

Guide To

Student Activity Fees



CENTER FOR CAMPUS
FREE SPEECH

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About the Center for Campus Free Speech:

A thriving marketplace of ideas is critical to the mission of higher education. Students learn best in an environment where they’re exposed to a variety of ideas and experiences, able to debate and challenge them and put those ideas into practice. This mission begins in the classroom and extends beyond it—to extracurricular opportunities created by students to enhance their education experience. Throughout campus, this mission is only served when campuses and their faculty and students are free to engage on the entire spectrum of issues, concerns and controversies of the day.

The Center for Campus Free Speech is a resource center that provides information and expertise on campus free speech and academic freedom issues. We connect members of the higher education community into a network to help promote and protect free speech on college campuses.

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Introduction

The purpose of this guide is to provide campus leaders with a primer on the legal issues involved in creating and managing a student activity fee system. Legal issues occupy center stage because the use of student activities fees to support organizations that take positions on social, economic, religious and political issues has led to significant litigation over the constitutionality of such programs. Objecting students argued that the mandatory exaction of fees violated their First Amendment rights. Until recently, that litigation had resulted in substantial confusion about the legal obligations governing the design and operation of student fee programs. The Supreme Court's 2000 ruling in *Board of Regents of the University of Wisconsin System v. Southworth* (*Southworth*) cleared up much of that confusion by ruling that mandatory student fee programs do not violate the First Amendment rights of objecting students. So long as student fee programs do not take the viewpoint of student organizations into account in determining eligibility for funding, student fee programs pass constitutional muster. This guide explains *Southworth* and the impact the ruling has on student fee programs.

This guide also seeks to clear up the misinformation that is being spread by opponents of student fee systems. Having lost *Southworth*, their aim appears to be to frighten student leaders and school administrators into scaling back or abandoning student fee systems. To do this, they have produced “guides” and other publications that, in our view, misstate the law and wrongly suggest that schools that permit student fee programs are opening themselves up to legal action.¹ In fact, *Southworth* gives a clear green light to the development of student fee programs and considerable guidance to student leaders and school administrators on how to design and operate student fee programs comfortably within the boundaries of the First Amendment.

The guide will address:

1. Why campuses have created student activity fees;
2. Types of fee mechanisms; and,
3. The legal background, principles, and practicalities of fee systems.

Origin of Student Activity Fees

Student activity fees serve three important and interrelated purposes in enriching student life. First, extracurricular activities significantly enhance classroom education. They provide opportunities to learn skills not taught in the classroom. They provide students hands-on opportunities to learn leadership, teamwork, and communication skills. In addition, they provide for experiential learning.

Second, they provide opportunities for service. Students want outlets to give back to their communities and to serve their fellow students. The range and diversity of service programs funded by student fees is as broad as the student body itself. On most campuses, those services range from community efforts including environmental protection efforts such as river cleanups, providing services to the needy, community services such as tutoring local elementary school students, to issues of particular relevance to students—student-directed writing centers, book rental and trading programs, counseling students in crisis, and tutoring those in need of assistance.

Third, and just as important, student activity fees can be used to fund groups that have something to say on matters of political, social, economic, or religious matters. Creating a forum for the exchange of information, for discussion, and, at times, for spirited debate, has its own value.

While these activities are clearly important, tuition generally is used to pay for classroom-related expenses. To find money for extracurricular activities, campus administrators began instituting separate student activity fees over one hundred years ago. Initially, student fees were used to pay for basic student services like health care and graduation ceremonies and a limited number of extracurricular opportunities. For example, the University of Oregon first charged an optional fee in 1899 to support “football, track, publications, the Executive branch of student government and the glee club.”² In 1910, the University of Wisconsin began charging a health fee to pay for the school’s first clinic and physician.³

Now, at many campuses student activities fees support a broad range of activities, including student newspapers; student governments; student organizations and clubs of all kinds; as well as institutions ranging from women’s centers, daycare facilities, multicultural centers, volunteer centers, legal assistance, state student associations, and other student-initiated or student-run projects.

Not only has the breadth of student activities grown over time, but so, too, have students’ roles in University governance and student fee allocation. As campuses moved away from the traditional doctrine of ‘in loco parentis’⁴ in the 1960’s and 70’s, students were given more say in the decisions affecting student life. From self-governing

residence hall councils to student-initiated classes to formal participation in campus-wide decision-making committees, students gained responsibility for themselves and their campus. Paralleling this trend, students on many campuses were also given a central role in allocating funding from student activity fee systems.

One example of how a student fee system developed is at the University of Wisconsin. In 1971, the state legislature enacted a law merging the Wisconsin State University campuses and the University of Wisconsin campuses into one system. That legislation explicitly permitted the collection of student activity fees and assigned to students the job of determining how the fees would be allocated to student organizations.⁵

According to Roger Howard, a Dean Emeritus at the University of Wisconsin-Madison,⁶ prior to the 1971 merger of the university systems, students at many of the Wisconsin State University (WSU) campuses had already started to play some role in deciding the use of their activity fees. On most WSU campuses, fee revenue supported student unions, health care, athletics, and a small set of other programs. At the University of Wisconsin-Madison campus, however, student fees had yet to be used to fund

campus activities, save for the Wisconsin Memorial Union.

After the merger legislation passed, UW-Madison students began to expand the use of student fees to fund student-led programs. Today, UW-Madison has more than 750 student organizations⁷, nearly half of which receive some level of funding.⁸ They include organizations that put on cultural programs (Multicultural Students Coalition and Wunk Sheek, a Native American organization), engage in service activities (Habitat for Humanity), build leadership skills and campus community (Adventure Learning Program), as well as groups that engage in advocacy (United Council of UW Students and the Wisconsin Student Public Interest Research Group or WISPIRG)⁹.

There are some ways in which Wisconsin is unique; for example, most states do not have statutes mandating that students have a say in allocating student fee funds. Still, many other campuses have developed similar systems. In 1971, Oregon students and administrators set up a system that allows students to have primary control over the student activity fees¹⁰. In 1968, the State University of New York schools started collecting a fee and gave students a lead role in allocating those funds to campus organizations.¹¹

Attacks on Student Fee Funded Activities

It should come as no surprise that as the range of student fee funded activities has expanded in recent decades—moving from basics like health insurance and athletics to a truly broad range of activities including advocating positions on important social and political matters—student fees and the activities they support have sometimes become controversial.

Like any large, heterogeneous community, students have widely divergent views on political, social, economic, and religious issues. Debates over these matters become,

at times, contentious. While colleges and universities see these activities as integral to an educational environment, others object to the promotion of views different from their own, and especially object to the use of student fees. These opponents of student fee funded activities have taken the position that they would rather sacrifice the whole forum that student fees fund than tolerate a forum that contains views other than their own. Religious conservatives have been among the most vigorous objectors to the broad range of student fee funded activities,¹² though there are other groups in that camp as well.¹³

Student Activity Fee Mechanisms

Though there are variations within each category, there are two basic types of student activity fees: mandatory (those that must be paid as a condition of enrollment) and voluntary (not a condition of enrollment, and with a mechanism to either opt out or opt in to paying the fee).

Mandatory

On most campuses, student activities are funded through a mandatory fee. The fees are pooled together in a general fund that is typically allocated to a wide variety of student organizations and activities by a student government, student association, or some other democratically elected student governing body. The campus administration then reviews and signs off on the student government's recommendations. In some cases, a campus funding board that includes both students and non-students makes the fee allocations.

The majority of student activity systems are mandatory, though there is considerable variation in the amount of the fee and the number of groups funded through it. Some schools have chosen to have a small fee that funds fewer activities or that funds only a small part of student organizations' budgets. Other schools have created a much larger pool of funding. In some cases, the campus has also chosen to make allocation decisions for the following academic year and then set the per-student fee based on the

total of those allocations to ensure that large requests are well planned and that student organizations are not in a position of competing with each other for funds.

Voluntary

Since this guide focuses on the legal issues surrounding student fees, the most important thing to note about the variety of voluntary fee mechanisms is that by virtue of *not* being mandatory they remove many of the First Amendment questions surrounding student fees. In a voluntary program, no student is compelled to pay the fee and thus, as a general matter, there is no basis for claims of compelled association or speech. While that is a significant advantage to the voluntary fee systems, it comes at a price. Voluntary fee systems generate less revenue to fund student activities and provide less predictable funding for campus organizations.

In terms of the mechanics, there are a number of ways to institute a voluntary fee. The mechanisms that tend to provide the highest level of funding are refundable and waivable fee systems. In refundable systems, all students initially pay the fee, but then can request a refund for all or part of the fee. In a waivable system, the vast majority of students pay the fee, but there is a mechanism to opt out of funding an individual activity or the student fee as a whole. Because these fee mechanisms presume that most or all students will pay the fee, but also have

an opt-out mechanism for those who consciously object, the participation rate will be higher than with other voluntary systems.

Two less common mechanisms for instituting a voluntary fee are a simple donation system and a “pledge system.” In a donation system, rather than assessing a fee per se, campuses provide an institutional mechanism for students to donate to organizations of their choice. Donation systems do not work to fund large-scale or resource-intensive programs for two reasons. First, there is no way to know how many other students will pay the fee, and thus there is no guarantee that the program will raise enough money to be viable. This uncertainty discourages students from making a donation. Indeed, donating to a program under these circumstances might be irrational, knowing that the donation would go into a pool of money that would likely never become big enough to fund the program in question. Second, regardless of the size of the pro-

gram to be funded, donation systems suffer from the “free rider syndrome”—the hope that others will pay for something even if you do not.

The “pledge system” is an attempt to have a fee that is decided upon by the individual, yet retains an element of the community decision found in most fee systems. In a pledge system, students have the opportunity to pledge that they will donate to an organization *if* enough other students donate such that there will be sufficient funding to support the organization. These systems still have dramatically lower student participation rates than either a waivable or refundable system because students have to pro-actively seek out to pledge funding. However, the fact that there is some level of community decision involved and that there is some assurance that enough donations will come in to support the activity means that this system can be viable for larger projects under the right circumstances.

Key Legal Principles and Background

This chapter discusses the basis of the legal challenges to student fees, the legal requirements for mandatory fee systems that arise out of this litigation, and practical principles to implement in a fee allocation system that meets those requirements. There are just a handful of key principles that, once understood, make it easy to operate a student fee system that complies with the law.

Basis of Legal Challenges

Prior to *Southworth*, the most common claim in legal challenges to student activity fees was that student activity fees amounted to ‘compelled speech’ and were therefore a First Amendment violation. These legal challenges involved students who were subject to a mandatory fee, but objected to the positions taken by one or more of the student organizations funded through the mandatory fee system. Advocates of this position were fond of quoting Thomas Jefferson – “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.”

Initially, many courts agreed with the objecting students that the First Amendment protected their right of association --- in these cases, their right not to have their funds support political speech they disagreed with. These courts found that the mandatory exaction of student fees was analytically no different than fees charged by labor unions that, by law, represented all

of the employees who worked for a given employer. In many states, labor laws require employees to pay dues to the labor union authorized to represent workers even if the employees were not members of the union. Courts had upheld the exaction of these dues to prevent the “free rider” problem --- that is, that non-union members would reap the benefit of union representation without paying their fair share. But the Supreme Court, in a landmark case (*Abood v. Detroit Board of Education*) held that union dues exacted from *non*-members could be used only for activities “germane” to the central mission of the union --- to press the employer for better pay, benefits and working conditions, and could not be used to engage in unrelated political activities.

Applying the logic of *Abood* to student fee cases, lower federal courts held that the mandatory exaction of student fees implicated the right of objecting students to be free of compelled association. But the courts also found that state colleges and universities had a powerful interest in establishing mandatory fee programs to pay for a broad array of student activities that were “germane” to the school’s mission to provide a rich educational environment for its students. As a result, the courts were then called on to decide which student programs met the “germaneness” test, with the courts taking two divergent approaches to answering that question. Some courts, like the United States

Court of Appeals for the Ninth Circuit, ruled that the appropriate inquiry was whether the *forum* created by the student fee system was germane to the school's educational mission. These courts ruled that most programs --- even those that engaged in advocacy, along with other activities --- survived germaneness review.¹⁴ Other courts, including the California Supreme Court, found that the appropriate inquiry was whether *each group* that participated in the forum survived germaneness review.¹⁵

Southworth v. Board of Regents

After years of confusion sown by inconsistent lower court decisions, the Supreme Court finally resolved the controversy over the constitutionality of mandatory student fees in *Board of Regents of the University of Wisconsin System v. Southworth*.¹⁶ Scott Southworth was a conservative student at the University of Wisconsin-Madison. The University had a mandatory fee, which it collected to help fund hundreds of student organizations. Southworth disagreed with the views of a number of the more liberal organizations funded through the fee system, including groups ranging from the Campus Women's Center to the International Socialist Organization. Southworth, along with several of his conservative colleagues, sued the University, arguing that forcing him to pay the fee was tantamount to compelling him to support speech that he abhorred, a violation of the First Amendment.

The Supreme Court ended the debate over the constitutionality of mandatory student activity fees in *Southworth*. *Southworth* rejected prior lower court decisions that applied a "germaneness" test for mandatory fees; under that test, fees could be exacted if, but only if, the university could prove

that creating a forum for student debate was "germane" to the university's educational mission. In *Southworth*, the Court concluded that promoting a "public forum" for student debate was integral to the university's mission, and thus it made little sense to require universities to prove that fact again and again. As the Court put it:

"The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends."

In so ruling, the Supreme Court ended the debate about the constitutionality of a university's exaction of a mandatory fee. All the Constitution requires is a university's determination that its students will be well served by the creation of a forum to discuss social, political, philosophical and economic issues. Once a university makes that determination, its decision to create a forum, and to use mandatory student fees to fund it is not subject to second-guessing by the courts.

The Court also made clear that the Constitution did not impose a limit on the kind of speech, or expressive activity, that could take place in the forum. Lower court decisions had suggested that there were activities that might not be germane to the university's core educational mission, and that these activities could not be supported by mandatory student fees. But the Court made clear that those decisions as well were for the school to make, not the courts. As the Court put it:

“The speech the University seeks to encourage in the program[s] before us is distinguished not by discernable limits but by its vast, unexplored bounds. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning.”

The Court also rejected lower court opinions that suggested that activities supported by student fees had to take place on the school’s campus. Objecting students had frequently argued that lobbying and service activities that took place off campus did not directly benefit the school’s students, and thus were not germane to the school’s mission. The Court rejected that argument. The Court ruled that education does not necessarily take place within the confines of a school’s campus and was not subject to geographic limitation. The Court said:

“We find no principled way, however, to impose upon the University, as a constitutional matter, a requirement to adopt geographic or spatial restrictions as a condition for [student groups’] entitlement to reimbursement. Universities possess significant interests in encouraging students to take advantage of the social, civic, cultural, and religious opportunities available in surrounding communities and throughout the country. Universities, like all of society, are finding that traditional conceptions of territorial boundaries are difficult to insist upon in an age marked by revolutionary changes in communications, information transfer, and the means of discourse.”

Having ruled that state colleges and universities were free to use mandatory student fees to create forums for expressive activity, and that the courts would not oversee these decisions, the Court turned to what it saw as the possible First Amendment problems.

The Supreme Court was not worried about the *creation* of student fee programs --- that decision, the Court thought, was up to the school. Rather, the Court was concerned that the fee system might be *administered* in a way that discriminated against minority views and favored views that were supported by a majority of students. The Court did not want to license the exclusion of certain voices from the forum simply because a majority of students might disagree with their message.

Accordingly, the Court drew an analogy to cases governing “public forums,” like parks and streets, where restrictions on speech must be imposed in accordance with principles of viewpoint neutrality. “If the rule of viewpoint neutrality is respected, our holding affords the University latitude to adjust its extracurricular student speech program to accommodate these advances and opportunities.” Viewpoint neutrality is not a difficult concept to understand. Put simply, it requires the government, when it maintains a forum for expressive activities, to permit equal access by everyone who wants to participate. The government may not pick and choose which viewpoints may be expressed in that forum. This standard, that funding must be allocated without regard to the views of the group applying for funding, is the operational principal to ensure that the fee system is constitutional.

Viewpoint Neutrality

In the context of collecting and allocating student fees, “viewpoint neutrality” means ensuring that there is no bias toward any particular viewpoint. Because student fee funded activities involve a wide range of projects and programs that can require vastly different levels of funding, “neutrality” is not measured by the particular *outcome* of funding allocations, but by the *process* by which those decisions are made. The goal is to have a process that is neutral and bias-free, not to create an artificial ‘balance’ of views and activities.

It is easier to describe the elements an allocation system may *not* have in order to prevent bias rather than to design a bias-free system. The key elements are:

- Funding decisions may not have any relationship to the particular viewpoint of the group or activity. Requests for funding based on criteria that are neutral toward the views of the organization.
- Funding may not be contingent on a particular level of support or popularity of an organization, although the amount of funds to be allocated to an organization may take into account student involvement in the organization.
- Criteria used to evaluate funding proposals must be consistently applied.

While the system for allocating student fee funds at UW-Madison was not at issue in the U.S. Supreme Court’s decision, follow-up litigation before the United States Court of Appeals for the Seventh Circuit did specifically address the UW-Madison allocation process and found it to be constitutional, with minor exceptions not relevant here. The case, *Fry v. Board of Regents* (commonly known as *Southworth II*)¹⁷ only strictly applies to

campuses in the Seventh Circuit (Wisconsin, Illinois and Indiana). Nonetheless, the decision did identify some sound principles that any allocation system should incorporate:

- The allocation system should require that decisions are made without regard to viewpoint;
- The allocation system should have a process for removing fee allocation committee members that violate viewpoint neutrality;
- The allocation decisions should be made based on specific, content-neutral criteria;
- The allocation system should have a clear appeals process.

Fee allocation systems should also be designed so that the decision-making process is transparent and may be reviewed by any member of the campus community. In addition, the system should be structured to ensure that all students can easily determine how organizations may apply for funding and how fee allocation decisions are made. The more open the process, the more likely it is that a system will survive judicial review. These additional safeguards will help to ensure that potentially problematic decisions are caught early in the process and that students involved with the process understand the mechanics well enough to appreciate why some requests for funding are denied. These steps can be met by requiring meetings to be open to members of the campus community, by keeping detailed records of meetings and making them available to members of the campus community, and by running training sessions and establishing other mechanisms for educating student organizations on the student fee allocation process.

One example of a system that works well is the University of Wisconsin-Madison Gen-

eral Student Services Fund (GSSF) allocation process. This process, run by the student government (the Associated Students of Madison) is not perfect, and we do not mean to suggest that it is. In fact, some would argue that in attempting to satisfy the lower court judges during the *Southworth II* litigation, the University adopted far more detailed procedures and criteria than are legally or practically necessary. Nonetheless, it is an example of a system that implements, and goes beyond, the principles described above.

From the Associated Students of Madison Bylaws¹⁸:

Criteria considered when deciding whether an organization is eligible for funding:

- The group must be an officially registered organization
- The group must have written governing documents
- The organization/program must provide a specific and identifiable educational benefit and/or service to the students of the University
- All students must be able to participate in the organization/program and/or access to the services they provide
- The group and/or activity must demonstrate how it contributes to the University's mission
- The group must present a detailed plan about its mission, goals, and activities
- The group and/or activity must not duplicate current offerings
- The group's proposal must be fiscally responsible
- The group must attend its hearing

Criteria considered when determining the amount of funding to allocate to eligible organizations:

- An eligible organization/program has demonstrated the ability to effectively spend the funds that the group was awarded in the manner proposed
- An eligible organization/program has demonstrated that it has accomplished the objectives that it had set out to accomplish in the past
- An eligible organization/program has demonstrated that the request for funds is reasonable within the objectives it has set
- An eligible organization/program has demonstrated a need for the request for funding to achieve its objectives
- An eligible organization/program has demonstrated that it has submitted accurate requests for funding in the past
- An eligible organization/program has not significantly changed since their eligibility hearing so as to violate the eligibility criteria

Procedures the UW system uses to ensure decisions are made in a viewpoint neutral manner:

- The student government document all hearings regarding a group's request (both by note taker and audio tape);
- The student government has a clear timeline for voting and decisions spelled out in its bylaws;
- The student government has an appeals process spelled out in the bylaws. Appeals first go before the Student Judiciary and then before the campus administration. The appeals process has a specific timeline spelled out in the student government bylaws;
- The student government's bylaws require that members of the finance committee make decisions in a viewpoint neutral manner and have a procedure to remove members that violate this requirement.

Common Misconceptions About Viewpoint Neutrality

Although viewpoint neutrality is a relatively simple concept, in the years since the Supreme Court's ruling some have misunderstood what viewpoint neutrality means in practice. For the most part, these misconceptions are caused by one central misunderstanding—that the *outcome* of the allocation process must be neutral or balanced towards viewpoints rather than that the *process* for allocating funds needs to be neutral towards viewpoints. The following discussion highlights three of the more common ways this central misunderstanding comes up in practice:

Misconception 1: Viewpoint neutrality means that fee allocation decisions cannot take into account the results of a student referendum

Post *Southworth*, it is understood that requiring a showing of majority support, through a referendum or otherwise, as a condition for funding would be constitutionally suspect. The forum may not be open only to those organizations that command broad support. The essence of viewpoint neutrality is that all points of view—even those espoused by small minorities—must be given equal access to the forum.

However, nothing in *Southworth* holds that schools must turn a blind eye towards indications of student support, such as a referendum or petition. Indeed, a system that did not consider, at least to some extent, student support would likely violate the Constitution.

The confusion about viewpoint neutrality and referenda is understandable since the *Southworth* Court *did* raise concerns about the use of a referendum as the sole determi-

nant in deciding whether groups were eligible for funding. The Court suggested, but did not rule, that such a method of determining eligibility would not be viewpoint neutral.

“To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views.”¹⁹

If referenda are the *sole* means by which eligibility for funding is determined, then the majority could easily silence a minority view, violating the principle of viewpoint neutrality. If a funding allocation system is designed in that manner, it should be changed to allow both popular and unpopular views access to funding.

More recently, the use of an advisory referendum in determining how much funding to allocate an organization has been the subject of litigation. In *Amidon, Brownlow, CALL-NY v. SUNY Student Association, NYPIRG*, the 2nd Circuit Court of Appeals held that an advisory referenda asking students if they supported funding an organization at a specific dollar amount violated viewpoint neutrality.²⁰ The Court determined that the specific referendum in question “substantially captures one thing: the student body’s valuation of the RSO.”²¹ It also determined that the other parts of the allocation process in question were insufficient to stop the student government from using the results of the referendum to reduce or deny funding to groups known to have unpopular viewpoints. As the Court put it, “here there are no effective safeguards to prevent

a discriminatory advisory referendum from tainting the allocation process.”

Nonetheless, the 2nd Circuit’s decision in *Amidon* did not find all referenda to be inappropriate. The Court specifically allowed for allocation systems to take into account the level of student participation in an organization and the use of referenda that ascertain how many students would be likely to participate in an activity or organization.

“Our decision does not foreclose the use of advisory referenda that are reasonable in light of the forum’s purpose and viewpoint neutral. For example, we see no impediment to using an advisory referendum (or perhaps more aptly labeled, a survey) to ascertain how many students anticipate attending a specific event for which an RSO seeks funding as a means of assessing that RSO’s prospective costs.”²²

Though the constitutionality of using referenda in allocation decisions is not a settled question, there remains a strong argument that referenda and other tools to measure student involvement and interest can be useful in making allocation decisions provided they are used in the right way. A critical distinction exists between the use of referenda to determine a group’s *eligibility* to receive funds and the use of referenda as a tool for gauging student interest in the group for use in determining the *amount of funds allocated* to a group that has already been deemed eligible.

When a referendum is used to inform the amount of an allocation for a group or activity, the referendum can serve as a useful measure of the amount of services provided by the group and future student interest/

involvement. It is common sense that the amount of funds allocated should be, at least in part, a function of the number of students who benefit from the group’s presence on campus. There is a strong argument that allocation decisions must be made, at least in part, by considering the level of student support in order to avoid running afoul of viewpoint neutrality principles.

Consider a concrete example. Suppose that Students for Choice had 5 active student members while Students for Life had 500. The University would have a very difficult time justifying giving Students for Choice \$2500 and Students for Life \$1500 without appearing to favor the speech of Students for Choice. By not taking into account the level of student support, the University artificially amplifies the voice of the minority organization, Students for Choice, at the expense of the expressive rights of the larger number of students who support Students for Life. On the other hand, if the fee allocation were \$500 to Students for Choice and \$5000 to Students for Life—because the University has a policy that student interest is a determining factor in allocation decisions—that allocation seems easy to defend on viewpoint neutrality grounds. If anything, the University has tipped the scale in favor of the minority organization to ensure it is heard in the forum, without unduly penalizing the interests of Students for Life.

Using referenda is simply one method of considering student interest in allocation decisions. Provided that referenda are employed as one of the criteria considered in setting allocation levels and do not harm an organization’s access to the forum in the first place, a measure of student interest and likely involvement can be useful.

Misconception 2: Viewpoint neutrality means that all groups must be allocated the same amount of funding.

A related misconception is that the only way to allocate fees in a viewpoint neutral manner is to give every group the exact same amount of funding again, arguing that the outcome of allocation decisions must be neutral rather than focusing on the process by which funds are allocated. There are three problems with this misconception. First, different types of groups have very different resource needs. A chess club requires different resources than a student legal services program. Second, groups with different levels of student involvement on campus would also need different levels of resources. If a campus group has a large number of participants, they will use more resources to meet that demand than one that has a small number of participants. Third, there is a serious viewpoint neutrality problem in treating dissimilar groups alike. To build on the prior illustration, there is a strong argument that giving equal funding for Students for Choice and Students for Life both unfairly amplifies the voice of the smaller group and unfairly suppresses the voice of the larger group. While strict proportionality is not required, a strict equality rule is unlikely to survive First Amendment attack.

Misconception 3: Viewpoint neutrality means that a group cannot be funded unless a group that advocates the “opposite” view also receives funding

While there is no coherent legal basis for this concern, it is a point that is made frequently by opponents of student fee programs. The typical argument is that groups working of a “liberal” side of an issue—for example, tolerance for gays—may not be funded unless the school is equally willing to fund an organization that takes the opposite position, say an organization of formerly gay individuals who believe that homosexuality is a personal life choice that one is free to change. The problem with this argument is that it is *not* an equality argument. If such an organization existed, principles of viewpoint neutrality would require the school to permit it to seek funds on an equal footing with the tolerance for gays organization. Nor is it a viewpoint neutrality argument. The objection does *not* go to the criteria used to determine eligibility—it is an objection based solely on the orientation or viewpoint of the group receiving funding. Rather, it is the classic sore-loser argument that seeks to defund organizations—not because an opposition group is not receiving funds, but because an opposition group simply does not exist. Under Southworth, this argument is without merit because it has nothing to do with the viewpoint neutral tools used to determine funding eligibility.

Southworth v. Board of Regents of the University of Wisconsin

SUPREME COURT OF THE UNITED STATES

March 22, 2000

**BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM,
PETITIONER v. SCOTT HAROLD SOUTHWORTH et al.**

Justice Kennedy delivered the opinion of the Court.

For the second time in recent years we consider constitutional questions arising from a program designed to facilitate extracurricular student speech at a public university. Respondents are a group of students at the University of Wisconsin. They brought a First Amendment challenge to a mandatory student activity fee imposed by petitioner Board of Regents of the University of Wisconsin and used in part by the University to support student organizations engaging in political or ideological speech. Respondents object to the speech and expression of some of the student organizations. Relying upon our precedents which protect members of unions and bar associations from being required to pay fees used for speech the members find objectionable, both the District Court and the Court of Appeals invalidated the University's student fee program. The University contends that its mandatory student activity fee and the speech which it supports are appropriate to further its educational mission.

We reverse. The First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech if the program is viewpoint neutral. We do not sustain, however, the student referendum mechanism of the University's program, which appears to permit the exaction of fees in violation of the viewpoint neutrality principle. As to that aspect of the program, we remand for further proceedings.

I

The University of Wisconsin is a public corporation of the State of Wisconsin. See Wis. Stat. §36.07(1) (1993-1994). State law defines the University's mission in broad terms: "to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses and to serve and stimulate society by developing in students heightened intellectual, cultural and humane sensitivities ... and a sense of purpose." §36.01(2). Some 30,000 undergraduate students and 10,000 graduate and professional students attend the University's Madison campus, ranking it among the Nation's largest institutions of higher learning. Students come to the renowned University from all 50 States and from 72 foreign countries. Last

year marked its 150th anniversary; and to celebrate its distinguished history, the University sponsored a series of research initiatives, campus forums and workshops, historical exhibits, and public lectures, all reaffirming its commitment to explore the universe of knowledge and ideas.

The responsibility for governing the University of Wisconsin System is vested by law with the board of regents. §36.09(1). The same law empowers the students to share in aspects of the University's governance. One of those functions is to administer the student activities fee program. By statute the "[s]tudents in consultation with the chancellor and subject to the final confirmation of the board [of regents] shall have the responsibility for the disposition of those student fees which constitute substantial support for campus student activities." §36.09(5). The students do so, in large measure, through their student government, called the Associated Students of Madison (ASM), and various ASM subcommittees. The program the University maintains to support the extracurricular activities undertaken by many of its student organizations is the subject of the present controversy.

It seems that since its founding the University has required full-time students enrolled at its Madison campus to pay a nonrefundable activity fee. App. 154. For the 1995-1996 academic year, when this suit was commenced, the activity fee amounted to \$331.50 per year. The fee is segregated from the University's tuition charge. Once collected, the activity fees are deposited by the University into the accounts of the State of Wisconsin. *Id.*, at 9. The fees are drawn upon by the University to support various campus services and extracurricular student activities. In the University's view, the activity fees "enhance the educational experience" of its students by "promot[ing] extracurricular activities," "stimulating advocacy and debate on diverse points of view," enabling "participa[tion] in political activity," "promot[ing] student participa[tion] in campus administrative activity," and providing "opportunities to develop social skills," all consistent with the University's mission. *Id.*, at 154-155.

The board of regents classifies the segregated fee into allocable and non-allocable portions. The non-allocable portion approximates 80% of the total fee and covers expenses such as student health services, intramural sports, debt service, and the upkeep and operations of the student union facilities. *Id.*, at 13. Respondents did not challenge the purposes to which the University commits the non-allocable portion of the segregated fee. *Id.*, at 37.

The allocable portion of the fee supports extracurricular endeavors pursued by the University's registered student organizations or RSO's. To qualify for RSO status students must organize as a not-for-profit group, limit membership primarily to students, and agree to undertake activities related to student life on campus. *Id.*, at 15. During the 1995-1996 school year, 623 groups had RSO status on the Madison campus. *Id.*, at 255. To name but a few, RSO's included the Future Financial Gurus of America; the International Socialist Organization; the College Democrats; the College Republicans; and the American Civil Liberties Union Campus Chapter. As one would expect, the expressive activities undertaken by RSO's are diverse in range and content, from displaying posters and circulating newsletters throughout the campus, to hosting campus debates and guest speakers, and to what can best be described as political lobbying.

RSO's may obtain a portion of the allocable fees in one of three ways. Most do so by seeking funding from the Student Government Activity Fund (SGAF), administered by the ASM. SGAF moneys may be issued to support an RSO's operations and events, as well as travel expenses "central to the purpose of the organization." *Id.*, at 18. As an alternative, an RSO can apply for funding from the General Student Services Fund (GSSF), administered through the ASM's finance committee. During the 1995-1996 academic year, 15 RSO's received GSSF funding. These RSO's included a campus tutoring center, the student radio station, a student environmental group, a gay and bisexual student center, a community legal office, an AIDS support network, a campus women's center, and the Wisconsin Student Public Interest Research Group (WISPIRG). *Id.*, at 16-17. The University acknowledges that, in addition to providing campus services (e.g., tutoring and counseling), the GSSF-funded RSO's engage in political and ideological expression. Brief for Petitioner 10.

The GSSF, as well as the SGAF, consists of moneys originating in the allocable portion of the mandatory fee. The parties have stipulated that, with respect to SGAF and GSSF funding, "[t]he process for reviewing and approving allocations for funding is administered in a viewpoint-neutral fashion," *Id.*, at 14-15, and that the University does not use the fee program for "advocating a particular point of view," *Id.*, at 39.

A student referendum provides a third means for an RSO to obtain funding. *Id.*, at 16. While the record is sparse on this feature of the University's program, the parties inform us that the student body can vote either to approve or to disapprove an assessment for a particular RSO. One referendum resulted in an allocation of \$45,000 to WISPIRG during the 1995-1996 academic year. At oral argument, counsel for the University acknowledged that a referendum could also operate to defund an RSO or to veto a funding decision of the ASM. In October 1996, for example, the student body voted to terminate funding to a national student organization to which the University belonged. *Id.*, at 215. Both parties confirmed at oral argument that their stipulation regarding the program's viewpoint neutrality does not extend to the referendum process. Tr. of Oral Arg. 19, 29.

With respect to GSSF and SGAF funding, the ASM or its finance committee makes initial funding decisions. App. 14-15. The ASM does so in an open session, and interested students may attend meetings when RSO funding is discussed. *Id.*, at 14. It also appears that the ASM must approve the results of a student referendum. Approval appears pro forma, however, as counsel for the University advised us that the student government "voluntarily views th[e] referendum as binding." Tr. of Oral Arg. 15. Once the ASM approves an RSO's funding application, it forwards its decision to the chancellor and to the board of regents for their review and approval. App. 18, 19. Approximately 30% of the University's RSO's received funding during the 1995-1996 academic year.

RSO's, as a general rule, do not receive lump-sum cash distributions. Rather, RSO's obtain funding support on a reimbursement basis by submitting receipts or invoices to the University. Guidelines identify expenses appropriate for reimbursement. Permitted expenditures include, in the main, costs for printing, postage, office supplies, and use of University facilities and equip-

ment. Materials printed with student fees must contain a disclaimer that the views expressed are not those of the ASM. The University also reimburses RSO's for fees arising from membership in "other related and non-profit organizations." *Id.*, at 251.

The University's policy establishes purposes for which fees may not be expended. RSO's may not receive reimbursement for "[g]ifts, donations, and contributions," the costs of legal services, or for "[a]ctivities which are politically partisan or religious in nature." *Id.*, at 251-252. (The policy does not give examples of the prohibited expenditures.) A separate policy statement on GSSF funding states that an RSO can receive funding if it "does not have a primarily political orientation (i.e. is not a registered political group)." *Id.*, at 238. The same policy adds that an RSO "shall not use [student fees] for any lobbying purposes." *Ibid.* At one point in their brief respondents suggest that the prohibition against expenditures for "politically partisan" purposes renders the program not viewpoint neutral. Brief for Respondents 31. In view of the fact that both parties entered a stipulation to the contrary at the outset of this litigation, which was again reiterated during oral argument in this Court, we do not consider respondents' challenge to this aspect of the University's program. The University's Student Organization Handbook has guidelines for regulating the conduct and activities of RSO's. In addition to obligating RSO's to adhere to the fee program's rules and regulations, the guidelines establish procedures authorizing any student to complain to the University that an RSO is in noncompliance. An extensive investigative process is in place to evaluate and remedy violations. The University's policy includes a range of sanctions for noncompliance, including probation, suspension, or termination of RSO status.

One RSO that appears to operate in a manner distinct from others is WISPIRG. For reasons not clear from the record, WISPIRG receives lump-sum cash distributions from the University. University counsel informed us that this distribution reduced the GSSF portion of the fee pool. Tr. of Oral Arg. 15. The full extent of the uses to which WISPIRG puts its funds is unclear. We do know, however, that WISPIRG sponsored on-campus events regarding homelessness and environmental and consumer protection issues. App. 348. It coordinated community food drives and educational programs and spent a portion of its activity fees for the lobbying efforts of its parent organization and for student internships aimed at influencing legislation. *Id.*, at 344, 347.

In March 1996, respondents, each of whom attended or still attend the University's Madison campus, filed suit in the United States District Court for the Western District of Wisconsin against members of the board of regents. Respondents alleged, inter alia, that imposition of the segregated fee violated their rights of free speech, free association, and free exercise under the First Amendment. They contended the University must grant them the choice not to fund those RSO's that engage in political and ideological expression offensive to their personal beliefs. Respondents requested both injunctive and declaratory relief. On cross-motions for summary judgment, the District Court ruled in their favor, declaring the University's segregated fee program invalid under *Abod v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), and *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990). The District Court decided the fee program compelled students "to support political and ideological activity with which they disagree" in violation of respondents' First Amendment rights to freedom of speech and association. App. to Pet for Cert. 98a. The court did not reach respondents'

free exercise claim. The District Court's order enjoined the board of regents from using segregated fees to fund any RSO engaging in political or ideological speech.

The United States Court of Appeals for the Seventh Circuit affirmed in part, reversed in part, and vacated in part. *Southworth v. Grebe*, 151 F.3d 717 (1998). As the District Court had done, the Court of Appeals found our compelled speech precedents controlling. After examining the University's fee program under the three-part test outlined in *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), it concluded that the program was not germane to the University's mission, did not further a vital policy of the University, and imposed too much of a burden on respondents' free speech rights. "[L]ike the objecting union members in *Abood*," the Court of Appeals reasoned, the students here have a First Amendment interest in not being compelled to contribute to an organization whose expressive activities conflict with their own personal beliefs. 151 F.3d, at 731. It added that protecting the objecting students' free speech rights was "of heightened concern" following our decision in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995), because "[i]f the university cannot discriminate in the disbursement of funds, it is imperative that students not be compelled to fund organizations which engage in political and ideological activities—that is the only way to protect the individual's rights." 151 F.3d., at 730, n. 11. The Court of Appeals extended the District Court's order and enjoined the board of regents from requiring objecting students to pay that portion of the fee used to fund RSO's engaged in political or ideological expression. *Id.*, at 735.

Three members of the Court of Appeals dissented from the denial of the University's motion for rehearing en banc. In their view, the panel opinion overlooked the "crucial difference between a requirement to pay money to an organization that explicitly aims to subsidize one viewpoint to the exclusion of other viewpoints, as in *Abood and Keller*, and a requirement to pay a fee to a group that creates a viewpoint-neutral forum, as is true of the student activity fee here." *Southworth v. Grebe*, 157 F.3d 1124, 1129 (CA7 1998) (D. Wood, J., dissenting).

Other courts addressing First Amendment challenges to similar student fee programs have reached conflicting results. Compare *Rounds v. Oregon State Bd. of Higher Ed.*, 166 F.3d 1032, 1038-1040 (CA9 1999), *Hays County Guardian v. Supple*, 969 F.2d 111, 123 (CA5 1992), cert. denied, 506 U.S. 1087 (1993), *Kania v. Fordham*, 702 F.2d 475, 480 (CA4 1983), *Good v. Associated Students of Univ. of Wash.*, 86 Wash. 2d 94, 105, 542 P.2d 762, 769 (1975) (en banc), with *Smith v. Regents of Univ. of Cal.*, 4 Cal. 4th 843, 862-863, 844 P.2d 500, 513-514 cert. denied, 510 U.S. 863 (1993). These conflicts, together with the importance of the issue presented, led us to grant certiorari. 526 U.S. 1038 (1999). We reverse the judgment of the Court of Appeals.

II

It is inevitable that government will adopt and pursue programs and policies within its constitutional powers but which nevertheless are contrary to the profound beliefs and sincere convictions of some of its citizens. The government, as a general rule, may support valid programs and policies by taxes or other exactions binding on protesting parties. Within this broader principle it seems inevitable that funds raised by the government will be spent for speech and other expression to advocate and defend its own policies. See, e.g., *Rust v. Sullivan*, 500 U.S. 173 (1991); *Regan v. Taxation*

With Representation of Wash., 461 U.S. 540, 548-549 (1983). The case we decide here, however, does not raise the issue of the government's right, or, to be more specific, the state-controlled University's right, to use its own funds to advance a particular message. The University's whole justification for fostering the challenged expression is that it springs from the initiative of the students, who alone give it purpose and content in the course of their extracurricular endeavors.

The University having disclaimed that the speech is its own, we do not reach the question whether traditional political controls to ensure responsible government action would be sufficient to overcome First Amendment objections and to allow the challenged program under the principle that the government can speak for itself. If the challenged speech here were financed by tuition dollars and the University and its officials were responsible for its content, the case might be evaluated on the premise that the government itself is the speaker. That is not the case before us.

The University of Wisconsin exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas by, and among, its students. We conclude the objecting students may insist upon certain safeguards with respect to the expressive activities which they are required to support. Our public forum cases are instructive here by close analogy. This is true even though the student activities fund is not a public forum in the traditional sense of the term and despite the circumstance that those cases most often involve a demand for access, not a claim to be exempt from supporting speech. See, e.g., *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). The standard of viewpoint neutrality found in the public forum cases provides the standard we find controlling. We decide that the viewpoint neutrality requirement of the University program is in general sufficient to protect the rights of the objecting students. The student referendum aspect of the program for funding speech and expressive activities, however, appears to be inconsistent with the viewpoint neutrality requirement.

We must begin by recognizing that the complaining students are being required to pay fees which are subsidies for speech they find objectionable, even offensive. The *Abood* and *Keller* cases, then, provide the beginning point for our analysis. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977); *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990). While those precedents identify the interests of the protesting students, the means of implementing First Amendment protections adopted in those decisions are neither applicable nor workable in the context of extracurricular student speech at a university.

In *Abood*, some nonunion public school teachers challenged an agreement requiring them, as a condition of their employment, to pay a service fee equal in amount to union dues. 431 U.S., at 211-212. The objecting teachers alleged that the union's use of their fees to engage in political speech violated their freedom of association guaranteed by the First and Fourteenth Amendments. *Id.*, at 213. The Court agreed and held that any objecting teacher could "prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." *Id.*, at 234. The principles outlined in *Abood* provided the foundation for our later decision in *Keller*. There we held that lawyers admitted to practice in California could be required to join a state bar as-

sociation and to fund activities “germane” to the association’s mission of “regulating the legal profession and improving the quality of legal services.” 496 U.S., at 13-14. The lawyers could not, however, be required to fund the bar association’s own political expression. *Id.*, at 16.

The proposition that students who attend the University cannot be required to pay subsidies for the speech of other students without some First Amendment protection follows from the *Abood* and *Keller* cases. Students enroll in public universities to seek fulfillment of their personal aspirations and of their own potential. If the University conditions the opportunity to receive a college education, an opportunity comparable in importance to joining a labor union or bar association, on an agreement to support objectionable, extracurricular expression by other students, the rights acknowledged in *Abood* and *Keller* become implicated. It infringes on the speech and beliefs of the individual to be required, by this mandatory student activity fee program, to pay subsidies for the objectionable speech of others without any recognition of the State’s corresponding duty to him or her. Yet recognition must be given as well to the important and substantial purposes of the University, which seeks to facilitate a wide range of speech.

In *Abood* and *Keller* the constitutional rule took the form of limiting the required subsidy to speech germane to the purposes of the union or bar association. The standard of germane speech as applied to student speech at a university is unworkable, however, and gives insufficient protection both to the objecting students and to the University program itself. Even in the context of a labor union, whose functions are, or so we might have thought, well known and understood by the law and the courts after a long history of government regulation and judicial involvement, we have encountered difficulties in deciding what is germane and what is not. The difficulty manifested itself in our decision in *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), where different members of the Court reached varying conclusions regarding what expressive activity was or was not germane to the mission of the association. If it is difficult to define germane speech with ease or precision where a union or bar association is the party, the standard becomes all the more unmanageable in the public university setting, particularly where the State undertakes to stimulate the whole universe of speech and ideas.

The speech the University seeks to encourage in the program before us is distinguished not by discernable limits but by its vast, unexplored bounds. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning.

Just as the vast extent of permitted expression makes the test of germane speech inappropriate for intervention, so too does it underscore the high potential for intrusion on the First Amendment rights of the objecting students. It is all but inevitable that the fees will result in subsidies to speech which some students find objectionable and offensive to their personal beliefs. If the standard of germane speech is inapplicable, then, it might be argued the remedy is to allow each student to list those causes which he or she will or will not support. If a university decided that its students’ First Amendment interests were better protected by some type of optional or refund system it would be free to do so. We decline to impose a system of that sort as a constitutional requirement, however.

The restriction could be so disruptive and expensive that the program to support extracurricular speech would be ineffective. The First Amendment does not require the University to put the program at risk.

The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.

The University must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, we conclude, is the requirement of viewpoint neutrality in the allocation of funding support. Viewpoint neutrality was the obligation to which we gave substance in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995). There the University of Virginia feared that any association with a student newspaper advancing religious viewpoints would violate the Establishment Clause. We rejected the argument, holding that the school's adherence to a rule of viewpoint neutrality in administering its student fee program would prevent "any mistaken impression that the student newspapers speak for the University." *Id.*, at 841. While *Rosenberger* was concerned with the rights a student has to use an extracurricular speech program already in place, today's case considers the antecedent question, acknowledged but unresolved in *Rosenberger*: whether a public university may require its students to pay a fee which creates the mechanism for the extracurricular speech in the first instance. 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. There is symmetry then in our holding here and in *Rosenberger*: 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. We conclude that the University of Wisconsin may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle.

The parties have stipulated that the program the University has developed to stimulate extracurricular student expression respects the principle of viewpoint neutrality. If the stipulation is to continue to control the case, the University's program in its basic structure must be found consistent with the First Amendment.

We make no distinction between campus activities and the off-campus expressive activities of objectionable RSO's. Those activities, respondents tell us, often bear no relationship to the University's reason for imposing the segregated fee in the first instance, to foster vibrant campus debate among students. If the University shares those concerns, it is free to enact viewpoint neutral rules restricting off-campus travel or other expenditures by RSO's, for it may create what is tantamount to a limited public forum if the principles of viewpoint neutrality are respected. Cf. *id.*, at 829-830. We find no principled way, however, to impose upon the University, as a constitutional matter, a requirement to adopt geographic or spatial restrictions as a condition for RSO's' entitlement to reimbursement. Universities possess significant interests in encouraging students to take advantage

of the social, civic, cultural, and religious opportunities available in surrounding communities and throughout the country. Universities, like all of society, are finding that traditional conceptions of territorial boundaries are difficult to insist upon in an age marked by revolutionary changes in communications, information transfer, and the means of discourse. If the rule of viewpoint neutrality is respected, our holding affords the University latitude to adjust its extracurricular student speech program to accommodate these advances and opportunities.

Our decision ought not to be taken to imply that in other instances the University, its agents or employees, or-of particular importance-its faculty, are subject to the First Amendment analysis which controls in this case. Where the University speaks, either in its own name through its regents or officers, or in myriad other ways through its diverse faculties, the analysis likely would be altogether different. See *Rust v. Sullivan*, 500 U.S. 173 (1991); *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983). The Court has not held, or suggested, that when the government speaks the rules we have discussed come into play.

When the government speaks, for instance to promote its own policies or to advance a particular idea, it is, in the end, accountable to the electorate and the political process for its advocacy. If the citizenry objects, newly elected officials later could espouse some different or contrary position. In the instant case, the speech is not that of the University or its agents. It is not, furthermore, speech by an instructor or a professor in the academic context, where principles applicable to government speech would have to be considered. Cf. *Rosenberger*, *supra*, at 833 (discussing the discretion universities possess in deciding matters relating to their educational mission).

III

It remains to discuss the referendum aspect of the University's program. While the record is not well developed on the point, it appears that by majority vote of the student body a given RSO may be funded or defunded. It is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here. A remand is necessary and appropriate to resolve this point; and the case in all events must be reexamined in light of the principles we have discussed.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion. In this Court the parties shall bear their own costs. It is so ordered.

Rosenberger v. University of Virginia

Background

In the early 1990s, a group of students from the University of Virginia formed “Wide Awake Productions” to produce a magazine designed to facilitate discussion of Christian theology and philosophy. The organization was recognized as an official Contracted Independent Organization by the student council, a status which allows the organization to submit bills from outside contractors for payment by the Student Activities Fund. The organization soon printed its first issue, which had articles about prayer, racism, stress, C.S. Lewis’ ideas about free will and evil, and reviews of religious music. WAP then requested that the SAF pay its printer \$5,862 for the cost of publication. The funding committee of the student council denied this allocation claiming that the newspaper was a “religious activity” and therefore ineligible for funding by the SAF. WAP appealed this decision to both the entire student council body as well as the Dean of Students: both rejected the appeal and sustained the denial of funding.

WAP then took the issue to District Court, claiming the University had violated their rights to freedom of expression and to freely exercise their religious beliefs. After multiple appeals, the case appeared before the Supreme Court. The University of Virginia argued that any affiliation with a primarily religious publication would violate the Establishment Clause. The Supreme Court

ruled that no such violation could take place so long as funds were distributed without regard to an organization’s point of view—thus facilitating an educational forum where all viewpoints were welcome to participate. Thus, the Court ruled that WAP’s publication costs should be paid for by the Student Activities Fund.

“Symmetry” in the *Rosenberger* and *Southworth* decision:

From the *Southworth* decision: “While *Rosenberger* was concerned with the rights a student has to use an extracurricular speech program already in place, today’s case considers the antecedent question, acknowledged but unresolved in *Rosenberger*: whether a public university may require its students to pay a fee which creates the mechanism for the extracurricular speech in the first instance. 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. There is symmetry then in our holding here and in *Rosenberger*: 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. We conclude that the University of Wisconsin may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle.”

The Court's Decision
U.S. Supreme Court
**RONALD W. ROSENBERGER, ET AL., PETITIONERS v. RECTOR AND VISITORS
OF THE UNIVERSITY OF VIRGINIA ET AL.**
**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT**
No. 94-329.

Argued March 1, 1995
Decided June 29, 1995

Respondent University of Virginia, a state instrumentality, authorizes payments from its Student Activities Fund (SAF) to outside contractors for the printing costs of a variety of publications issued by student groups called "Contracted Independent Organizations" (CIOs). The SAF receives its money from mandatory student fees and is designed to support a broad range of extracurricular student activities related to the University's educational purpose. CIOs must include in their dealings with third parties and in all written materials a disclaimer stating that they are independent of the University and that the University is not responsible for them. The University withheld authorization for payments to a printer on behalf of petitioners' CIO, Wide Awake Productions (WAP), solely because its student newspaper, Wide Awake: A Christian Perspective at the University of Virginia, "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality," as prohibited by the University's SAF Guidelines. Petitioners filed this suit under 42 U.S.C. 1983, alleging, inter alia, that the refusal to authorize payment violated their First Amendment right to freedom of speech. After the District Court granted summary judgment for the University, the Fourth Circuit affirmed, holding that the University's invocation of viewpoint discrimination to deny third-party payment violated the Speech Clause, but concluding that the discrimination was justified by the necessity of complying with the Establishment Clause.

Held:

1. The Guideline invoked to deny SAF support, both in its terms and in its application to these petitioners, is a denial of their right Page II of free speech. Pp. 7-16.
 - (a) The Guideline violates the principles governing speech in limited public forums, which apply to the SAF under, e.g., *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46-47. In determining whether a State is acting within its power to preserve the limits it has set for such a forum so that the exclusion of a class of speech there is legitimate, see, e.g., *id.*, at 49, this Court has observed a distinction between, on the one hand, content discrimination - i.e., discrimination against speech because of its subject matter - which may be permissible if it preserves the limited forum's purposes, and, on the other hand, viewpoint discrimination i.e., discrimination because of the speaker's specific motivating ideology, opinion, or perspective - which is presumed impermissible when directed against speech otherwise within the forum's limitations, see *id.*, at 46. The most recent and most apposite case in this area is *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. __, __, in which the Court held that permitting school property to be used for the presentation of all views

on an issue except those dealing with it from a religious standpoint constitutes prohibited viewpoint discrimination. Here, as in that case, the State's actions are properly interpreted as unconstitutional viewpoint discrimination rather than permissible line-drawing based on content: By the very terms of the SAF prohibition, the University does not exclude religion as a subject matter, but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints. Pp. 7-11.

(b) The University's attempt to escape the consequences of *Lamb's Chapel* by urging that this case involves the provision of funds rather than access to facilities is unavailing. Although it may regulate the content of expression when it is the speaker or when it enlists private entities to convey its own message, *Rust v. Sullivan*, 500 U.S. 173 ; *Widmar v. Vincent*, 454 U.S. 263, 276 , the University may not discriminate based on the viewpoint of private persons whose speech it subsidizes, *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 548 . Its argument that the scarcity of public money may justify otherwise impermissible viewpoint discrimination among private speakers is simply wrong. Pp. 11-14.

(c) Vital First Amendment speech principles are at stake here. The Guideline at issue has a vast potential reach: The term "promotes" as used there would comprehend any writing advocating a philosophic position that rests upon a belief (or nonbelief) in a deity or ultimate reality, while the term "manifests" would bring within the prohibition any writing resting upon a premise presupposing the existence (or nonexistence) of a deity or ultimate reality. It is Page III difficult to name renowned thinkers whose writings would be accepted, save perhaps for articles disclaiming all connection to their ultimate philosophy. Pp. 14-16.

2. The violation following from the University's denial of SAF support to petitioners is not excused by the necessity of complying with the Establishment Clause. Pp. 16-25.

(a) The governmental program at issue is neutral toward religion. Such neutrality is a significant factor in upholding programs in the face of Establishment Clause attack, and the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and even-handed policies to extend benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse, *Board of Ed. of Kiryas Joel v. Grumet*, 512 U.S. __, __. There is no suggestion that the University created its program to advance religion or aid a religious cause. The SAF's purpose is to open a forum for speech and to support various student enterprises, including the publication of newspapers, in recognition of the diversity and creativity of student life. The SAF Guidelines have a separate classification for, and do not make third-party payments on behalf of, "religious organizations," and WAP did not seek a subsidy because of its Christian editorial viewpoint; it sought funding under the Guidelines as a "student . . . communications . . . grou[p]." Neutrality is also apparent in the fact that the University has taken pains to disassociate itself from the private speech involved in this case. The program's neutrality distinguishes the student fees here from a tax levied for the direct support of a church or group of churches, which would violate the Establishment Clause. Pp. 16-21.

(b) This case is not controlled by the principle that special Establishment Clause dangers exist where the government makes direct money payments to sectarian institutions, see, e.g., *Roemer v. Board of Public Works*, 426 U.S. 736, 747 , since it is undisputed that no public funds flow directly into WAP's coffers under the program at issue. A public univer-

sity does not violate the Establishment Clause when it grants access to its facilities on a religion-neutral basis to a wide spectrum of student groups, even if some of those groups would use the facilities for devotional exercises. See e.g., *Widmar*, 474 U.S., at 269 . This is so even where the upkeep, maintenance, and repair of those facilities is paid out of a student activities fund to which students are required to contribute. *Id.*, at 265. There is no difference in logic or principle, and certainly no difference of constitutional significance, between using such funds to operate a facility to which students have access, and paying a third-party contractor to operate the facility on its behalf. That is all Page IV that is involved here: The University provides printing services to a broad spectrum of student newspapers. Were the contrary view to become law, the University could only avoid a constitutional violation by scrutinizing the content of student speech, lest it contain too great a religious message. Such censorship would be far more inconsistent with the Establishment Clause’s dictates than would governmental provision of secular printing services on a religion-blind basis. Pp. 21-25.

18 F.3d 269, reversed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, SCALIA, and THOMAS, JJ., joined. O’CONNOR, J., and THOMAS, J., filed concurring opinions. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined. [*ROSENBERGER v. UNIVERSITY OF VIRGINIA*, ___ U.S. ___ (1995) , 1]

JUSTICE KENNEDY delivered the opinion of the Court.

The University of Virginia, an instrumentality of the Commonwealth for which it is named and thus bound by the First and Fourteenth Amendments, authorizes the payment of outside contractors for the printing costs of a variety of student publications. It withheld any authorization for payments on behalf of petitioners for the sole reason that their student paper “primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality.” That the paper did promote or manifest views within the defined exclusion seems plain enough. The challenge is to the University’s regulation and its denial of authorization, the case raising issues under the Speech and Establishment Clauses of the First Amendment.

I

The public corporation we refer to as the “University” is denominated by state law as “the Rector and Visitors of the University of Virginia,” Va. Code Ann. 23-69 (1993), and it is responsible for governing the school, see 23-69 to 23-80. Founded by Thomas Jefferson in 1819, and ranked by him, together with the authorship of the Declaration of Independence and of the Virginia Act for Religious Freedom, Va. Code Ann. 57-1, as one of his proudest achievements, the University is among the Nation’s oldest and most respected seats of higher learning. It has more than 11,000 undergraduate students, and 6,000 graduate and professional students. An understanding of the case requires a somewhat detailed description of the program the University created to support extracurricular student activities on its campus.

Before a student group is eligible to submit bills from its outside contractors for payment by the fund described below, it must become a “Contracted Independent Organization” (CIO). CIO status is available to any group the majority of whose members are students, whose managing officers are fulltime students, and that complies with certain procedural requirements. App. to Pet. for Cert. 2a. A CIO must file its constitution with the University; must pledge not to discriminate in its membership; and must include in dealings with third parties and in all written materials a disclaimer, stating that the CIO is independent of the University and that the University is not responsible for the CIO. App. 27-28. CIOs enjoy access to University facilities, including meeting rooms and computer terminals. Id., at 30. A standard agreement signed between each CIO and the University provides that the benefits and opportunities afforded to CIOs “should not be misinterpreted as meaning that those organizations are part of or controlled by the University, that the University is responsible for the organizations’ contracts or other acts or omissions, or that the University approves of the organizations’ goals or activities.” Id., at 26.

All CIOs may exist and operate at the University, but some are also entitled to apply for funds from the Student Activities Fund (SAF). Established and governed by University Guidelines, the purpose of the SAF is to support a broad range of extracurricular student activities that “are related to the educational purpose of the University.” App. to Pet. for Cert. 61a. The SAF is based on the University’s “recogni[tion] that the availability of a wide range of opportunities” for its students “tends to enhance the University environment.” App. 26. The Guidelines require that it be administered “in a manner consistent with the educational purpose of the University as well as with state and federal law.” App. to Pet. for Cert. 61a. The SAF receives its money from a mandatory fee of \$14 per semester assessed to each full-time student. The Student Council, elected by the students, has the initial authority to disburse the funds, but its actions are subject to review by a faculty body chaired by a designee of the Vice President for Student Affairs. Cf. id., at 63a-64a.

Some, but not all, CIOs may submit disbursement requests to the SAF. The Guidelines recognize 11 categories of student groups that may seek payment to third-party contractors because they “are related to the educational purpose of the University of Virginia.” Id., at 61a-62a. One of these is “student news, information, opinion, entertainment, or academic communications media groups.” Id., at 61a. The Guidelines also specify, however, that the costs of certain activities of CIOs that are otherwise eligible for funding will not be reimbursed by the SAF. The student activities which are excluded from SAF support are religious activities, philanthropic contributions and activities, political activities, activities that would jeopardize the University’s tax exempt status, those which involve payment of honoraria or similar fees, or social entertainment or related expenses. Id., at 62a-63a. The prohibition on “political activities” is defined so that it is limited to electioneering and lobbying. The Guidelines provide that “[t]hese restrictions on funding political activities are not intended to preclude funding of any otherwise eligible student organization which . . . espouses particular positions or ideological viewpoints, including those that may be unpopular or are not generally accepted.” Id., at 65a-66a. A “religious activity,” by contrast, is defined as any activity that “primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality.” Id., at 66a.

The Guidelines prescribe these criteria for determining the amounts of third-party disbursements that will be allowed on behalf of each eligible student organization: the size of the group, its financial self-sufficiency, and the University-wide benefit of its activities. If an organization seeks SAF support, it must submit its bills to the Student Council, which pays the organization's creditors upon determining that the expenses are appropriate. No direct payments are made to the student groups. During the 1990-1991 academic year, 343 student groups qualified as CIOs. One hundred thirty-five of them applied for support from the SAF, and 118 received funding. Fifteen of the groups were funded as "student news, information, opinion, entertainment, or academic communications media groups."

Petitioners' organization, Wide Awake Productions (WAP), qualified as a CIO. Formed by petitioner Ronald Rosenberger and other undergraduates in 1990, WAP was established "[t]o publish a magazine of philosophical and religious expression," "[t]o facilitate discussion which fosters an atmosphere of sensitivity to and tolerance of Christian viewpoints," and "[t]o provide a unifying focus for Christians of multicultural backgrounds." App. 67. WAP publishes *Wide Awake: A Christian Perspective at the University of Virginia*. The paper's Christian viewpoint was evident from the first issue, in which its editors wrote that the journal "offers a Christian perspective on both personal and community issues, especially those relevant to college students at the University of Virginia." App. 45. The editors committed the paper to a two-fold mission: "to challenge Christians to live, in word and deed, according to the faith they proclaim and to encourage students to consider what a personal relationship with Jesus Christ means." Ibid. The first issue had articles about racism, crisis pregnancy, stress, prayer, C. S. Lewis' ideas about evil and free will, and reviews of religious music. In the next two issues, *Wide Awake* featured stories about homosexuality, Christian missionary work, and eating disorders, as well as music reviews and interviews with University professors. Each page of *Wide Awake*, and the end of each article or review, is marked by a cross. The advertisements carried in *Wide Awake* also reveal the Christian perspective of the journal. For the most part, the advertisers are churches, centers for Christian study, or Christian bookstores. By June 1992, WAP had distributed about 5,000 copies of *Wide Awake* to University students, free of charge.

WAP had acquired CIO status soon after it was organized. This is an important consideration in this case, for had it been a "religious organization," WAP would not have been accorded CIO status. As defined by the Guidelines, a "religious organization" is "an organization whose purpose is to practice a devotion to an acknowledged ultimate reality or deity." App. to Pet. for Cert. 66a. At no stage in this controversy has the University contended that WAP is such an organization.

A few months after being given CIO status, WAP requested the SAF to pay its printer \$5,862 for the costs of printing its newspaper. The Appropriations Committee of the Student Council denied WAP's request on the ground that *Wide Awake* was a "religious activity" within the meaning of the Guidelines, i.e., that the newspaper "promote[d] or manifest[ed] a particular belie[f] in or about a deity or an ultimate reality." Ibid. It made its determination after examining the first issue. App. 54. WAP appealed the denial to the full Student Council, contending that WAP met all the applicable Guidelines and that denial of SAF support on the basis of the magazine's religious

perspective violated the Constitution. The appeal was denied without further comment, and WAP appealed to the next level, the Student Activities Committee. In a letter signed by the Dean of Students, the committee sustained the denial of funding. App. 55.

Having no further recourse within the University structure, WAP, Wide Awake, and three of its editors and members filed suit in the United States District Court for the Western District of Virginia, challenging the SAF's action as violative of Rev. Stat. 1979, 42 U.S.C. 1983. They alleged that refusal to authorize payment of the printing costs of the publication, solely on the basis of its religious editorial viewpoint, violated their rights to freedom of speech and press, to the free exercise of religion, and to equal protection of the law. They relied also upon Article I of the Virginia Constitution and the Virginia Act for Religious Freedom, Va. Code Ann. 57-1, 57-2 (1986 and Supp. 1994), but did not pursue those theories on appeal. The suit sought damages for the costs of printing the paper, injunctive and declaratory relief, and attorney's fees.

On cross-motions for summary judgment, the District Court ruled for the University, holding that denial of SAF support was not an impermissible content or viewpoint discrimination against petitioners' speech, and that the University's Establishment Clause concern over its "religious activities" was a sufficient justification for denying payment to third-party contractors. The court did not issue a definitive ruling on whether reimbursement, had it been made here, would or would not have violated the Establishment Clause. 795 F. Supp. 175, 181-182 (WD Va. 1992).

The United States Court of Appeals for the Fourth Circuit, in disagreement with the District Court, held that the Guidelines did discriminate on the basis of content. It ruled that, while the State need not underwrite speech, there was a presumptive violation of the Speech Clause when viewpoint discrimination was invoked to deny third-party payment otherwise available to CIOs. 18 F.3d 269, 279-281 (1994). The Court of Appeals affirmed the judgment of the District Court nonetheless, concluding that the discrimination by the University was justified by the "compelling interest in maintaining strict separation of church and state." *Id.*, at 281.

II

It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Discrimination against speech because of its message is presumed to be unconstitutional. See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. ___, ___ (1994) (slip op., at 16-19). These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991). When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. See *R. A. V. v. St. Paul*, 505 U.S. 377, 391 (1992). Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology

or the opinion or perspective of the speaker is the rationale for the restriction. See *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983).

These principles provide the framework forbidding the State from exercising viewpoint discrimination, even when the limited public forum is one of its own creation. In a case involving a school district's provision of school facilities for private uses, we declared that "[t]here is no question that the District, like the private owner of property, may legally preserve the property under its control for the use to which it is dedicated." *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. ___, ___ (slip op., at 5-7) (1993). The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics. See, e.g., *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985); *Perry Ed. Assn.*, *supra*, at 49. Once it has opened a limited forum, however, the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not "reasonable in light of the purpose served by the forum," *Cornelius*, *supra*, at 804-806; see also *Perry Ed. Assn.*, *supra*, at 46, 49, nor may it discriminate against speech on the basis of its viewpoint, *Lamb's Chapel*, *supra*, at ___ (slip op., at 6-7); see also *Perry Ed. Assn.*, *supra*, at 46; *R. A. V.*, *supra*, at 386-388, 391-393; cf. *Texas v. Johnson*, 491 U.S. 397, 414-415 (1989). Thus, in determining whether the State is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations. See *Perry Ed. Assn.*, *supra*, at 46.

The SAF is a forum more in a metaphysical than in a spatial or geographic sense, but the same principles are applicable. See, e.g., *Perry Ed. Assn.*, *supra*, at 46-47 (forum analysis of a school mail system); *Cornelius*, *supra*, at 801 (forum analysis of charitable contribution program). The most recent and most apposite case is our decision in *Lamb's Chapel*, *supra*. There, a school district had opened school facilities for use after school hours by community groups for a wide variety of social, civic, and recreational purposes. The district, however, had enacted a formal policy against opening facilities to groups for religious purposes. Invoking its policy, the district rejected a request from a group desiring to show a film series addressing various child-rearing questions from a "Christian perspective." There was no indication in the record in *Lamb's Chapel* that the request to use the school facilities was "denied for any reason other than the fact that the presentation would have been from a religious perspective." 508 U.S., at ___ (slip op., at 8-9). Our conclusion was unanimous: "[I]t discriminates on the basis of viewpoint to permit school property to be used for the presentation of all views about family issues and child-rearing except those dealing with the subject matter from a religious standpoint." *Ibid.*

The University does acknowledge (as it must in light of our precedents) that "ideologically driven attempts to suppress a particular point of view are presumptively unconstitutional in funding, as in other contexts," but insists that this case does not present that issue because the Guidelines draw lines based on content, not viewpoint. Brief for Respondents 17, n. 10. As we have noted,

discrimination against one set of views or ideas is but a subset or particular instance of the more general phenomenon of content discrimination. See, e.g., *R. A. V.*, supra, at 391. And, it must be acknowledged, the distinction is not a precise one. It is, in a sense, something of an understatement to speak of religious thought and discussion as just a viewpoint, as distinct from a comprehensive body of thought. The nature of our origins and destiny and their dependence upon the existence of a divine being have been subjects of philosophic inquiry throughout human history. We conclude, nonetheless, that here, as in *Lamb's Chapel*, viewpoint discrimination is the proper way to interpret the University's objections to *Wide Awake*. By the very terms of the SAF prohibition, the University does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints. Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered. The prohibited perspective, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications.

The dissent's assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints reflects an insupportable assumption that all debate is bipolar and that anti-religious speech is the only response to religious speech. Our understanding of the complex and multifaceted nature of public discourse has not embraced such a contrived description of the marketplace of ideas. If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint. The dissent's declaration that debate is not skewed so long as multiple voices are silenced is simply wrong; the debate is skewed in multiple ways.

The University's denial of WAP's request for third-party payments in the present case is based upon viewpoint discrimination not unlike the discrimination the school district relied upon in *Lamb's Chapel* and that we found invalid. The church group in *Lamb's Chapel* would have been qualified as a social or civic organization, save for its religious purposes. Furthermore, just as the school district in *Lamb's Chapel* pointed to nothing but the religious views of the group as the rationale for excluding its message, so in this case the University justifies its denial of SAF participation to WAP on the ground that the contents of *Wide Awake* reveal an avowed religious perspective. See supra, at 5. It bears only passing mention that the dissent's attempt to distinguish *Lamb's Chapel* is entirely without support in the law. Relying on the transcript of oral argument, the dissent seems to argue that we found viewpoint discrimination in that case because the government excluded Christian, but not atheistic, viewpoints from being expressed in the forum there. Post, at 37-38, and n. 13. The Court relied on no such distinction in holding that discriminating against religious speech was discriminating on the basis of viewpoint. There is no indication in the opinion of the Court (which, unlike an advocate's statements at oral argument, is the law) that exclusion or inclusion of other religious or antireligious voices from that forum had any bearing on its decision.

The University tries to escape the consequences of our holding in *Lamb's Chapel* by urging that this case involves the provision of funds rather than access to facilities. The University begins with the unremarkable proposition that the State must have substantial discretion in determining how to allocate scarce resources to accomplish its educational mission. Citing our decisions in *Rust v. Sullivan*, 500 U.S. 173 (1991), *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540 (1983), and *Widmar v. Vincent*, 454 U.S. 263 (1981), the University argues that content-based funding decisions are both inevitable and lawful. Were the reasoning of *Lamb's Chapel* to apply to funding decisions as well as to those involving access to facilities, it is urged, its holding “would become a judicial juggernaut, constitutionalizing the ubiquitous content-based decisions that schools, colleges, and other government entities routinely make in the allocation of public funds.” Brief for Respondents 16.

To this end the University relies on our assurance in *Widmar v. Vincent*, *supra*. There, in the course of striking down a public university's exclusion of religious groups from use of school facilities made available to all other student groups, we stated: “Nor do we question the right of the University to make academic judgments as to how best to allocate scarce resources.” 454 U.S., at 276. The quoted language in *Widmar* was but a proper recognition of the principle that when the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message. In the same vein, in *Rust v. Sullivan*, *supra*, we upheld the government's prohibition on abortion-related advice applicable to recipients of federal funds for family planning counseling. There, the government did not create a program to encourage private speech but instead used private speakers to transmit specific information pertaining to its own program. We recognized that when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes. 500 U.S., at 194. When the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee. See *id.*, at 196-200.

It does not follow, however, and we did not suggest in *Widmar*, that viewpoint-based restrictions are proper when the University does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers. A holding that the University may not discriminate based on the viewpoint of private persons whose speech it facilitates does not restrict the University's own speech, which is controlled by different principles. See, e.g., *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 250 (1990); *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 270 -272 (1988). For that reason, the University's reliance on *Regan v. Taxation with Representation of Wash.*, *supra*, is inapposite as well. *Regan* involved a challenge to Congress' choice to grant tax deductions for contributions made to veterans' groups engaged in lobbying, while denying that favorable status to other charities which pursued lobbying efforts. Although acknowledging that the Government is not required to subsidize the exercise of fundamental rights, see 461 U.S., at 545 -546, we reaffirmed the requirement of viewpoint neutrality in the Government's provision of financial

benefits by observing that “[t]he case would be different if Congress were to discriminate invidiously in its subsidies in such a way as to ‘aim] at the suppression of dangerous ideas,’” see *id.*, at 548 (quoting *Cammarano v. United States*, 358 U.S. 498, 513 (1959), in turn quoting *Speiser v. Randall*, 357 U.S. 513, 519 (1958)). Regan relied on a distinction based on preferential treatment of certain speakers - veterans organizations - and not a distinction based on the content or messages of those groups’ speech. 461 U.S., at 548 ; cf. *Perry Ed. Assn.*, 460 U.S., at 49 . The University’s regulation now before us, however, has a speech-based restriction as its sole rationale and operative principle.

The distinction between the University’s own favored message and the private speech of students is evident in the case before us. The University itself has taken steps to ensure the distinction in the agreement each CIO must sign. See *supra*, at 2. The University declares that the student groups eligible for SAF support are not the University’s agents, are not subject to its control, and are not its responsibility. Having offered to pay the third-party contractors on behalf of private speakers who convey their own messages, the University may not silence the expression of selected viewpoints.

The University urges that, from a constitutional standpoint, funding of speech differs from provision of access to facilities because money is scarce and physical facilities are not. Beyond the fact that in any given case this proposition might not be true as an empirical matter, the underlying premise that the University could discriminate based on viewpoint if demand for space exceeded its availability is wrong as well. The government cannot justify viewpoint discrimination among private speakers on the economic fact of scarcity. Had the meeting rooms in Lamb’s Chapel been scarce, had the demand been greater than the supply, our decision would have been no different. It would have been incumbent on the State, of course, to ration or allocate the scarce resources on some acceptable neutral principle; but nothing in our decision indicated that scarcity would give the State the right to exercise viewpoint discrimination that is otherwise impermissible.

Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition. See *Healy v. James*, 408 U.S. 169, 180 -181 (1972); *Keyishian v. Board of Regents, State Univ. of N. Y.*, 385 U.S. 589, 603 (1967); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). In ancient Athens, and, as Europe entered into a new period of intellectual awakening, in places like Bologna, Oxford, and Paris, universities began as voluntary and spontaneous assemblages or concourses for students to speak and to write and to learn. See generally R. Palmer & J. Colton, *A History of the Modern World* 39 (7th ed. 1992). The quality and creative power of student intellectual life to this day remains a vital measure of a school’s influence and attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the nation’s intellectual life, its college and university campuses.

The Guideline invoked by the University to deny third-party contractor payments on behalf of WAP effects a sweeping restriction on student thought and student inquiry in the context of University sponsored publications. The prohibition on funding on behalf of publications that “primarily promot[e] or manifes[t] a particular belie[f] in or about a deity or an ultimate reality,” in its ordinary and commonsense meaning, has a vast potential reach. The term “promotes” as used here would comprehend any writing advocating a philosophic position that rests upon a belief in a deity or ultimate reality. See Webster’s Third New International Dictionary 1815 (1961) (defining “promote” as “to contribute to the growth, enlargement, or prosperity of: further, encourage”). And the term “manifests” would bring within the scope of the prohibition any writing that is explicable as resting upon a premise which presupposes the existence of a deity or ultimate reality. See *id.*, at 1375 (defining “manifest” as “to show plainly: make palpably evident or certain by showing or displaying”). Were the prohibition applied with much vigor at all, it would bar funding of essays by hypothetical student contributors named Plato, Spinoza, and Descartes. And if the regulation covers, as the University says it does, see Tr. of Oral Arg. 18-19, those student journalistic efforts which primarily manifest or promote a belief that there is no deity and no ultimate reality, then undergraduates named Karl Marx, Bertrand Russell, and Jean-Paul Sartre would likewise have some of their major essays excluded from student publications. If any manifestation of beliefs in first principles disqualifies the writing, as seems to be the case, it is indeed difficult to name renowned thinkers whose writings would be accepted, save perhaps for articles disclaiming all connection to their ultimate philosophy. Plato could contrive perhaps to submit an acceptable essay on making pasta or peanut butter cookies, provided he did not point out their (necessary) imperfections.

Based on the principles we have discussed, we hold that the regulation invoked to deny SAF support, both in its terms and in its application to these petitioners, is a denial of their right of free speech guaranteed by the First Amendment. It remains to be considered whether the violation following from the University’s action is excused by the necessity of complying with the Constitution’s prohibition against state establishment of religion. We turn to that question.

III

Before its brief on the merits in this Court, the University had argued at all stages of the litigation that inclusion of WAP’s contractors in SAF funding authorization would violate the Establishment Clause. Indeed, that is the ground on which the University prevailed in the Court of Appeals. We granted certiorari on this question: “Whether the Establishment Clause compels a state university to exclude an otherwise eligible student publication from participation in the student activities fund, solely on the basis of its religious viewpoint, where such exclusion would violate the Speech and Press Clauses if the viewpoint of the publication were nonreligious.” Pet. for Cert. i. The University now seems to have abandoned this position, contending that “[t]he fundamental objection to petitioners’ argument is not that it implicates the Establishment Clause but that it would defeat the ability of public education at all levels to control the use of public funds.” Brief for Respondents 29; see *id.*, at 27-29, and n. 17; Tr. of Oral Arg. 14. That the University itself no longer presses the Establishment Clause claim is some indication that it lacks force; but as the Court of Appeals rested its judgment on the point and our dissenting colleagues would find it determinative, it must be addressed.

The Court of Appeals ruled that withholding SAF support from Wide Awake contravened the Speech Clause of the First Amendment, but proceeded to hold that the University's action was justified by the necessity of avoiding a violation of the Establishment Clause, an interest it found compelling. 18 F.3d, at 281. Recognizing that this Court has regularly "sanctioned awards of direct nonmonetary benefits to religious groups where the government has created open fora to which all similarly situated organizations are invited," 18 F.3d, at 286 (citing *Widmar*, 454 U.S., at 277), the Fourth Circuit asserted that direct monetary subsidization of religious organizations and projects is "a beast of an entirely different color," 18 F.3d, at 286. The court declared that the Establishment Clause would not permit the use of public funds to support "a specifically religious activity in an otherwise substantially secular setting." *Id.*, at 285 (quoting *Hunt v. McNair*, 413 U.S. 734, 743 (1973) (emphasis deleted)). It reasoned that because Wide Awake is "a journal pervasively devoted to the discussion and advancement of an avowedly Christian theological and personal philosophy," the University's provision of SAF funds for its publication would "send an unmistakably clear signal that the University of Virginia supports Christian values and wishes to promote the wide promulgation of such values." 18 F.3d, at 286.

If there is to be assurance that the Establishment Clause retains its force in guarding against those governmental actions it was intended to prohibit, we must in each case inquire first into the purpose and object of the governmental action in question and then into the practical details of the program's operation. Before turning to these matters, however, we can set forth certain general principles that must bear upon our determination.

A central lesson of our decisions is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards religion. We have decided a series of cases addressing the receipt of government benefits where religion or religious views are implicated in some degree. The first case in our modern Establishment Clause jurisprudence was *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947). There we cautioned that in enforcing the prohibition against laws respecting establishment of religion, we must "be sure that we do not inadvertently prohibit [the government] from extending its general state law benefits to all its citizens without regard to their religious belief." *Id.*, at 16. We have held that the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse. See *Board of Ed. of Kiryas Joel Village School Dist. v. Grumet*, 512 U.S. ___, ___ (1994) (slip op., at 16) (SOUTER, J.) ("[T]he principle is well grounded in our case law [and] we have frequently relied explicitly on the general availability of any benefit provided religious groups or individuals in turning aside Establishment Clause challenges"); *Witters v. Washington Dept. of Services for Blind*, 474 U.S. 481, 487-488 (1986); *Mueller v. Allen*, 463 U.S. 388, 398-399 (1983); *Widmar*, 454 U.S., at 274-275. More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design. See *Lamb's Chapel*, 508 U.S., at ___; *Mergens*, 496 U.S., at 248, 252; *Widmar*, *supra*, at 274-275.

The governmental program here is neutral toward religion. There is no suggestion that the University created it to advance religion or adopted some ingenious device with the purpose of aiding a religious cause. The object of the SAF is to open a forum for speech and to support various student enterprises, including the publication of newspapers, in recognition of the diversity and creativity of student life. The University's SAF Guidelines have a separate classification for, and do not make third-party payments on behalf of, "religious organizations," which are those "whose purpose is to practice a devotion to an acknowledged ultimate reality or deity." Pet. for Cert. 66a. The category of support here is for "student news, information, opinion, entertainment, or academic communications media groups," of which Wide Awake was 1 of 15 in the 1990 school year. WAP did not seek a subsidy because of its Christian editorial viewpoint; it sought funding as a student journal, which it was.

The neutrality of the program distinguishes the student fees from a tax levied for the direct support of a church or group of churches. A tax of that sort, of course, would run contrary to Establishment Clause concerns dating from the earliest days of the Republic. The apprehensions of our predecessors involved the levying of taxes upon the public for the sole and exclusive purpose of establishing and supporting specific sects. The exaction here, by contrast, is a student activity fee designed to reflect the reality that student life in its many dimensions includes the necessity of wide-ranging speech and inquiry and that student expression is an integral part of the University's educational mission. The fee is mandatory, and we do not have before us the question whether an objecting student has the First Amendment right to demand a pro rata return to the extent the fee is expended for speech to which he or she does not subscribe. See *Keller v. State Bar of California*, 496 U.S. 1, 15 -16 (1990); *Aboud v. Detroit Board of Ed.*, 431 U.S. 209, 235 -236 (1977). We must treat it, then, as an exaction upon the students. But the \$14 paid each semester by the students is not a general tax designed to raise revenue for the University. See *United States v. Butler*, 297 U.S. 1, 61 (1936) ("A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government"); see also *Head Money Cases*, 112 U.S. 580, 595-596 (1884). The SAF cannot be used for unlimited purposes, much less the illegitimate purpose of supporting one religion. Much like the arrangement in *Widmar*, the money goes to a special fund from which any group of students with CIO status can draw for purposes consistent with the University's educational mission; and to the extent the student is interested in speech, withdrawal is permitted to cover the whole spectrum of speech, whether it manifests a religious view, an antireligious view, or neither. Our decision, then, cannot be read as addressing an expenditure from a general tax fund. Here, the disbursements from the fund go to private contractors for the cost of printing that which is protected under the Speech Clause of the First Amendment. This is a far cry from a general public assessment designed and effected to provide financial support for a church.

Government neutrality is apparent in the State's overall scheme in a further meaningful respect. The program respects the critical difference "between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Mergens*, supra, at 250 (opinion of O'CONNOR, J.). In this case, "the government has not willfully fostered or encouraged" any mistaken impression that

the student newspapers speak for the University. *Capitol Square Review and Advisory Bd. v. Pinette*, ante, at ___ (slip op., at 10). The University has taken pains to disassociate itself from the private speech involved in this case. The Court of Appeals' apparent concern that *Wide Awake's* religious orientation would be attributed to the University is not a plausible fear, and there is no real likelihood that the speech in question is being either endorsed or coerced by the State, see *Lee v. Weisman*, 505 U.S. 577, ___ (1992); *Witters*, supra, at 489 (citing *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'CONNOR, J., concurring)); see also *Witters*, supra, at 493 (O'CONNOR, J., concurring in part and concurring in judgment) (citing *Lynch*, supra, at 690 (O'CONNOR, J., concurring)).

The Court of Appeals (and the dissent) are correct to extract from our decisions the principle that we have recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions, citing *Roemer v. Board of Pub. Works of Md.*, 426 U.S. 736, 747 (1976); *Bowen v. Kendrick*, 487 U.S. 589, 614 -615 (1988); *Hunt v. McNair*, 413 U.S., at 742; *Tilton*, 403 U.S., at 679 -680; *Board of Ed. of Central School Dist. No. 1 v. Allen*, 392 U.S. 236 (1968). The error is not in identifying the principle but in believing that it controls this case. Even assuming that WAP is no different from a church and that its speech is the same as the religious exercises conducted in *Widmar* (two points much in doubt), the Court of Appeals decided a case that was, in essence, not before it, and the dissent would have us do the same. We do not confront a case where, even under a neutral program that includes nonsectarian recipients, the government is making direct money payments to an institution or group that is engaged in religious activity. Neither the Court of Appeals nor the dissent, we believe, takes sufficient cognizance of the undisputed fact that no public funds flow directly to WAP's coffers.

It does not violate the Establishment Clause for a public university to grant access to its facilities on a religion-neutral basis to a wide spectrum of student groups, including groups which use meeting rooms for sectarian activities, accompanied by some devotional exercises. See *Widmar*, 454 U.S., at 269; *Mergens*, 496 U.S., at 252. This is so even where the upkeep, maintenance, and repair of the facilities attributed to those uses is paid from a student activities fund to which students are required to contribute. *Widmar*, supra, at 265. The government usually acts by spending money. Even the provision of a meeting room, as in *Mergens* and *Widmar*, involved governmental expenditure, if only in the form of electricity and heating or cooling costs. The error made by the Court of Appeals, as well as by the dissent, lies in focusing on the money that is undoubtedly expended by the government, rather than on the nature of the benefit received by the recipient. If the expenditure of governmental funds is prohibited whenever those funds pay for a service that is, pursuant to a religion-neutral program, used by a group for sectarian purposes, then *Widmar*, *Mergens*, and *Lamb's Chapel* would have to be overruled. Given our holdings in these cases, it follows that a public university may maintain its own computer facility and give student groups access to that facility, including the use of the printers, on a religion neutral, say first-come-first-served, basis. If a religious student organization obtained access on that religion-neutral basis and used a computer to compose or a printer or copy machine to print speech with a religious content or viewpoint, the State's action in providing the group with access would no more violate the Establishment Clause than would giving those groups access to an assembly hall. See *Lamb's Chapel v. Center Moriches School Dist.*, 508 U.S. ___ (1993); *Widmar*, supra; *Mergens*, supra. There is no

difference in logic or principle, and no difference of constitutional significance, between a school using its funds to operate a facility to which students have access, and a school paying a third-party contractor to operate the facility on its behalf. The latter occurs here. The University provides printing services to a broad spectrum of student newspapers qualified as CIOs by reason of their officers and membership. Any benefit to religion is incidental to the government's provision of secular services for secular purposes on a religion-neutral basis. Printing is a routine, secular, and recurring attribute of student life.

By paying outside printers, the University in fact attains a further degree of separation from the student publication, for it avoids the duties of supervision, escapes the costs of upkeep, repair, and replacement attributable to student use, and has a clear record of costs. As a result, and as in *Widmar*, the University can charge the SAF, and not the taxpayers as a whole, for the discrete activity in question. It would be formalistic for us to say that the University must forfeit these advantages and provide the services itself in order to comply with the Establishment Clause. It is, of course, true that if the State pays a church's bills it is subsidizing it, and we must guard against this abuse. That is not a danger here, based on the considerations we have advanced and for the additional reason that the student publication is not a religious institution, at least in the usual sense of that term as used in our case law, and it is not a religious organization as used in the University's own regulations. It is instead a publication involved in a pure forum for the expression of ideas, ideas that would be both incomplete and chilled were the Constitution to be interpreted to require that state officials and courts scan the publication to ferret out views that principally manifest a belief in a divine being.

Were the dissent's view to become law, it would require the University, in order to avoid a constitutional violation, to scrutinize the content of student speech, lest the expression in question - speech otherwise protected by the Constitution - contain too great a religious content. The dissent, in fact, anticipates such censorship as "crucial" in distinguishing between "works characterized by the evangelism of *Wide Awake* and writing that merely happens to express views that a given religion might approve." *Post*, at 36. That eventuality raises the specter of governmental censorship, to ensure that all student writings and publications meet some baseline standard of secular orthodoxy. To impose that standard on student speech at a university is to imperil the very sources of free speech and expression. As we recognized in *Widmar*, official censorship would be far more inconsistent with the Establishment Clause's dictates than would governmental provision of secular printing services on a religion-blind basis.

"[T]he dissent fails to establish that the distinction [between 'religious' speech and speech 'about' religion] has intelligible content. There is no indication when 'singing hymns, reading scripture, and teaching biblical principles' cease to be 'singing, teaching, and reading' - all apparently forms of 'speech,' despite their religious subject matter and become unprotected 'worship.' . . .

"[E]ven if the distinction drew an arguably principled line, it is highly doubtful that it would lie within the judicial competence to administer. Merely to draw the distinction would

require the university - and ultimately the courts - to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases. E.g., *Walz [v. Tax Comm'n of New York City]*, 397 U.S. 664 (1970).” 454 U.S., at 269 -270, n. 6 (citations omitted).

To obey the Establishment Clause, it was not necessary for the University to deny eligibility to student publications because of their viewpoint. The neutrality commanded of the State by the separate Clauses of the First Amendment was compromised by the University’s course of action. The viewpoint discrimination inherent in the University’s regulation required public officials to scan and interpret student publications to discern their underlying philosophic assumptions respecting religious theory and belief. That course of action was a denial of the right of free speech and would risk fostering a pervasive bias or hostility to religion, which could undermine the very neutrality the Establishment Clause requires. There is no Establishment Clause violation in the University’s honoring its duties under the Free Speech Clause.

The judgment of the Court of Appeals must be, and is, reversed.

It is so ordered.

- 1 One notable example is the Foundation for Individual Rights in Education's (FIRE) Guide to Student Fees, Funding, and Legal Equality on Campus (2003), Philadelphia, PA. In several sections of the guide—notably the question and answer chapter --- the legal requirements for fee systems are misstated. For example, at one point the Guide argues that,

when the student government funds advocates only one side of a debate and deems this advocacy a service to all students, then presumably those advocating contrary viewpoints are performing a “disservice.” To say the very least, that is not constitutionally required viewpoint neutrality. This is how a system of mandatory student fees, however, too often ends up funding groups from one side of a debate and not the other. When the University of Wisconsin gives \$50,000 a year to a campus gay organization to promote tolerance and acceptance of homosexuals, is it paying for a service that students in general can use, or is it amplifying the voice of one side of a controversial debate? Would the student government also give \$50,000 to a group of “ex-gays” offering to help homosexuals who wished to change their sexual orientation? To prevent such abuses, students should work for a definition of “student services” that does not define advocacy as a service and that identifies things that truly benefit all or most students. Partisan lobbying and advocacy may be of truly great value to this or that cause, but they are not “student services.”

There are several flaws in this discussion. First, the answer to the rhetorical question here is “yes”—if a group of “ex-gays” formed a student organization otherwise in compliance with university rules and sought funding the student government would in fact fund that organization. Whether the organization would be entitled to precisely the same degree of funding would depend on a variety of factors—the group’s proposed expenses, the services it provides other students, its track-record, and other non-viewpoint discriminatory factors. Second, there is no requirement that a student group be denied fees simply because the group has no ideologically opposite counterpart. To put it simply, the college Republicans could not be denied funding because there was no college Democrats organization. And finally, the implication that advocacy organizations are not fully eligible for funding under student fee systems is at odds with the Supreme Court’s rejection of that argument in *Southworth*.

- 2 http://www.dailymerald.com/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=df72cc68-4fa8-4fed-84c0-a73f2959bfa1
- 3 <http://digital.library.wisc.edu/1711.dl/UW.UWHist1848-1925v2>. Page 519
- 4 Prior to the 1960’s and 1970’s, colleges and universities were often seen as taking the role of the substitute parent to students—a doctrine known as “*in loco parentis*” or in place of parent.
- 5 Wisconsin State Statute 36.09(5) states that
- The students of each institution or campus subject to the responsibilities and powers of the board, the president, the chancellor and the faculty shall be active participants in the immediate governance and policy development for such institutions. As such, students shall have primary responsibility for the formulation and review of policies concerning student life, services and interests. Students in consultation with the chancellor and subject to the final confirmation of the board shall have the responsibility for the disposition of those student fees which constitute substantial support for student activities.
- 6 Interview conducted by phone on September 13, 2006.
- 7 A full listing of current registered student organizations is available from the Student Organization’s Office. <http://soo.studentorg.wisc.edu/>.
- 8 A current listing of organizations funded through the Associated Students of Madison Finance Committee and Student Services Finance Committee is available from the Associated Students of Madison. www.asm.wisc.edu
- 9 <http://www.asm.wisc.edu/cms/content/view/36/33/>
- 10 http://www.dailymerald.com/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=df72cc68-4fa8-4fed-84c0-a73f2959bfa1
- 11 State University of New York, Memorandum to Presidents from the University Counsel and Vice Chancellor for Legal Affairs. May 9, 1974. Volume 74, No. 19
- 12 Alliance Defense Fund (www.alliancedefensefund.org) is the prime example here. The organization has played a role in challenges to student fee systems at the University of Wisconsin, Georgia Institute of Technology, Miami University (Ohio), the University of Oklahoma and the University of Virginia.
- 13 One organization that has been especially active is the Pacific Legal Foundation, a free market law firm funded by the oil and gas industry. It has represented objecting students in many cases trying to eliminate student fees. <http://www.pacificlegal.org/>
- 14 *Rounds v. Oregon State Bd. of Higher Ed.*, 166 F.3d 1032, 1038 (CA9 1999)
- 15 *Smith v. Board of Regents*, 844 P.2d 500 (Cal. 1993)
- 16 *Board of Regents v. Southworth*, 529 U.S. 217 (2000)
- 17 *Southworth v. Board of Regents of the University of Wisconsin System*, 307 F.3d 566 (7th Cir. 2002)
- 18 The quoted sections of the ASM Bylaws were current as of the fall of 2006. Current ASM Bylaws are available at www.asm.wisc.edu.
- 19 *Board of Regents v. Southworth*, 529 U.S. 217 (2000).
- 20 *Amidon, Brownlow, CALL-NY v. SUNY Student Association*, NYPIRG; 2007
- 21 *Ibid.*
- 22 *Ibid.*



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