

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 98–1189

**BOARD OF REGENTS OF THE UNIVERSITY OF
WISCONSIN SYSTEM, PETITIONER v. SCOTT
HAROLD SOUTHWORTH ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[March 22, 2000]

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

Opinion of the Court

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 nonallocable portions. The nonallocable 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 nonallocable 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

Opinion of the Court

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 equipment. 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

Opinion of the Court

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 *Abood 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

Opinion of the Court

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

Opinion of the Court

(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 association and to fund activities “germane” to the association’s mission of “regulating the legal profes-

Opinion of the Court

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

Opinion of the Court

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 RSOs' 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 majori-

Opinion of the Court

tarian 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.