

University of Wisconsin-Green Bay
Student Government Association
Student Court

Chief Justice Mach, Associates Justice Czepinski, Dorgu, Ruud & Schmidt

Memorandum

The purpose of this memo is to provide basic facts on *Board of Regents of the University of Wisconsin System v. Southworth* (529 U.S. 217, 2000) and its impact on segregated fee allocations.

The facts of the case are as follows: The University of Wisconsin requires students to pay an activity fee (segregated fee). The fee supports various campus services and extracurricular student activities including the College Democrats and Republicans, Amnesty International etc. Scott Southworth filed suit against the University, alleging that the fee violated his rights to free speech, free association, and free exercise under the First Amendment. Southworth argued that the University must grant him the choice **not** to fund registered student organizations that engage in political and ideological expression offensive to his personal beliefs.

The question before the Supreme Court of the United States was whether public universities and colleges may subsidize campus groups by means of a mandatory student activity fee without violating the First Amendment rights of students who find some campus groups objectionable.

Unanimously, the Court held that the “First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular speech if the program [process] is viewpoint neutral.” Moreover, the Court found that “when a university requires its students to pay fees to support extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”

With that said, it is important to understand the basic principles of viewpoint neutrality in the context of allocating segregated fees.

1) What does viewpoint-neutral funding mean?

Viewpoint-neutral funding provides that funding decisions cannot be based on a group’s point of view. Thus, an organization cannot be denied funding because it advocated a particular opinion, no matter how deplorable or unusual. Viewpoint neutral criteria for evaluating funding proposals would only consider factors that are NOT tied to viewpoint such as fiscal responsibility, relevance to mission, and level of services provided.

2) Does viewpoint neutrality mean that funding must be equal for all organizations?

No. Viewpoint neutrality is about the process, not the outcome. Therefore, different groups may be funded at different levels, but NOT because of the viewpoints that they espouse. Different organizations require different amounts of money to function effectively on campus. It would usually be incorrect to suggest that the chess club should receive the same amount of money as the student newspaper. The newspaper, in general, costs more money to function and serves a larger percentage of the campus population.

3) How do we make sure that the funding process is viewpoint neutral?

Though funding allocation processes vary across the country, there is a set of basic criteria that should be adopted to ensure the process is viewpoint neutral:

- i. The group must be an officially registered organization;
- ii. The group and/or activity must demonstrate how it contributes to the university's mission;
- iii. The group must present a detailed plan about its mission, goals and activities;
- iv. The group and/or activity must be open to all students;
- v. The group's proposal must be fiscally responsible;
- vi. The group must attend its hearing.

And to further ensure a viewpoint neutral process, the student government, or in this case SUFAC, has adopted and continues to revise the following policies:

- i. SUFAC must document all hearings regarding a group's request
- ii. SGA, and SUFAC, must have a clear, fair and open appeals process.
- ii. SUFAC's funding decisions must be based on how the group met the above criteria and not on the group and/or activity's viewpoint or opinions.

4) Is it unconstitutional to use referenda in funding decisions?

The answer depends upon the type of funding decision to be made by referendum. A critical distinction exists between the use of referenda to

determine a group's eligibility to receive funds and the use of referenda to determine the amount of funds allocated to a group that has already been deemed eligible. Although the distinction may seem pedantic, the difference is of the utmost significance. If in order to be eligible for funding a group had to win majority support in a referendum, it is easy to see how minority and unpopular viewpoints would be discriminated against. So, it is clear that referenda as a means of determining eligibility for funding are inappropriate.

However, when a referendum is used to determine or advise the amount of an allocation for a group or activity, then the referendum can serve as a legitimate measure of the number or amount of services to be provided by the group. It is a common sense notion that the amount of funds allocated should be a function of the number of students who benefit from the group's presence on campus. Consider a concrete example. Suppose that both a pro-life group and a pro-choice group were applying for funding at the same university and suppose that both groups were determined eligible by a rigorous, viewpoint neutral process. Now also suppose that the pro-life group has 500 members while the pro-choice has only 5. Clearly, the pro-life group is supported by more of the campus community and thus needs a greater amount of money to serve its larger body of members. If the funding process ignores this vast difference in student support between the two groups, then both would receive the same amount of money. Yet, such a decision would effectively amplify the voice of the pro-choice group at the expense of the expressive rights of the pro-life group – effectively discriminating against the more popular pro-life group. In order to avoid viewpoint discrimination, allocation decisions must take popularity and levels of use into consideration. A referendum is a useful and appropriate tool for informing those allocation decisions.

5) Are organizations that engage in off-campus activities eligible for funding?

Yes, so long as such activities are consistent with the educational mission of the university. The Supreme Court is quite clear on this point--“We make no distinction between campus activities and the off-campus expressive activities of objectionable [student organizations].

Please let this serve as a guide to understanding viewpoint neutrality when considering segregated fee allocation decisions. Please contact the SGA Chief Justice or the SUFAC Chair for further explanation.

Resources: Center for Campus Free Speech & Oyez.org