimination because CFAC is modeled after MPIRG, but provides a different point of view for students to access on campus. The SSFC punished CFAC’s diversity by granting it only $18,700, while it granted MPIRG $128,560. This is evidence of viewpoint discrimination. Finally, SSFC failed to provide CFAC with adequate due process by failing to give CFAC notice of the allegations against it or time to respond to those allegations, by denying CFAC a final deliberation on issues addressed by CFAC between the Initial and Final Deliberations, by failing to reconsider the cuts imposed on CFAC’s portion of the Ron Paul event, and by just abdicating responsibility and deciding to send CFAC to the appeals process after the SSFC admitted it could not impose a “plagiarism” standard, but wanted to punish CFAC anyway. For any and all of these reason, the decision of the SSFC to cut 80% of CFAC’s budget should be reversed and the appeals committee should restore that funding to CFAC’s 2014-2015 budget, and grant CFAC a proper review of the cuts imposed during Initial Deliberations.

Adam Motzko
CFAC - Treasurer
Appendix A – SSFC Minimum Requirements from the SSFC Handbook

7) Groups receiving funds from the student services fees shall demonstrate expenditures in general compliance with their submitted budgets.

9) All groups currently receiving funds from student services fees must be audited by the designated independent auditing firm contracted to perform audits of fee receiving organizations. Copies of audits will be attached to the standardized request form submitted to the Student Services Fees Committee. All financial records must be submitted in a timely manner.

   a. Student groups will be audited based on total amount of SSFs received and amount of risk to the institution.
   b. Higher dollar/higher risk groups (currently receiving more than $15,000) will be audited every two years, lower dollar/lower risk groups (currently receiving less than $15,000) will be audited every four years
   c. All groups will be audited after their first year receiving Student Services Fee funding
   d. SSF Administrative Fee Budget may be adjusted to account for an increase/decrease in overall SSF audit costs
   e. Terms of the audit contract between University and independent auditing firm can be determined by the SSF Advisor, a representative from the Senior Vice President For Academic Affairs and Provost’s Office and a representative from the Controller’s Office.
   f. Financial implications to fund this level of auditing may have an impact of the SSF Administration budget.

12) All groups applying for student services fees must complete the standardized request form.

15) All groups applying for student fees must comply with all deadlines established by the Student Services Fees Committee. Requests for exceptions must be submitted in writing and received at least two weeks prior to the deadline for submission. Exceptions require approval of the Student Services Fees Advisor and the chair of the Student Services Fee Committee.
Appendix B – Guidelines for Decision Making from SSFC Handbook

a. All organizations (student groups and administrative units) must fully justify their fees request, including any financial reserves.

- In response to its own needs, operating risks (i.e. fluctuations in enrollment) and budgeting practices, organizations should establish an internal requirement for reserve funds.
- This requirement is not translated into an arbitrary SSF rule, i.e. 10% of operating funds. It is recommended that operating reserves for student groups be between 0-10%, but a minimum reserve is not required.
- Administrative units are not required to maintain minimum or maximum reserves.
- The SSFC has the ability to reduce financial reserves for any organization – administrative unit or student group – if proper justification is not found for the requested amount.

Appendix C – See Attachment

Appendix D – See Attachment