



The Southworth Case

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, PETITIONER *v.* SCOTT SOUTHWORTH *et al.*
UNITED STATES SUPREME COURT Case No. 98-1189

“Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found”
University of Wisconsin Board of Regents, 1894

What is the *Southworth* case?

The *Southworth, et al. v. Board of Regents of the University of Wisconsin System* court case challenged shared governance and student fee autonomy in the University of Wisconsin System. The lawsuit was filed in April 1996 by Scott Southworth and two other UW-Madison Law students. These three students claimed that the existing student fee policy violated their first amendment rights by forcing them to support “political and ideological” student organizations they objected to. The Western District Court and 7th Circuit Court of Appeals both ruled in favor of the plaintiffs contending that the student fee allocation system was unconstitutional.

In November 1998, the University of Wisconsin Board of Regents appealed the lawsuit to the United States Supreme Court, citing a strong belief in the educational benefits of a student-controlled system for the allocation of student fees. On March 22, 2000 in a landmark, unanimous decision, the Supreme Court ruled that Wisconsin’s mandatory student fee system is constitutional as long as fees are allocated in a viewpoint-neutral manner.

Viewpoint Neutrality

Viewpoint neutrality means that funding decisions cannot be based upon an organization’s political or ideological stance, or views they promote. Decisions must be based on criteria such as educational value, existence of similar programming, availability of other funding sources, populations served, et cetera. Every organization across the ideological spectrum must have an equal opportunity to receive funding.

However, organizations themselves do not have to be viewpoint neutral-- in fact, the Court encourages the funding of diverse groups on campus. Groups with opposing viewpoints do not have to receive equal funding; equal funding would only be required if the groups were the same based on all the funding criteria. Viewpoint neutrality pertains to the process by which funds are distributed, not the outcome or makeup of the allocation bodies such as student fee committees.

Excerpts from the *Southworth* Decision

Justice Kennedy delivered the opinion of the United States Supreme Court

Student fees and activities are protected by the United States Constitution.

“The First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech, provided that the program is viewpoint neutral.”

Student fees must be allocated in a viewpoint-neutral manner.

“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.”

“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.”

Student fees facilitate the open exchange of ideas by, and among, students.

“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.”

The educational mission of the university is enhanced by a marketplace of ideas.

“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.”

Student-initiated process is open to unpopular or controversial viewpoints.

“The University’s whole justification for fostering the challenged expression is that it springs from the initiative of students, who alone give it purpose and content in the course of their extracurricular endeavors.”

“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.”

Geographical limits cannot be placed on student activities.

“We make no distinction between campus activities and the off-campus expressive activities of objectionable [student organizations].”

“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.”

“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.”

United States Supreme Court, March 22, 2000