Segregated fees.

Seg. Fees

University Communications

News Releases

UNIVERSITY OF WISCONSIN MADISON

September 24, 1999

TO: Editors, news directors
FROM: Erik Christianson, 608-262-0930
RE: Southworth panel discussion

The lawsuit challenging the constitutionality of the UW-Madison student fee system before the U.S. Supreme Court is the topic of a campus panel discussion Wednesday (Sept. 29).

The event starts at 7 p.m. in Room 2260 of the Law School, 975 Bascom Mall, and is sponsored by the Southworth Project, a collaboration of the Daily Cardinal student newspaper, the School of Journalism and Mass Communication and the Law School. Panelists include Scott Southworth, the lawsuit's main plaintiff; UW-Madison Professor Donald Downs, a First Amendment expert; Susan Ullman, Wisconsin assistant attorney general who will argue the case for the UW System before the Supreme Court; Patricia Brady, UW System senior legal counsel; Adam Klaus, Associated Students of Madison chair; and Sharif Durhams, Milwaukee Journal Sentinel higher education reporter.

Panelists will first respond to questions from members of the Southworth Project, which features journalism and law students working together this semester to compile in-depth news reports and analysis of the case. The students will cover the oral arguments in Washington in November and receive two credits as part of the independent study project.

An audience question-and-answer period will follow the panel discussion. Overflow seating and a live broadcast of the event will be provided in Room 2211 of the Law School if necessary.

For more information on the panel discussion or the Southworth Project, contact Amy Kasper, a second-year law student, at (608) 294-7258; or Colleen Jungbluth, Daily Cardinal managing editor, at (608) 262-5857.

News media planning to cover the event can contact Erik Christianson in the Office of News and Public Affairs at (608) 262-0930 for background information on the case, technical assistance at the event and suggestions for parking on campus.

###
Version for printing

Retrieve release by month:

Receive news releases by email

Fee fees

University Communications

News Releases

UNIVERSITY OF WISCONSIN MADISON

FOR IMMEDIATE RELEASE
September 29, 1999
CONTACT: Colleen Jungbluth, (608) 262-5857; Amy Kasper, (608) 294-7258; Robert Drechsel, (608) 263-3394

(NOTE TO EDITORS: A panel discussion tonight at 7 p.m., Room 2260 of the Law School, will focus on the student fees case scheduled before the U.S. Supreme Court. For more details, contact Erik Christianson, (608) 262-0930.)

FEE CASE PROJECT LINKS JOURNALISM, LAW STUDENTS

MADISON-Journalism and law students at the University of Wisconsin-Madison have joined forces to generate in-depth coverage and analysis of the university's student fee lawsuit before the U.S. Supreme Court.

The Southworth Project is a one-of-a-kind collaboration with the Daily Cardinal student newspaper, the School of Journalism and Mass Communication and the Law School. It takes its name from the lawsuit's main plaintiff.

"There has always been a close, but not always cordial, relationship between practitioners of journalism and law," says Robert Drechsel, professor of journalism and mass communication and a project adviser. "It's a useful exercise to get them together and expose them to what each other does before they graduate, and the Southworth case seemed like the ideal vehicle."

Former UW-Madison law student Scott Southworth and two other law students sued the university in 1996, objecting to the use of student fees to finance campus groups they disagree with on ideological, political or religious grounds. They claim the mandatory student fee system violates their First Amendment protection of freedom of belief.

The university and its student government leaders maintain that fee-supported student groups are a necessary and vital part of the educational experience, and that student fees are constitutional because they support a forum for free speech.

After a federal judge ruled in the plaintiffs' favor and the 7th U.S. Circuit Court of Appeals upheld the decision, the UW System Board of Regents appealed the case to the Supreme Court. The court will hear oral arguments on the case Nov. 9 and is expected to issue a ruling in early 2000. Its decision will affect all public colleges and universities.

"The Southworth Project will help students and faculty at universities around the country understand what the stakes and the principles are in this case, because it will affect every campus," says Brady Williamson, a project adviser who teaches constitutional law at the UW Law School and has argued before the Supreme Court. "The law students have expertise in understanding and researching the

legal principles involved, and they are working with the journalism students to synthesize and communicate them to the whole country."

Thirteen students from the journalism and law schools were selected for the Southworth Project this spring and will receive two credits for their work. They spent the summer researching the issues and have begun producing news articles on the case.

The articles are published in the Daily Cardinal and are planned to be distributed to media outlets around the country, especially in Minnesota and Oregon, where similar lawsuits have been filed. The project's Web site, http://www.journalism.wisc.edu/southworth, will be functioning by the end of the week, and media interested in receiving more information about the project can contact the team by e-mail at southworth@journalism.wisc.edu.

A highlight for the Southworth Project team will be its trip to Washington to cover the oral arguments before the Supreme Court. On Nov. 8, the team will receive a private tour of the Supreme Court's permanent exhibitions. On Nov. 9, team members will meet with New York Times Supreme Court reporter Linda Greenhouse, cover the oral arguments and write deadline news stories for the Daily Cardinal and other media.

Second-year law student Amy Kasper says she was drawn to the project because of her interest in the First Amendment.

"This case is very interesting, because both sides are claiming First Amendment rights in their arguments," Kasper says. "Because the case has local and national significance, it definitely has been a worthwhile project to get involved in so I can learn more about the impact it will have on public universities."

The Southworth Project is also sponsoring educational events to inform the campus community about the case, including a panel discussion tonight at 7 p.m., Room 2260 of the Law School. Panelists include Southworth; UW-Madison professor Donald Downs, a First Amendment expert; Susan Ullman, Wisconsin assistant attorney general who will argue the university's case before the Supreme Court; Patricia Brady, UW System senior legal counsel; Adam Klaus, Associated Students of Madison chair; and Sharif Durhams, Milwaukee Journal Sentinel higher education reporter.

Southworth Project team members say they have learned much from each other by working together on the project, which will culminate with a comprehensive report to be archived at the university.

"This is a very dynamic case, one people on campus and around the country need to be educated about," says Colleen Jungbluth, team member and managing editor of the Daily Cardinal. "Since it involves the First Amendment, there is something in it for everybody."

###

Erik Christianson, 608-262-0930, echristi@facstaff.wisc.edu

Version for printing

Retrieve release by month:

University Communications

News Releases

UNIVERSITY OF WISCONSIN MADISON

Seg. fees

FOR IMMEDIATE RELEASE
2/13/01
CONTACT: W. Lee Hansen, (608) 238-4819, wlhansen@facstaff.wisc.edu

NOTE TO REPORTERS: To arrange advance phone interviews with either of the keynote speakers, call Lee Hansen, (608) 238-4819. Also, downloadable photos of the keynoters are available at the conference site:
http://wiscinfo.doit.wisc.edu/acadfreeconf/

CONFERENCE SET ON ACADEMIC FREEDOM

MADISON - A conference on the rights and responsibilities of academic freedom, including the issues of free speech and intellectual property rights, will convene Thursday and Friday, Feb. 22-23, at the University of Wisconsin-Madison.

The free conference will be held in the Pyle Center, 702 Langdon St. It is sponsored by the departments of history and educational policy studies.

"Threats to academic freedom continue to come from all directions," says W. Lee Hansen, professor emeritus of economics and one of the conference organizers. "This conference gives us a chance to reassess those threats at a university noted for its dedication to sifting and winnowing the truth."

Speakers will include faculty, staff and students as well as outside presenters. Topics include the use of segregated fees by universities, "corporatization" of universities, freedom to publish research results, and disruption of presentations by campus speakers.

Keynoters are Robert O'Neil, professor of law at the University of Virginia and founding director of the Thomas Jefferson Center for the Protection of Free Expression, and Alan Kors, professor of history at the University of Pennsylvania.

O'Neil teaches courses at Virginia in constitutional law of free speech and church and state, the First Amendment and the arts. He is a former president of the UW System and vice president of Indiana University. He will open the conference Thursday, Feb. 22, at 8:20 a.m. with an address on "Academic Freedom and Intellectual Property: Contentious but Compatible."

Kors teaches European intellectual history and is editor-in-chief of the Oxford University Press Encyclopedia of the Enlightenment. He is co-author of the 1998 book "The Shadow University: The Betrayal of Liberty on America's Campuses." He will speak Thursday, Feb. 22, at 7:30 p.m. on "Selective Campus Enforcement and the Betrayal of Liberty."

For a full schedule, call the History Department, (608) 263-1808, or visit:
http://wiscinfo.doit.wisc.edu/acadfreeconf/.

# # #
- Jeff Iseminger, (608) 262-8287, jpisemin@facstaff.wisc.edu
Version for printing

Retrieve release by month:

Receive news releases by email

Higher Education and National Affairs
(American Council on Education Newsletter)
June 26, 2000

EMBRACING A "WHOLE UNIVERSE OF SPEECH AND IDEAS"

By Katharine C. Lyall, President, University of Wisconsin System

A college campus is a risky place. Almost daily, students, faculty, and leaders run the risk of encountering an idea they detest, an idea they simply disapprove of, or an idea that might reshape the way they view the world. When that happens, I believe the university is doing its job and doing it well. It's the business we're in. And the U.S. Supreme Court seems to agree.

On March 22, the high court handed down a decision in the Board of Regents of the University of Wisconsin System v. Southworth case that one newspaper editorial described as "so sensible as to seem self-evident." The ruling states that a university "is entitled to impose a mandatory fee to sustain an open dialogue" on campus, provided the funding of such a forum is administered in a viewpoint-neutral fashion.

The Southworth case stems from a lawsuit brought by three university students who sued the institution, charging that the mandatory fees they paid supported groups with views that conflicted with their personal convictions. The high court's ruling in the case is a landmark decision -- one that does much to guarantee that all speech on campus has the same protection as speech in the classroom.

The First Amendment encourages a noisy society, one in which all parties are invited to join in the national chat room. The American college campus must be the model for that "constant conversation," one in which the banal, the obnoxious, and the offensive compete for attention with the brilliant, the inspiring, and the new.

The Southworth decision reminds us that the campus is meant to be a preserve of civility and discourse in an often uncivil, often silent world. The university is faithful to this ideal when it welcomes all ideas: not as equally "good," but as equally deserving of a fair hearing. We are, as Supreme Court Justice Anthony Kennedy wrote in the decision, an institution that "undertakes to stimulate the whole universe of speech and ideas." And this speech is "distinguished not by discernable limits but by its vast, unexplored bounds."

At a time when some in the university, even our own students and faculty, would shrink into a self-imposed shell of silence, the Supreme Court has invited us to speak more boldly. And, in the process, it has reminded us why we exist: to teach and learn in a forum of competing viewpoints.

For this to happen, however, university administrators cannot be bystanders. We must referee just enough to guarantee that every voice is heard, that no one is shouted down. In this, we need the help of student leaders who will work harder to enlist a wider range of peers in a governance process that will make an open forum meaningful.

Much has already been said about the Southworth case. I was particularly struck by an observation by Thomas Baker of the Center for Constitutional Law at Drake University (IA). "To this court," he said, "the marketplace of ideas is on the Internet and on university campuses."

That's an awesome responsibility, but it's familiar territory for the university. We are always traveling in fast company, always crossing the strand from the known world to the new. In other words, it is our business to seek and embrace a "whole universe of speech and ideas." The Southworth decision challenges us to do just that.

Seg. Fees

Seg Fees

Lincoln (NE) *Journal Star*
March 28, 2000

Editorial

Student fee ruling is good for lively debate

In its recent decision on student fees the U.S. Supreme Court has presented a strikingly clear statement on the right of public universities to create a free, open and robust exchange of ideas.

The 9-0 decision plainly identifies a university campus as a special environment where minority views not only are tolerated, they can be supported because their existence on a campus stimulates debate and permits examination.

"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," wrote Justice Anthony M. Kennedy.

"If the university reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue." The 9-0 margin was somewhat surprising. It overturned lower court rulings that cited precedents issued by the high court itself.

The ruling came in a case filed by then-law student Scott Southworth against the University of Wisconsin. Southworth opposed a $15 semester fee assessed the university's 38,000 students. The money is funneled to more than 100 organizations.

Southworth, a political conservative, said it was inconsequential whether the organizations being funded were liberal or conservative. According to The New York Times, the suit was financed by the Alliance Defense Fund, an organization based in Scottsdale, Ariz., that advises conservative students on strategies for "defunding the left." Southworth and two other students said that their constitutional rights were violated because their contribution was coerced.

The high court's ruling, however, said that as long as funding to student organizations is allocated on a value-neutral basis, students' constitutional rights are adequately protected.

One aspect of the court's ruling might raise doubts about the fee system in place at the University of Nebraska. At Wisconsin a majority vote of students could either fund or defund a group. That provision, the court said, might violate the principle that funding should be granted on the basis of viewpoint neutrality. It asked the appeals court to examine that issue in more depth.

For the last two decades NU students who oppose using fees for controversial speakers have had the right to ask for their money back.

Since less than 1 percent of students ask for their money back -- the rebate would be less than $11 -- the policy seemingly has done little to discourage the marketplace of ideas at NU.

Because the NU policy is similar in some respects to the Wisconsin policy, the case might merit special attention from NU officials as it moves back through the courts.

While that minor question lingers, however, the main thrust of the court's ruling is unequivocal. A public university has the right to stimulate unfettered debate in the interest of education. The ruling should have an invigorating and healthy impact on campus intellectual life.

UNIVERSITY OF WISCONSIN SYSTEM

University Relations
1856 Van Hise Hall, 1220 Linden Drive
Madison, Wisconsin 53706
(608) 263-3961 (608) 265-3260 Fax
website: http://www.uwsa.edu

NEWS RELEASE

FOR IMMEDIATE RELEASE

March 22, 2000

Contact: Katharine Lyall, UW System
(608) 262-2123
Roger Howard, UW Madison
608) 263-5702

U. S. Supreme Court Upholds Free Speech in Southworth Case, UW Leaders Say

Madison, WI –University of Wisconsin leaders said they were pleased with Wednesday's Supreme Court decision that public colleges and universities can use money from student fees to finance the campus groups of their choosing.

"I am tremendously gratified that the Supreme Court has upheld the right of students to allocate their fee money democratically," said Katharine Lyall, president of the University of Wisconsin System.

"This is not only a vote in favor of freedom of expression on our college campuses, but also a vote that speaks to the very heart of a university. It confirms that a core part of the university's mission is to be a forum for the free exchange of ideas." said Lyall.

"On behalf of the Board of Regents, I am pleased that the Supreme Court has recognized the importance of free speech in a great public university. It is, of course, at the heart of the institution," said Board of Regents President San W. Orr.

"We hope students will think carefully about the decisions they make in funding student organizations," said Orr.

UW Madison Chancellor David Ward said he is pleased with the court's decision. "I am gratified that the justices have affirmed UW-Madison's commitment to the First Amendment and the way in which we seek to foster a rich dialogue on campus," he said.

MORE

Scott Southworth, Amy Schoepke and Keith Bannach, former UW law students, brought the original suit against the university in 1996, arguing that a mandatory segregated fee system forced them to support political and ideological organizations with which they disagreed, thus violating their First Amendment rights of free speech and freedom of association. The students named 18 campus-related organizations to which they objected on political, ideological or religious grounds.

A federal judge and a federal appeals court ruled against the university, but the State Attorney General's Office appealed those rulings to the U. S. Supreme Court which, on Wednesday, March 21, overturned the lower court rulings.

The Supreme Court did not, however, sustain the use of a student referendum mechanism to allocate funds. That aspect of the case was remanded to the district court for further proceedings.

"This decision has broad implications for public universities throughout the nation," added Lyall. "We are pleased that Wisconsin could be the national testing ground for this important issue."

Roger Howard, interim associate vice chancellor for student affairs at UW-Madison and the campus' main spokesperson on the case, said, "I am very pleased that the Supreme Court recognized the importance the university places on supporting a broad forum for diverse speech. The student allocation of activity fees creates a rich array of programs on many different topics. The court's decision permits us to continue this valuable effort."

--Sharyn Wisniewski (608) 262-6448

--Erik Christianson (608) 262-0930

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

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

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

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

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 association and to fund activities "germane" to the association's mission of "regulating the legal profes-

sion 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 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-

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.

United Council of UW Students

The State Student Association of Wisconsin

Michelle Diggles
President

122 State Street, Suite 500
Madison, WI 53703
http://www.unitedcouncil.net

Phone: 608/263-3422
Fax: 608/265-4070
ucpres@gdinet.com

United Council
of University of Wisconsin Students, Inc.

122 State Street, Suite 500, Madison, WI 53703 Phone: (608) 263-3422 Fax: (608) 265-4070

Speech of

Michelle Diggles, President

on

Board of Regents of the University of Wisconsin System v. Southworth

March 22, 2000

Ladies and gentlemen, good afternoon. My name is Michelle Diggles and I am the President of the United Council of University of Wisconsin Students. United Council represents approximately 140,000 students on 24 UW campuses.

Students throughout Wisconsin are very pleased with the decision released by this nation's highest court today. The unanimous decision by the Supreme Court reiterates that not only do students have the right to control their fees, but also that the use of mandatory fees is essential to creating a politically, culturally, ideologically, and socially diverse environment for students.

We have consistently fought for student fee autonomy and free speech on campus because we know that the organizations and events funded by students fees are central to the mission of the university. Student fees are used to fund speakers, debates, art exhibits, productions, bus passes, and campus safety programs, as well as many other activities which benefit the university community.

Student fees create a forum of resources on campus from which all different organizations, working from different viewpoints on varied issues, can draw from in order to ensure that their voices are heard. Viewpoint neutral free speech on campus is essential to ensuring that the university community provides a rich and diverse marketplace of ideas.

As Justice Kennedy wrote in the decision:

> "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."

Additionally, the Supreme Court said it would not impose any optional or refund mechanism for mandatory students fees. The decision said that due to the viewpoint neutrality in the distribution of students fees, the rights of objecting students are protected. Thus, there is no First Amendment

violation.

In Wisconsin, students throughout the UW System have enjoyed student fee autonomy for about 25 years. We have consistently supported the marketplace of ideas created by student fees in hopes 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."

Thank you.

United Council
of University of Wisconsin Students, Inc.
122 State Street, Suite 500, Madison, WI 53703 Phone: (608) 263-3422 Fax: (608) 265-4070

For immediate release
March 22, 2000

For more information contact:
Michelle Diggles, President
o: 608/263-3422
cell: 608/516-9237

HIGH COURT UNANIMOUSLY RULES TO UPHOLD FREE SPEECH ON CAMPUS

Supreme Court reverses and remands 7th Circuit Court Decision

Washington, D.C.—The Supreme Court unanimously reversed and remanded the 7th Circuit Court's *Board of Regents of the University of Wisconsin System v. Southworth et al.* decision today. The court concurred with the University of Wisconsin System that mandatory student fees on college and university campuses are central to those institutions' mission to promote free speech and a marketplace of ideas.

UW-System will hold a press conference at 1 p.m. in the Regent Room at 1820 Van Hise to address the decision.

"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. The University [of Wisconsin System] exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas by, and among, its students," wrote Justice Anthony M. Kennedy.

"This is a victory for students across the state and the nation. It will set a precedent for protecting student free speech nationally," said Michelle Diggles, United Council President.

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

"The Supreme Court has concurred that the role of the university is to ensure that all students have a right to access the resources necessary to further free speech on campuses. Limiting what organizations can access student fees would contradict the goal of the university," said Jorna E. Taylor, Shared Governance Director of United Council.

—more—

The Supreme Court remanded the referendum question back to the lower courts for fact finding."The referendum aspect of the University's program appears to permit RSO [registered student organization] funding or defunding by majority vote of the student body. To the extent the referendum substitutes majority determinations by viewpoint neutrality it would undermine the constitutional protection the program requires," cited the decision.

"The unanimous decision by the Supreme Court reiterates that not only do students have the right to control their student fees, but that the use of mandatory fees is essential to creating a politically, culturally, ideologically, and socially diverse environment for students,"said Diggles.

The Untied Council of UW Students is the nation's largest, oldest, and most effective statewide student association representing approximately 140,000 students on 24 UW campuses.

—30—

United Council Student Fee Autonomy Factsheet

United Council of UW Students
Shared Governance Factsheet

Wisconsin State Statute 36.09(5)

"... 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 campus student activities. ..."

What is Student Fee Autonomy?

Student Fee Autonomy is the right of elected student representatives to decide how their fees are used, rather than having the decision made by campus administrators. The philosophy is based on the democratic premise that those people affected by a decision should be actively involved in making that decision.

What Types of Student Fees Are There?

In the UW System, there are **allocable** and **non-allocable** student fees. Allocable student fees are disbursed by elected student governments while non-allocable student fees are primarily controlled by campus administrators. Both allocable and non-allocable fees are subject to the review of campus administrators and approval of the Board of Regents.

Student Fee Facts

☞ **Fees are allocated by open and democratic student governments**
Elected student governments allow students on campus many different ways to be directly involved in the allocation of student fees.

☞ **Fees provide student leadership development opportunities**
Nearly all non-instructional student activities in the UW System are funded with student fees. In this era of decreasing state support for the university, student fees provide opportunities for students to develop highly-sought leadership skills.

☞ **Student Fee Autonomy is a Wisconsin tradition**
Since the merger of the Univeristy of Wisconsin System in the early 1970's, Wisconsin has maintained a tradition of students holding primary responsibility for fee allocation as part of the shared governance process.

☞ **Fees support the educational mission of the UW System**
Student fees create an open forum for the expression of diverse viewpoints. In this "marketplace of ideas", controversial ideas are encouraged to be debated.

MYTH:

Student groups use funds to promote politically partisan groups and activities.

FACT:

UW System Board of Regents policy strictly prohibits the use of funds for politically partisan activities.

☞ **Fees are mandated and regulated by law**
Student fee allocations, while primarily controlled by students, are regulated according to Board of Regents Financial Policy & Procedure Papers #20 and #37, and General Administrative Policy Paper #15, thereby preventing misuse of student fees by students or administrators.

For more information contact: United Council, 122 State Street, Suite 500, Madison, Wisconsin 53703-2500
608/263-3422; fax 265-4070; ucouncil@gdinet.com.

Recent Attacks Against Student Fee Autonomy

Southworth et. al. v. Grebe et. al.

Southworth is a case which challenges the right of Student Governments to allocate fees as they see fit to campus activities. The case has gone through two phases, being tried in the District Court of Western Wisconsin and the Seventh Circuit Court of Appeals. Both decisions were in favor of the plaintiffs, Southworth and the law students.

In 1998, the case was appealed to the US Supreme Court. Should the ruling of the Seventh Circuit stand, students will be faced with nearly impossible requirements for the funding of student organizations. Until the appeal process is completed, student fees will continue to be distributed through the democratic process that exists on each campus.

Anti-Student Democracy Bill (SB 134)

In March 1997, State Senator Bob Welch (R-Redgranite) introduced legislation which would have required a refund or "check-off" system to be created for the distribution of student fees. A hearing was held in the Senate Education Committee where, fortunately, the bill remained, and died.

Handrick Amendment

In June 1995, the Assembly Republican Caucus introduced an amendment to the 1995-1997 Biennial Budget that would have taken away student fee autonomy and defunded several organizations, including United Council, student governments, and pre-professional groups. United Council led a statewide coalition that fought the amendment in the State Senate, and won with bipartisan support.

MYTH:

Only "liberal" groups receive funding.

FACT:

A wide array of groups receive funding including:

Intercollegiate and Intramural Athletics
Academic Clubs
Student Union Programming
Student Religious Organizations
Pre-professional Organizations
Veterans Organizations
Lesbian, Gay, Bisexual, Transgender Groups
Students of Color Organizations
Tutorial Services
Student Government Associations
Women's Centers and Women's Groups
Environmental Groups

The Ishtook/Solomon Campus Gag Amendment

Similar in effect to the Handrick Amendment, this amendment was offered to the 1996 Federal Appropriations bill. The amendment failed in committee and subcommittee. It was also defeated on the House of Representatives floor on a bipartisan vote of 161 in favor and 263 against the amendment.

Other Attacks

Attacks against student control of fees have also occurred in the state legislatures of Idaho, Minnesota, Colorado, and Oregon, with continuing threats in other states and the federal government; but students continue to prevail because of grassroots efforts that organize and educate on the importance of student fee autonomy.

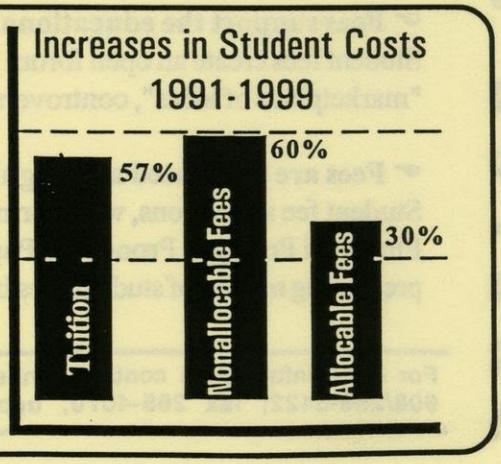
MYTH:

Students are too irresponsible and inconsistent to responsibly control student fees.

FACT:

When students have chosen to fund important student services, they have exercised more restraint than university administrators or the Wisconsin State Legislature.

A United Council study on student costs, submitted to the UW System Board of Regents, shows that allocable student fees have increased at a slower rate over the last five years than both non-allocable fees and tuition.



United Council *Southworth v. Grebe* Factsheet

United Council of UW Students Shared Governance Fact sheet

> **"...the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."**

What is Southworth v. Grebe?

The *Southworth, et al. v. Grebe, et al.* court case challenges shared governance and student fee autonomy in the University of Wisconsin System. The suit was filed in April 1996 with the Western District Court of Wisconsin by Scott Southworth, Amy Schoepke, and Keith Bannach. These three UW-Madison Law students claim that the existing student fee policy violates their first amendment rights by forcing them to support "political and ideological" student groups which they personally object. Michael Grebe, et al., are the seventeen members of the University of Wisconsin Board of Regents at the time the suit was filed.

TIMELINE

04/02/96	Lawsuit Files with Western District Court
11/29/96	Western Circuit Court Finds in Favor of Plaintiffs
12/06/96	Board of Regents Appeal to 7th Circuit Court
06/04/97	7th Circuit Returns to Lower Court for Clairification
10/16/97	Board of Regents Appeal to 7th Circuit en banc
08/10/98	7th Circuit Court Denies Rehearing
Fall 1998	Board of Regents Appeal to US Supreme Court
Spr. 1999	US Supreme Court Accepts Case for Trial
11/09/99	US Supreme Court Hears Case
Spr. 2000	Decision from US Supreme Court Expected

Western District Court Decision

On November 29, 1996, Judge John Shabaz issued a summary judgement in favor of the plaintiffs. The ruling supported that the students' first amendment rights were violated by the existing student fee policy and that students were forced to support groups with which they did not agree. The UW System Board of Regents did not agree with this decision and decided to appeal to a higher court.

The Southworth Appeal

On December 12, 1996 the UW System Board of Regents appealed the case to the 7th Circuit Court of Appeals asking that the ruling be overturned. After reviewing the case the 7th Circuit Court concluded that the Western District Court and Judge Shabaz had offered an incomplete judgement and returned the case to the District Court asking for a complete ruling which would include a remedy for the problem. On July, 24, 1997 Judge Shabaz released his solution requiring the Board of Regents to publish a list prior to the start of the fiscal year listing what activities and organizations can and can not be funded. This decision was appealed by the Board of Regents on October 16, 1997, and an injunction was offered. An injunction puts the Western District Court ruling on hold until a decision was made on the case by the 7th Circuit Court of Appeals. An appeal was then made to the 7th Circuit Court of Appeals en banc. This re-hearing was denied, yet saw three judges dissenting from the opinion of the court.

For more information contact: United Council, 122 State Street, Suite 500, Madison, Wisconsin 53703-2500
608/263-3422; fax 608/265-4070; ucouncil@gdinet.com.

7th Circuit Court of Appeals Decision

On August 10, 1998 the 7th Circuit Court offered its decision on *Southworth, et al. v. Grebe, et al.* ruling in favor of the plaintiffs, but against the remedy in part offered by the Western District Court. The decision questions the vitalness of shared governance and the rights guaranteed to students under state statute 36.09(5). The ruling requires the UW System to develop a mechanism allowing students to designate groups on campus that they do not wish to fund, essentially saying that student governments do not act as representative bodies, and do not have the power to determine which student organizations should receive funding. This decision threatens student fee autonomy and student power in the state of Wisconsin. The decision is available at *www.ca7.uscourts.gov/* and the case number is 3510.

7th Circuit: Appeal for re-hearing *en banc*

The original ruling from the 7th Circuit Court was only issued from a three judge panel. The Board of Regents then appealed the case to the 7th Circuit en banc. The appeal was denied, but three of the judges wrote dissenting opinions. These opinions spoke of the forum of debate created by the free expression of ideas being essential to the educational mission of the university. It also went on to note the viewpoint neutral basis on which these fees were allocated to student groups through the democratically elected student governments. Finally, one of the opinions compared the student fees to the tuition payments, which students were compelled to make to the university, that often times supports classes to which students do not agree.

United States Supreme Court

In November of 1998, the University of Wisconsin Board of Regents appealed the lawsuit to the United States Supreme Court, citing strong beliefs in the rights of students to have control over the allocation of student fees. The Supreme Court accepted the case for a ruling in Spring of 1999. *Southworth et. al. v. Grebe et. al.* was heard on November 9th, 1999. A ruling is expected sometime in early Spring of 2000. This ruling will set a national precedent on the allocation of student segregated fees.

Discussion on the Southworth Decisions:

* The previous decisions invalidate the entire educational mission of the UW System. Student fees support and provide educational opportunities for students. They also provide a forum of debate on campuses that shape students' overall educational experience.

* Student governments are state agencies, in that they operate in the same way that the state government operates. The state collects and distributes fees to promote the best interests of the state, just as democratically elected student government representatives collect and distribute fees on a viewpoint neutral basis.

* This is clearly a nation-wide systematic attack on free speech. This particular case is being funded by the Alliance Defense Fund, an Arizona based organization, that does not have a chapter in Wisconsin. The ADF and other similar organizations have been sponsoring other lawsuits and judicial attacks on free speech and student fees across the country, to end the forum of debate on college campuses through student control of student fees.

* It will be of the utmost importance to keep student fee autonomy intact when the decision comes from the Supreme Court. It is also imperative that there is student involvement in any discussions of a new fee allocation system.

Seg Fees

November 12, 1999

Retaining the Student Fees

Forum

- Join a Discussion on Editorials

One of the roles of higher education is to provide a place where ideas and beliefs can collide, where students can learn to tolerate even points of view they find obnoxious. For decades, radical movements and countermovements in America have used the campus as a place to form and grow, to articulate ideas and promote goals. That has been true of the black civil rights movement in the 1950's and 60's, the Vietnam War opposition and the feminist movement of the 1960's and 70's, the gay rights movement of the 1970's and the conservative Christian movement of the 1980's and 90's.

Most of those groups had to fight, on campus and in court, either for the right to organize in groups on campus or, in the case of blacks, to enter the campus at all. When a college administration recognized a new group, it gave it legitimacy, space to meet in, the ability to advertise itself on college bulletin boards and newspapers, and access to potential new members in the student body. But the marketplace of ideas costs money to support, and for generations students at American colleges and universities have been required to pay activities fees that now support a long roster of organizations.

The democratic appeal of the activities fees was that everyone was required to invest in an environment that promoted everyone else's right of free speech and assembly. But now the Supreme Court will rule on a case that threatens to undermine the support system at public institutions. At the University of Wisconsin, where mandatory fee money goes to support any nonpartisan student group that applies for a share, three conservative Christian law students have argued that they should not have to pay to support 18 organizations that espouse gay rights, women's rights and other causes with which they disagree. A federal court of appeals has upheld their objections.

But the fee money also supports more than 100 other groups, including conservative Christian organizations like the Pro-Life Action League and Campus Crusade for Christ, as well as the Catholic Student Union, Buddhists, Muslims and a law group called The Federalist Society, to which the lead plaintiff in this case belonged. There have always been -- and always will be -- parents and students who think they have a right to be protected from ideas they do not like. But it should not be up to students or parents to choose which courses or campus organizations deserve support and which do not. That should be the university's mandate, and the Supreme Court should say so.

Attorney takes fee case to the high court

Erik Christianson

It's the ultimate experience for a lawyer — arguing a case before the U.S, Supreme Court. Susan Ullman will achieve that career peak as she defends the university's student fee system before the high court Nov. 9.

"For me, it sure is a highlight," says Ullman, a Wisconsin assistant attorney general, who is making her first appearance before the Supreme Court.

Ullman is preparing for the exhilarating, yet grueling, experience by practicing her argument in what is known as moot court, where people pretend they are the nine Supreme Court justices and ask questions about the case.

"I'm trying to hear as many tough questions as I can so I will be prepared for them," Ullman says.

Ullman has worked on the case since 1996, when it was filed in U.S. District Court. Assistant Attorney General Peter Anderson is co-counsel with Ullman on the case, referred to now as Board of Regents v. Southworth. As in all university litigation, the state Attorney General's office represents the UW System Board of Regents.

Ullman is no stranger to UW-Madison. Since joining the Department of Justice in 1993, she has represented the university in cases involving academic misconduct, admissions decisions and residency determinations.

Moreover, her husband, Arik Levinson, teaches at UW-Madison. She and her husband moved to Madison in 1993 when he

was offered an assistant professorship in the Department of Economics.

A Harvard grad, Ullman completed her law degree at Columbia University and clerked for Federal District Judge John R. Bartels of the Eastern District of New York before going into private practice. She specialized in antitrust law at the New York City law firm of Cravath, Swaine and Moore before coming to Madison.

Ullman says she prefers working in the public arena rather than the private sector.

"Here, my cases are my own, although I do have a co-counsel with this case," she says. "At the firm, I would still be considered very junior, and I don't think I would ever get the opportunity to go before the Supreme Court."

The arguments before the Supreme Court are highly prescribed. Ullman will argue first, as she represents the side that appealed to the court. She will be allotted 30 minutes total, generally broken down as 25 minutes for the argument and five minutes for rebuttal. The attorney for the students suing the university will argue second and be allotted the same amount of time. But the arguments are almost always punctuated by questions from the justices, so attorneys need to be prepared to address a range of issues related to the case.

"There will probably be some hypothetical questions, so I'm trying to anticipate the big-picture items that may go beyond a university campus," Ullman says. "Such as, what if the university had put the student fees directly into tuition, or can a person opt out of funding a forum anywhere?"

The students who filed the lawsuit claim mandatory fees force them to support student groups with which they disagree, violating their First Amendment rights of free speech and freedom of association. The university maintains the student fees create an educational forum for speech and are constitutional.

"My main points before the court will be that these fees fund all of the activity that makes a campus a lively, interesting, thought-provoking place, and that is furthering the First Amendment principle of free speech," Ullman says.

The court is expected to issue its ruling sometime next spring. ■

Afro-American Studies to lead new consortium

Barbara Wolff

The university will administer a four-university black studies consortium under a new grant from the Ford Foundation.

Grant coordinator Nellie McKay, professor of Afro-American studies and English, says an important goal of the grant is to acquaint both scholars and the general public with research and other activities in the field.

"The consortium is approaching this from several different angles," she says. "The first step is to explore what technologies currently are available to make research findings more readily accessible. Our ultimate goal is to increase the role of black studies in the creation of a public policy more responsive to the complicated realities of our multi-racial society."

UW-Madison will divide the $600,000 grant between Carnegie Mellon, the University of Michigan, Michigan State and the UW-Madison Department of Afro-American Studies.

According to McKay, the consortium will:

- Develop outreach initiatives with K-12 districts. UW-Madison will develop programs in theater, music and the visual arts.
- Establish new and strengthen existing ties with historically black colleges (HBCUs). "Our goal is to allow consortium members to benefit from the perspectives of scholars at HBCUs and to provide them with access to technological and other resources so that they can develop their own consortium," McKay says. Ford officials say combining resources and academic specialties could be a model for other universities.
- Organize a series of seminars and workshops open to the public, each hosted by a different consortium member institution. Technology will play an important part, as interactive video will allow participation by virtually anyone in the country, McKay says.

UW-Madison will be the first seminar venue. The three-day event will deal with black women's studies and take place in spring 2000. A subsequent seminar on black urban studies will take place at Carnegie Mellon. The final symposium, on race in the 21st century, will be held at either Ann Arbor or East Lansing. The event will emphasize the relationships between and among African American, American Indian, Latino and Latina, and Asian American populations.

This grant will continue work that the consortium began with a $625,000 Ford Foundation grant in 1995. The new grant is the third from the Ford Foundation to UW-Madison in 10 years. ■

Report urges bigger role in Greek system

The university should take a more active role with fraternities and sororities to improve the campus Greek system, a new report says.

The report from the university's Commission on Fraternities and Sororities says the commission must move beyond just providing oversight of the Greek system of approximately 2,700 students in 30 fraternities and 14 sororities.

The report reaffirms the original recommendations adopted by the commission in 1989, following its establishment by former Chancellor Donna Shalala, and offers several new recommendations focusing on many aspects of Greek life, from philanthropy and recruitment to fund raising and alcohol abuse.

The commission spent two years examining Greek life on campus, and commission chair Jack Ladinsky, professor emeritus of sociology, says the recommendations will help improve the system.

"The recommendations attend to local needs and reflect the very best thinking by national experts on university Greek life," he says.

Information: Melissa Yonan, adviser for fraternities and sororities in the Student Organization Office, 263-4597. ■

NEWSMAKERS

Here's a small sample of the faculty and staff who each week are spotlighted by the media. More: http://www.news.wisc.edu/inthenews/index.html.

He's got active lobes

Psychology professor **Richard Davidson** has seen the academic views on emotion come a long way, from utter dismissal to new regard as an emerging area of inquiry. Davidson's work is winning him professional distinction — he will receive the American Psychological Association's most prestigious award next year — as well as admiration from colleagues. "Richie may be the most left-frontally activated person I have ever met," author and scientist Daniel Goleman, who studied with Davidson at Harvard, tells the Washington Post (Nov. 2).

Falling water worries

Water levels of the Great Lakes have been dropping in recent years, a factor that has wreaked havoc on boaters and others who use the water. Many recreational and commercial boaters have run aground on rock piles and other obstacles that they believed to be submerged at greater depths, and maps of the lakes are becoming untrustworthy because of the dropping levels. Most experts believe the fall in water level is due to two consecutive mild winters and below-normal snowfall in the Upper Midwest, and many say a normal winter should return the lakes to expected levels. But **Jim Lubner** of the Sea Grant Institute tells the Associated Press (Oct. 18) that wetter weather is no guarantee. "If conditions remain like this for another year or two, we could be near a record low," he says, "but it's a crap shoot."

Animal testing needed

Animal-rights protesters have long argued that the merit of conducting research on animals does not justify the harm they endure. **Deborah Blum**, a professor of journalism who wrote about animal research in her book, "Monkey Wars," points out that while animals aren't perfect models, scientists do rely on them to help identify how humans will react to things such as new drugs or treatments. But she agrees that more needs to be done to find other ways of replicating human reactions. "I wish more people in science would push non-animal testing, but we are not there yet," Blum tells the Minneapolis Star Tribune (Oct. 13). "There are no good computer simulations of what happens in a whole human system, nor can you do it in a single cell grown in a test tube."

Skyscraper prospects doubted

Chicagoans have been upset ever since their city was stripped of the distinction of having the world's tallest building, an honor now held by Kuala Lumpur's Petronas Towers. Developers are now proposing a new behemoth, which at over 1,550 feet (2,000 with antennae) would eclipse the Petronas. The likelihood that the new structure will actually be built, though, isn't great, says **Richard Green**, a professor of real estate. Green tells The Economist (Oct. 2) that skyscrapers are disproportionally expensive to build and run, and he and other property economists are wondering if the numbers will ever add up suitably to win city and investor approval for the project.

Labor rights supported

A study by **Gordon Hewitt**, who did much of his work while a doctoral student at the university, is showing that collective bargaining by graduate students has little to no effect on the educational environment. The results of the survey make sense to **Chris Golde**, an educational administration professor who helped Hewitt with his study. Golde notes that the subjects of union bargaining, such as pay and benefits, don't pertain directly to the educational setting. "That's the business of being a university employee, not the business of being a student," Golde tells the Chronicle of Higher Education (Oct. 22).

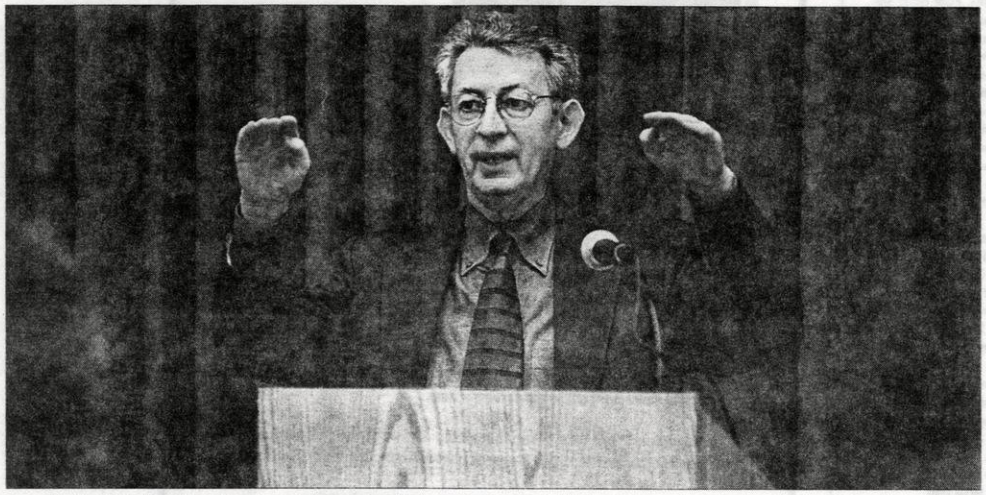
For Faculty and Staff of the University of Wisconsin-Madison

WisconsinWeek

http://www.news.wisc.edu/wisweek

October 20, 1999

Seg Fees



Chancellor David Ward, speaking at a news conference, explains that the budget proposal will balance tuition and state funding with private giving. Photo: Jeff Miller

'Intellectual firepower' to be brought to bear

New resources expected to aid recruiting of faculty and academic staff

Dan van der Weide, a new university professor working to enhance the power of modern microscopes, personifies the "intellectual firepower" the university expects to bring to bear in Wisconsin through the Madison Initiative.

Van der Weide, a professor of electrical and computer engineering who comes to UW-Madison from the University of Delaware, is one of the first of more than 100 faculty and academic staff expected to be hired under the Madison Initiative, a public-private investment included as part of the pending state budget.

UW-Madison has already authorized the hiring of 32 new faculty members with private funds, and 16 of them — including van der Weide — are now on campus.

"More than anything else, it allows us to recruit and retain the very best faculty and academic staff," Chancellor David Ward says. "Intellectual firepower is what makes a great university, and this funding will allow us to build and retain this intellectual firepower."

The Madison Initiative calls for an increase to the university's base budget of $57 million from the state and students, combined with $40 million in private giving from alumni and donors, over four years. The 1999-2001 state budget, expected to be signed next week by the governor, will provide $29.2 million for the first two years of the initiative.

The payoffs should be quickly apparent. Van der Weide, for example, plans to work with students to develop an Internet-based laboratory where experiments can be conducted using remotely operated microscopes. Such a lab has potential for teaching and scientific and industrial collaboration.

For a full report on the Madison Initiative, see page 14.

The chancellor says the initiative and overall university budget will provide students with improved educational and research opportunities; strengthen libraries and other services; and renovate buildings, among other things. ■

Seg fees case has national implications

Erik Christianson

The amount of money is relatively low. But the stakes couldn't be any higher.

The U.S. Supreme Court will hear the university's segregated fee lawsuit Tuesday, Nov. 9. The lawsuit, which challenges the constitutionality of the university's mandatory student fee system, could force public colleges and universities nationwide to re-examine their student fee systems.

Southworth

Southworth v. Board of Regents, the case's legal title, is a unique and compelling examination of one of the nation's foundational principles. Scott Southworth and two other conservative law students filed the federal lawsuit in April 1996, claiming the mandatory student fee forced them to support student groups they opposed on political, ideological or religious grounds. Since then, both the university and the plaintiffs have argued that the First Amendment is on their side.

"The funding of student services and a forum for the expression of diverse views does not offend the First Amendment," reads the university's legal brief to the Supreme Court. "It instead furthers First Amendment values by promoting vigorous debate in an educational setting entirely suited to that discussion."

Counters Jordan Lorence, the plaintiffs' attorney, in his Supreme Court brief: "The university must show it has a compelling interest in forcing students to fund

continued on page fifteen

Study: Bargaining doesn't inhibit grad education

Jeff Iseminger

Collective bargaining with graduate assistants doesn't interfere with the faculty's ability to instruct and advise those students, says the first national empirical study of collective bargaining's effects on faculty-student relationships.

The study was conducted by Gordon Hewitt, until recently a university doctoral student. He did the study in consultation with his adviser, Chris M. Golde, assistant professor of educational administration.

Hewitt surveyed a random sample of nearly 300 faculty members at five universities that have had graduate student collective bargaining for at least four years. They included the State University of New York at Buffalo and the universities of Florida, Massachusetts-Amherst, Michigan and Oregon.

Among the results:

- Ninety percent of faculty members said collective bargaining does not inhibit their ability to advise their graduate students.
- Ninety-two percent said it does not hurt their ability to instruct their students.

The survey did find that many faculty members have concerns about the increased labor costs and bureaucratic procedures inherent in the administration of a collective bargaining agreement.

"These findings demonstrate that the relationship of faculty and graduate students is not negatively affected by collective bargaining," says Hewitt, who now works for Tufts University. "Administrators are using a specious argument when they invoke the disrupted educational relationship theory in defending their campus against an organizing effort.

"Instead, administrators may want to focus on the faculty's concern shown in this study over administrative and cost issues of implementing a bargaining agreement."

Graduate student employee organizations claim teaching and research assistants are entitled to collective bargaining rights. Many university administrators, on the other hand, argue that graduate assistants are primarily students, not employees, and should be governed by educational policy, not a collective bargaining agreement.

Coincidentally, UW-Madison in 1969 became the first university to enter into collective bargaining with graduate students. But it is only in the last eight years or so that large numbers of graduate students have attempted to unionize at colleges and universities.

Graduate students in the University of California System, for example, went on strike in 1992 and 1998 and this year won recognition for collective bargaining. New contracts have also been signed at the universities of Iowa and Kansas, with recognition battles going on at several other campuses. ■

Seg fees

continued from page one


Ullman

the political and ideological advocacy of groups the students find objectionable, and that there is no less restrictive means to accomplish this governmental interest. This the university cannot do."

The Supreme Court is expected to issue a ruling in the spring.

Of the entire segregated fee, which was $331.50 in 1995-96 and is now $445, only a small portion (about $13 in 1995-96) funds student groups. But Southworth and the other plaintiffs say what's at issue is not the amount of money but what they contend is the coerced funding of speech with which they disagree.

"The First Amendment gives you the right to speak," Southworth says. "It also gives you the right not to speak."

After a U.S. District Court judge and the 7th U.S. Circuit Court of Appeals ruled for the plaintiffs, the UW System Board of Regents appealed to the Supreme Court. Four other UW-Madison students have since joined the lawsuit as plaintiffs.

The case has generated intense national interest. Fifteen states and numerous organizations have submitted briefs supporting the university's position. One group, the Pacific Legal Foundation, filed a friend-of-the-court brief supporting the plaintiffs. And similar lawsuits have since been filed in Oregon and Minnesota. ■

Case at a glance

Q: Who are the plaintiffs and defendants?

A: Scott Southworth, Amy Schoepke and Keith Bannach, former UW law students, are the original plaintiffs. Four other students have since joined the case as plaintiffs. The defendants are the members of the UW System Board of Regents in their official capacities as regents.

Q: Who are the attorneys?

A: Susan Ullman, state assistant attorney general, will present the oral argument before the U.S. Supreme Court. Assisting Ullman is Pete Anderson, state assistant attorney general. The plaintiffs' attorney is Jordan Lorence of the Northstar Legal Center, Fairfax, Va.

Q: What is the case timeline?

A: The case was filed April 2, 1996, with the U.S. District Court for the Western District of Wisconsin. U.S. District Juage John Shabaz ruled in favor of the plaintiffs Nov. 29, 1996. After appeal by the regents, a three-judge panel of the 7th U.S. Circuit Court of Appeals upheld the ruling Aug. 10, 1998. The regents appealed to the full circuit court, which upheld the ruling Oct. 27, 1998. The regents then appealed to the U.S. Supreme Court. The Supreme Court case number is 98-1189.

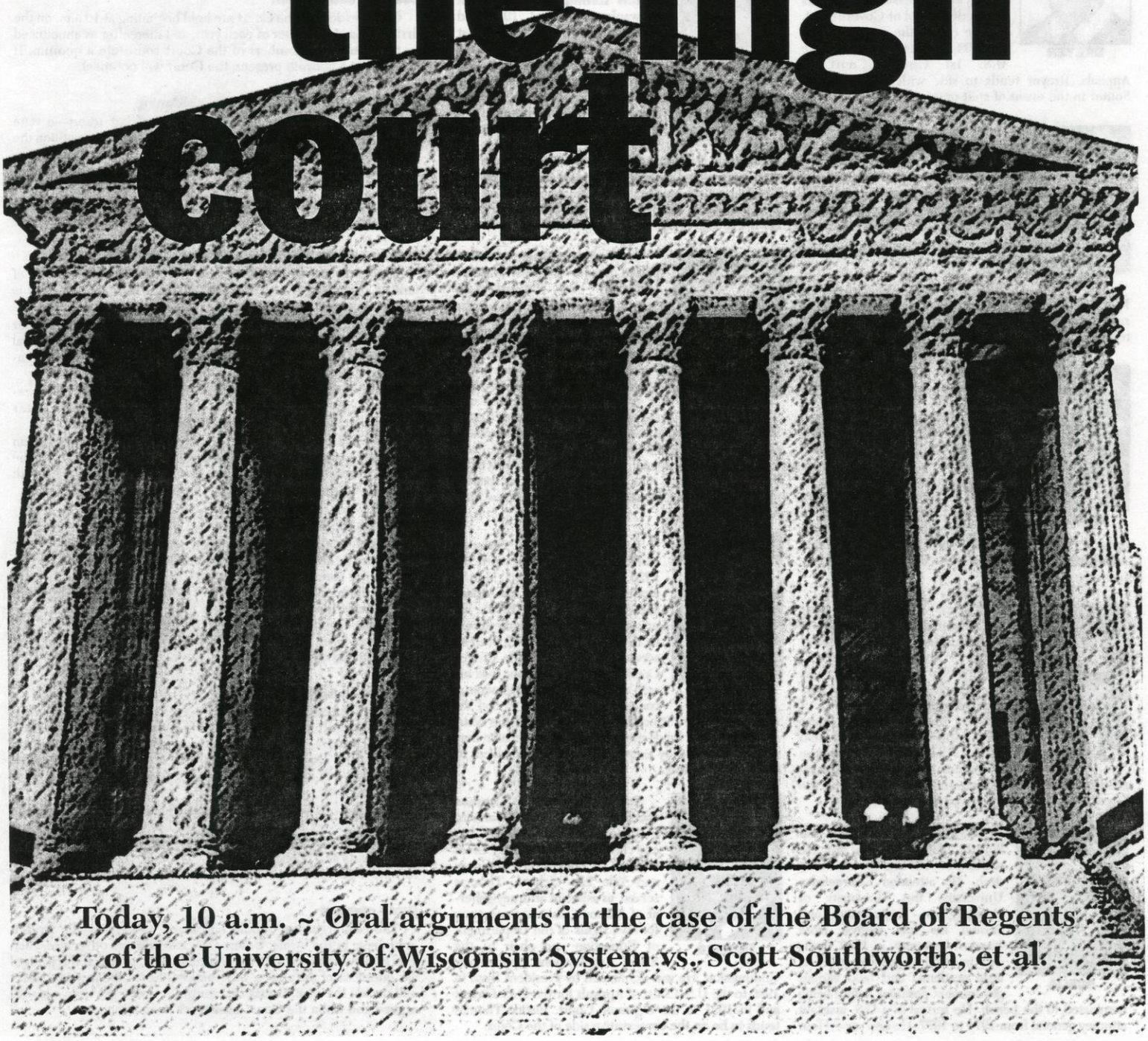
Q: What exactly will the U.S. Supreme Court decide?

A: The court says it will decide this specific issue: "Whether the First Amendment is offended by a policy or program under which public university students must pay mandatory fees that are used in part to support organizations that engage in political speech."

Q: What are possible outcomes?

A: If the university prevails, the current segregated fee system will remain in place. If not, two new fee plans have been discussed, but the regents have made no decision yet.

All eyes to the high court



Today, 10 a.m. ~ Oral arguments in the case of the Board of Regents of the University of Wisconsin System vs. Scott Southworth, et al.

USE IT OR LOSE IT:
Your Guide to the U.S. Supreme Court

COMPILED BY CHARLOTTE DAUGHERTY, BRYAN KLEINMAIER AND KRISTI WOLFF

Roll Call
MEET YOUR U.S. SUPREME COURT JUSTICES


BREYER

Justice William Breyer was born and raised in San Francisco. He attended Stanford University and Harvard Law School, where he was a professor of law. Later, Breyer served as a professor at Harvard's Kennedy School of Government. Before taking the oath of office in 1994, Breyer served on the U.S. 1st Circuit Court of Appeals. Breyer tends to side with Ginsburg and Souter in the event of split opinions.


GINSBURG

Justice Ruth Bader Ginsburg was born and raised in New York City. She attended Cornell University and Harvard Law School, later teaching at both Rutgers and Columbia University. In 1980, she was appointed to the U.S. Court of Appeals for the D.C. Circuit. In 1993, she took office in the Supreme Court, nominated by President Clinton. Like Breyer, she has championed so-called "liberal" causes like gender equity, and tends to favor an individual's rights over the state's.


KENNEDY

Justice Anthony M. Kennedy was born in Sacramento, Calif., on July 23, 1936. Kennedy attended Harvard Law School, graduating in 1961. Kennedy was a professor of constitutional law at the McGeorge School of Law at the University of the Pacific from 1965-1988. Kennedy took the oath of office in 1988. Kennedy wrote the majority opinion in a recent case in which the court ruled that mandatory student fees must be distributed in a viewpoint-neutral manner.


O'CONNOR

Justice Sandra Day O'Connor was born in 1930 in El Paso, Texas. She was educated at Stanford University, earning her law degree in 1952. She served as an assistant attorney general for the state of Arizona and an Arizona state senator prior to being confirmed to the Court in 1981. Justice O'Connor is generally considered to be on the moderate-conservative side of the Court, and is a swing vote on certain issues.


SCALIA

Justice Antonin Scalia was born in 1936 in Trenton, N.J. He married in 1960 and has nine children. He attended Georgetown University, the University of Fribourg in Switzerland and earned his law degree from Harvard University in 1960. Scalia was involved in private practice, legal academia and held various government positions before being nominated to the bench. He served as a U.S. assistant attorney general from 1974 to 1977. He also served four years on the U.S. Court of Appeals for the District of Columbia. Nominated by President Reagan, Scalia was sworn into office in 1986. He is considered to be on the conservative side of the Court.


REHNQUIST

Chief Justice William Hubbs Rehnquist was born in Milwaukee on Oct. 1, 1924, and raised in Shorewood. Rehnquist graduated from Stanford Law School in 1952. Rehnquist was sworn in as associate justice of the U.S. Supreme Court in 1972 by President Nixon. Rehnquist was later appointed chief justice in 1986. He wrote the opinion in the Keller case, a unanimous court decision that said the state bar's use of mandatory dues to finance political and ideological matters unrelated to regulating the legal profession violated the free-speech right of those members who disagreed with the matters.


SOUTER

Born in Massachusetts, **Justice David Souter** attended Harvard University and Harvard Law School. He was a Rhodes scholar to Oxford and subsequently practiced law in Concord, N.H. He was an associate justice on the New Hampshire Supreme Court and a judge for the U.S. 1st Circuit Court of Appeals. In 1990, Souter was appointed to the Supreme Court. Souter tends to favor broad First Amendment speech and association rights, indicating that he might favor Southworth's arguments. He has also been unsympathetic to any sort of state funding for religious speech, strictly interpreting the establishment clause of the First Amendment.


STEVENS

Justice John Paul Stevens was born in Chicago on April 20, 1920. Stevens attended Northwestern University for law school and graduated in 1947. Before his nomination to the Supreme Court by President Ford in 1975, Stevens served on the U.S. 7th Circuit Court of Appeals. Stevens took his oath of office in 1975. He wrote a concurring opinion in Abood vs. Detroit Board of Education, a case in which the court ruled that union funds spent on political expression may only be financed by employees who do not object to those political ideas.


THOMAS

Justice Clarence Thomas was born in 1948 near Savannah, Ga. He married in 1987 and has one child. Educated at Holy Cross College, Conception Seminary and Yale Law School, Thomas served as assistant attorney general of Missouri, assistant secretary for civil rights of the Department of Education and chair of the Equal Employment Opportunity Commission. He was nominated by President Bush in 1990 to the U.S. Court of Appeals for the D.C. Circuit and in 1991 to the Supreme Court. Justice Thomas tends to be on the conservative side of the Court.

Coming to Terms
a quick guide to legal lingo

Term

The U.S. Supreme Court holds a continuous annual term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. At the end of each term, all pending cases on the docket are continued to the next term.

Sessions and Quorum

Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Six members of the Court constitute a quorum. If there is not a quorum present, the Court will not meet.

Review on Certiorari: Time for Petitioning

Following a judgment in a lower court of last resort—a state supreme court or a federal appellate court—a party may petition the U.S. Supreme Court for review in the form of a writ of certiorari.

Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case is timely when it is filed with the U.S. Supreme Court's clerk within 90 days after entry of the judgment.

Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right but of judicial discretion. The Court will agree to hear oral arguments only for compelling reasons. The Court considers:

- A U.S. Court of Appeals has ruled differently than another U.S. Court of Appeals on the same matter or decided a federal question in a way that conflicts with a decision by a state's highest court.
- A state's highest court has decided an important federal question in a way that conflicts with the decision of another state's highest court or of a U.S. Court of Appeals.
- A state court or a U.S. Court of Appeals has decided an important question of federal law that has not been, settled by the Court, or has decided a federal question in a way that conflicts with previous decisions of the Court.

Briefs on the Merits: In General

A brief on the merits for a petitioner and a respondent must meet specific requirements as to content, length, and deadline. If they do not meet these requirements, the Court may strike or disregard them. The petitioner, the party asking the Court for review, must file its brief within 45 days of the granting of certiorari. The respondent then has 30 days after receiving the petitioner's brief to file its brief. Then the petitioner has another 30 days to file a reply brief.

Brief for an Amicus Curiae

An amicus curiae ("friend of the court") is a brief that introduces relevant matter not already addressed by the parties. These briefs are filed by persons or organizations who are not parties to the lawsuit but have an interest in the case's outcome. Such briefs are also required to meet specific criteria for form and timeliness.

Once the briefs have been filed, the justices do not discuss the case with each other. Their clerks may prepare a bench memo, outlining the applicable law, raising questions about the arguments made and possibly suggesting a ruling. Then the case is set for oral argument.

Oral Argument

The oral argument should emphasize and clarify the written arguments in the briefs. Unless the Court directs otherwise, each side is allowed 30 minutes for argument, during which the justices ask questions of the attorneys. After arguments, the justices confer and decide the case. It may be months between the time a case is argued and when the Court announces its opinion.

Ward discusses alternatives to current seg-fees system

By Jessica Steinhoff
THE SOUTHWORTH PROJECT

If the U.S. Supreme Court decides the existing segregated-fees system is unconstitutional, UW-Madison officials said they hope students will come up with ideas for an alternative system of funding student organizations.

"It is very important that this come from the students and that students feel comfortable with that system and have some ownership in it," said Chancellor David Ward, who said he believes the university will lose the case if it argues primarily using a free-speech strategy.

To gather student input about the funding of student groups and possible alternatives to the current funding system, a committee of students, staff and university officials from various University of Wisconsin System schools met following the initial challenge by Scott Southworth and the other plaintiffs to segregated fees, according to committee member William Richner, Vice Chancellor of General Services.

UW System President Katharine Lyall appointed the administrative members of the group, which had an equal number of university administrators and students, Richner said.

"It is very important that [a new funding system] come from the students and that students feel comfortable with that system and have some ownership in it."
—Chancellor David Ward

Former Associated Students of Madison Chair Eric Brakken was chosen by United Council to represent UW-Madison, according to Richner.

The committee stopped meeting after the regents appealed the Southworth case to the Supreme Court, however, with hopes that the current segregated-fees system might be upheld.

If the fees system is found unconstitutional and the Supreme Court allows the university to choose another way to fund student organizations, Ward said he hopes a similar group of students and staff will devise a new system.

Ward said at this point, it appears the university would be forced to separate allocable and nonallocable fees, offering students either a check-off system or a choice in which they can support all student organizations or none of them.

Drawing from examples at other public schools, Ward speculated one possible alternative would be a system in which students choose to contribute money to an activities fund controlled by the student government.

Ward calls this system a "reasonable compromise," but says it could be problematic for freshmen who are unfamiliar with student organizations and could result in a free-rider problem.

"The students who opt out may end up going to lectures and enjoying the richness of dialogue that is supported by other students," Ward said.

Ward suggested another option might be a check-off system in which students could choose exactly which groups they wished to fund. He said, however, this system also presents problems such as a lack of familiarity with organizations among freshmen, as well as a risk that many students would choose to fund very few groups, diminishing student involvement.

According to Ward, another option may be a system in which the student government gives each registered student organization enough money to exist, but requires the organizations to raise their own funds—through membership fees, for example—to support other activities.

"We used a system similar to this at the university I attended in England, but I have not heard this option mentioned here," Ward said.

A fees system similar to the University of Illinois is also possible, according to several administrators.

At the University of Illinois, a set fee, included in each student's tuition bill, goes into an account controlled by a committee of students and faculty members. Part of the fund is distributed to every student organization. The remaining money is allocated to student groups on an event-by-event basis, according to Beth Bisch, secretary for student programs and activities at the University of Illinois.

"Say a group such as the dance team, the College Republicans or the Muslim Student Organization wants to have a speaker come in, as long as it's open to the whole campus, they can apply to get money to pay the speaker," Bisch said.

She said a board of student and faculty representatives must determine that the event is open to the entire student body, then decides if they want to grant the amount of money the group has requested.

This approach, however, also has its downfalls, according to Ward.

"The problem with doing it by event is that someone has to be envisioning a program in advance, so it may make events very amateurish," Ward said.

Amicus briefs shed light on the seg-fees case

By Daynel L. Hooker, Bryan Kleinmaier and Sam Rosenthal
THE SOUTHWORTH PROJECT

While the University of Wisconsin System segregated-fee case, Board of Regents of the University of Wisconsin System vs. Southworth et al., is expected to have a profound impact on the UW-Madison campus, organizations around the country also are anxiously awaiting the outcome.

The U.S. Supreme Court's decision will establish the law on the use of student fees at public universities across the nation. Student groups, education associations, civil-rights groups, labor unions and others hope the high court will consider their particular interests in deciding the outcome.

But how do they accomplish that goal? Amici curiae briefs, also known as "friends of the court" briefs, are submitted to the court outlining legal views of interested parties not directly represented in the case. Just as the petitioner (the UW System) and the respondent (Scott Southworth, et al.) file briefs with the court in advance of oral arguments, amici curiae also may submit written arguments for the court's consideration.

U.S. Supreme Court rules say that "[a]n amicus curiae brief that brings ... relevant matter not already brought to its attention by the parties may be of considerable help to the Court."

Amici curiae briefs may be filed in support of either parties or in support of neither party.

See BRIEFS, page 8

Students Sound Off

Six days before the U.S. Supreme Court hears oral arguments in the segregated-fees case, students were asked who they believed should win the case and why.

"I think the university should win. I see segregated fees similar to taxing issues. We don't have a say where our taxes should go. Giving to all programs as opposed to giving to programs each person selects is a good thing."
—Jeff Monks
second-year law student

"The whole situation is unfortunate because ASM has failed to administer the fees in a fair manner. Southworth's victory will mean less funding for diversity. It's very disheartening because a victory for him will have a chilling effect on student programming."
—Heather Clefisch
second-year law student

"I think [those who initiated the suit] should win because we are paying money for tuition and some of that money is going for things I don't believe in. The money should be used to pay for other things like the upkeep of the school or better yet, to lower tuition, for God's sake."
—Tani Thurner
junior, Scandinavian studies

"I think it is important to remember that the question is not should the organizations be supported, but whether they can be supported without student consent. And in that case, I say no because consent is very important."
—Mike Stewart
junior, physics

"I don't think they should take away segregated fees because I believe they are needed. I support different views on the campus. I understand both sides of the case, but I think different views are an important part of campus life."
—Rea Holmes
senior, political science and African-American studies

"Regardless whether you're in support of the groups, to cut their funding is ridiculous. This is a university—you are participating in everyone's ideas. If [someone] wants to be separate and not have diverse ideas, [they] should go to another university."
—Abigail Cermak
junior, English

Moot court practice makes perfect

FOCUS: Attorney Jordan Lorence and Assistant Attorney General Susan Ullman

By Kate Kall
THE SOUTHWORTH PROJECT

Today will be the first time Jordan Lorence argues a case in front of the nation's high court. But it will not be the first time the attorney for Scott Southworth and friends has argued his 30-minute case—he has done so three times this month.

Lorence's method of choice for preparation was a moot court: an experience where an attorney practices his oral argument with the help of other law professionals.

Lorence held his first moot court two weeks ago, receiving a critique from fellow attorneys, including Milwaukee attorney Dan Kelly, former Wisconsin Supreme Court Justice Janine Geske and Marquette Law School Dean Howard Eisenberg. Kelly will assist Lorence in court today. Lorence argued two other moot courts this past week, including one arranged by the American Center for Law and Justice, which Lorence said is most noted for its involvement with Pat Robertson, a presidential candidate and Christian Coalition founder.

"I normally do one. For this one, I'm doing three because it's the Super Bowl. I want to do my best," Lorence said of his oral argument before the high court today. "This is an opportunity few attorneys get."

Lorence has assisted other attorneys at the counsel table in three previous U.S. Supreme Court cases. Although Lorence has been "test-driving" what it is like to answer questions from the hip, he has really been preparing since his first brief was filed.

Lorence said composing briefs and preparing oral arguments are similar in the nature of communication but different in time constraints.

"You can write a lot more than you can say in a period of time," he said.

In argument, Lorence said, he will have to make decisions about what's important to talk about and what may in the end be a waste of time.

In appellate-court oral arguments, judges from a panel interrogate the attorneys arguing the case—a process that can take the majority of the allotted time.

"I have an outline of what I want to say, and I'll never get to use it," Lorence said. "What's more important is [a questioning judge's] chain of logic, not my outline. What that judge thinks immediately becomes the most important question."

Lorence said he has spent a fair amount of time reviewing the 1995 Rosenberger case, in which the U.S. Supreme Court ruled that students could not be compelled to fund a religious student newspaper through student fees. As a result of the Rosenberger decision, Lorence said he has concluded that the justices are prepared to hear Southworth, and swing votes may be difficult to come by.

"I feel totally unprepared and nervous that I don't know what I'm doing," he said. "It's so different to be the attorney rather than the observer. I want to win the case on its merits, but I wish there was a way that both Susan and I could both walk away winners."

By Daynel L. Hooker
THE SOUTHWORTH PROJECT

Wisconsin Assistant Attorney General Susan Ullman will be arguing perhaps the biggest case of her career before the U.S. Supreme Court today.

Ullman is defending the constitutionality of the UW-Madison segregated-fees system, which is being challenged by a group of former students.

While this is her first oral argument before the nation's high court, the hours of preparation logged in anticipation number in the hundreds, making her anything but ill-prepared.

"By the time the oral argument happens, they have really been put through the wringer," said Wisconsin Attorney General James Doyle.

Doyle said whenever attorneys in his office prepare to argue before the high court, a minimum of three moot courts are conducted. Moot courts are simulated courtroom situations where attorneys for both parties argue persuasively before legal professionals. The attorneys are timed and their presentations are frequently interrupted by questions in preparation for the real thing.

The first moot court to test the university's arguments was held in New York City in mid-October. The second moot court was held Oct. 25 and tested by attorneys from the Wisconsin attorney general's office. The final moot court was held Nov. 4, tested by lawyers from the National Association of Attorneys General.

Peter Anderson, Ullman's co-counsel on the Southworth case who participated in the New York moot courts by phone, described the last as the most helpful.

"Many of [the lawyers] are Supreme Court practitioners," he said. "They don't know anything about the case, but they are very familiar with the culture of the Court."

After each 60-minute moot court, the lawyers spend 45 minutes critiquing the arguing attorney. The moot courts are videotaped so the attorneys can dissect the performance for deficiencies.

The process is designed to help attorneys become intimately familiar with their argument, Anderson said.

He said oral arguments before the high court are important.

"It focuses the justices' thinking and helps them to make a decision," he said. "The justices are not there to make you look dumb. They will be asking questions that will stretch the limits of your argument because they are concerned about the precedent they will be setting. Their questions are legitimate inquires."

During an oral argument, the justices ask questions of both parties. This allows the justices to communicate with each other about the cases before them, as they do not confer in advance of the oral argument.

"No matter how many questions you are asked, there is always going to be a question you have not heard," Anderson said.

Briefs

Continued from page 7

Generally, a group filing an amicus brief must receive the consent of each party. More than 30 amici briefs have filed in this case. The following is a sample of views from groups supporting Southworth, groups supporting the university, and groups supporting neither party.

Supporting UW-Madison

More than a dozen briefs have been filed supporting the university and urging the Supreme Court to reverse the 7th Circuit Court of Appeals decision. The groups include student government organizations, a national educator's organization and a student press organization.

In its brief, the Student Press Law Center urges the high court to decide in the university's favor because, according to the brief, "it is difficult to imagine a greater threat to student expression on a college campus than shutting down the primary student newspaper for lack of funding."

The SPLC is no stranger to the U.S. Supreme Court. It filed friend of the court briefs in the 1995 decision Rosenberger vs. Rector and Visitors of the University of Virginia, the Court's leading case on this issue.

In this decision, the Court decided that if the University of Virginia used student fees to fund nonreligious student groups, it could not discriminate against a religious student newspaper that sought funding.

According to the SPLC's brief, many public-college newspapers and broadcast stations receive student activity-fee funding and therefore many could not publish without it.

While the U.S. 7th Circuit Court of Appeals ruled in the Southworth case, it left open "the question of whether public colleges and universities could subject student publications and broadcast stations to funding restrictions if they engage in political or ideological expressive activity, the fact is that virtually all student news media provide some sort of political commentary or opinion."

As a result of this decision, the SPLC has received calls for help from student editors at public colleges because administrators and others relying on the 7th Circuit's decision in the Southworth case threatened to revoke activity-fee funding if the student publication persisted in writing political or ideological editorials.

In its brief, the SPLC suggests that the Court overturn the 7th Circuit's decision.

"The Center urges a reversal because numerous lower courts have recognized that student media increase the overall exchange of information, ideas, and opinions on campuses. [Lower courts also have recognized] that student publications are a vital part of a university's educational mission. As a result, some form of mandatory fee support of such publications is germane to a university's duties as an educational institution," the brief reads.

Supporting Southworth et al.

Groups supporting the respondents filed 13 amici briefs, including one by the Atlantic Legal Foundation. The ALF is familiar with the question of how to allocate student fees as it has represented student plaintiffs in two similar lawsuits. The ALF said in its brief that it is concerned with the way public universities promote political speech by compelling students to fund organizations they oppose.

The ALF brief furthermore claims voluntary contributions by students to political and ideological groups on campus would be sufficient to foster the marketplace of ideas the university desires.

The brief rejects the university's argument that its interest in education is enough to compel students to fund groups engaged in political and ideological activities the students oppose. The ALF argues that unlike course materials or lectures on different political and ideological matters, these groups are only incidentally concerned with education.

Supporting Neither Party

The Americans United for Separation of Church and State, the Anti-Defamation League of B'nai B'rith, and Hadassah, the Women's Zionist Organization of America—are all concerned with how the Court's decision will impact the First Amendment's establishment clause, which prohibits Congress from sponsoring religious viewpoints.

According to their convictions, each of the three groups remain committed to the strict separation of church and state to preserve religious freedom and diversity.

Although they have not taken a position on this particular student-fees issue, the filing groups argue the Court's ruling should be carefully limited so as to clarify other contentious church/state issues and prevent any unintended consequences.

This brief grows out of concerns from the Rosenberger case. The groups express hope the Court will take the opportunity in today's case to draw a clear distinction between "neutral" funding for expressive public for a—such as a university—and other nonexpressive funding systems, such as government grants intended for construction of buildings.

The briefs filed by these groups indicate that they hope to solidify the separation of church and state by explicitly limiting Rosenberger and Southworth.

Stay tuned for full coverage of the arguments before the U.S. Supreme Court in Wednesday's Cardinal.

Courting the CONSTITUTION

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

"The university's got a big problem."

—Jordan Lorence
Southworth's attorney

"This could easily be a 5-4 or 6-3 decision."

—Scott Southworth

Article. II.

"Obviously, a lot of university richness will depend on the outcome of the case."

—Katharine Lyall
UW System President

Article. IV.

"I'm not going to guess what they're going to decide."

—Susan Ullman
Wisconsin Assistant Attorney General

Article. V.

Article. VI.

Framing the issues

Justices pepper attorneys with probing questions

By Bryan Kleinmaier, Sarah Maguire and Sam Rosenthal
THE SOUTHWORTH PROJECT

WASHINGTON—The U.S. Supreme Court took another step toward resolving the question of whether a public university violates the First Amendment when it requires students to pay mandatory fees that support organizations engaging in political activities they oppose during Tuesday's oral arguments.

Justice Sandra Day O'Connor laid the foundation for the arguments in Board of Regents of the University of Wisconsin System vs. Scott Southworth, et al., in a 1995 opinion. In Rosenberger vs. Rector and Visitors of the University of Virginia, another student-fee case, she wrote about "the possibility that the student fee is susceptible to a free speech clause challenge by an objecting student that she should not be compelled to pay for speech with which she disagrees."

With those words in mind, the Court embarked on a one-hour debate to resolve this unanswered question. The Court focused on whether student groups are so central to UW-Madison's educational mission that the university may compel students to fund the political and ideological speech of these groups. The parties briefed and discussed prior cases, examining labor unions and state bar organizations that determined mandatory fees can only be used for activities central to the organization's purpose.

Are these student groups and the political and ideological speech in which they engage central to UW-Madison's educational mission? That question will only be answered when the Court delivers its opinion in the coming months. Until that time, the public dialogue among the justices and the attorneys provides insight into their answers.

"Could we salvage the program by abolishing student fees and raising tuition [to pay for the student groups]?"

—Justice John Paul Stevens

Since the nine justices do not ordinarily have the opportunity to make their own speeches during oral arguments, they often use the lawyers to make their viewpoints known through "softball" questions or protracted attacks.

"What [does WisPIRG] serve the [student body]? Meals?"

—Justice Anthony Kennedy

Wisconsin Assistant Attorney General Susan Ullman took the podium first, acting as a conduit among the justices.

The Court's central concern was the funding of WisPIRG through a referendum. Several justices were skeptical of the university's argument that the services WisPIRG provides to students justifies the $49,500 it received via a student referendum in the 1995-'96 academic year.

"What do they serve?" Justice Anthony Kennedy asked. "Meals?"

Chief Justice of the United States William Rehnquist disputed whether WisPIRG was providing a substantial service to the university or existed just to promote its own ideas.

"Democrats and Republicans also wish to propagate their ideas," Kennedy said, supporting Rehnquist. These partisan political organizations should not be considered service organizations, according to Kennedy.

On rebuttal, Ullman, presumably to save the other methods of funding, conceded that the referendum funding is problematic because it may conflict with viewpoint-neutral funding.

Several justices also analyzed the university's two other funding methods, the General Student Services Fund which the Student Services Finance Committee allocates to qualified programs and the allocable Associated Students of Madison budget.

Justice David Souter questioned whether the other funding methods are simply "a mechanism for funding groups that are ideological."

Souter noted that approximately 70 percent of the student groups at UW-Madison do not receive funding. Souter said he felt this undercut the university's argument that this funding is necessary to promote a vibrant forum. Ullman said the 70 percent figure may be incorrect, but she did not seem to provide a satisfactory answer for the court.

Ullman was not the only attorney assailed. Jordan Lorence, attorney for Scott Southworth, et al., endured some blistering attacks as well.

"A university ... has a duty to respect a student's right of conscience. The educational mission must be subordinate to that."

—Jordan Lorence attorney representing Scott Southworth, et al.

"Why analyze this case as funding individual groups vs. the funding of a forum?" asked Souter, playing the devil's advocate and asking the converse of what he asked Ullman. In asking this question, Souter implied that funding a forum would not be compelled speech.

Souter suggested that labor unions compel speech if they force members to fund a single voice, but that the university's forum is an outlet for all types of political speech. None of these groups alone could be associated with a student, he said.

"A university as a state actor has a duty to respect a student's right of conscience," Lorence answered in response to Justice Souter's queries. "The educational mission must be subordinate to that."

Several justices also questioned if it was the administration of the mandatory fees and not the fees themselves that resulted in compelled speech.

"Could we salvage the program by abolishing student fees and raising tuition [to pay for the student groups]?" Justice John Paul Stevens asked.

Lorence claimed this would still result in an infringement on First Amendment rights, beginning a dialogue about other First Amendment doctrines, the definitions of which divided the court and seemingly confused Lorence.

Surprisingly, the Court did not address possible remedies until the end of the argument. Kennedy questioned whether an opt-out remedy would be sufficient.

"An opt-in remedy is what we want," Lorence said on the steps of the Court after the arguments. "We do not want the burden to be on the students to get the money back."

Lorence, as well as the UW-Madison community, will have to wait until the Court's decision in the coming months to see if his argument was effective.

"Why analyze this case as funding individual groups vs. the funding of a forum?"

—Justice David Souter

A BRIEF DEBRIEFING OF A CASE TIMELINE

1995

< OCTOBER
PLAINTIFF SENDS LETTER TO UW SYSTEM BOARD OF REGENTS

1996

< APRIL
AFTER NO RESPONSE FROM THE BOARD OF REGENTS, PLAINTIFFS FILE SOUTHWORTH VS. GREBE

< NOVEMBER
WESTERN DISTRICT COURT RULES IN FAVOR OF PLAINTIFFS

DECEMBER >
REGENTS APPEAL TO 7TH CIRCUIT COURT OF APPEALS

1997

< JULY
JUDGE JOHN SHABAZ CLARIFIES HIS PREVIOUS DECISION

1998

< OCTOBER
THREE-JUDGE 7TH CIRCUIT COURT UPHOLDS DISTRICT COURT DECISION

NOVEMBER >
BOARD OF REGENTS VOTES TO APPEAL TO U.S. SUPREME COURT

1999

MARCH >
U.S. SUPREME COURT ANNOUNCES IT WILL HEAR THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM VS. SCOTT SOUTHWORTH, ET AL.

< NOVEMBER >
U.S. SUPREME COURT HEARS ORAL ARGUMENTS IN THE CASE.

JENNIFER PFAFFLIN/SOUTHWORTH PROJECT

Judging the high court

Both sides react to justices' questioning, offer predictions

By Charlotte Daugherty and Kate Kail
THE SOUTHWORTH PROJECT

WASHINGTON—Speaking on the U.S. Supreme Court steps following their halting half-hour arguments, each litigant who argued Board of Regents of the University of Wisconsin System vs. Scott Southworth, et al. had independent ideas about which justices will ultimately lean in their favor, but they agreed that the Court understood their arguments.


LORENCE

Immediately upon making his way down the steps in front of the court, attorney Jordan Lorence clarified the position he argued for Southworth and his fellow plaintiffs.

"We are not asking to censor speech of any group on campus and are not trying to cut off funding. We want funding by volunteers," Lorence said.

"That is as basic as what Thomas Jefferson and James Madison said when they wrote the First Amendment," he said.

Wisconsin Assistant Attorney General Susan Ullman, who defended the current student-fee system on behalf of the UW System, said she thought the line of questioning by the justices effectively demonstrated their concerns, and she felt prepared for the questions they asked.


ULLMAN

"I'm not going to guess what they're going to decide," Ullman said. "I did not notice [during the argument] whether any justices were particularly sympathetic to our position."

Based on the line of questioning during the oral arguments, Lorence said he thought many of the votes would come down along the ideologically liberal and conservative lines that divide the justices, but he was confident he had captured the coveted swing votes.

"The university's got a big problem. [Justice David] Souter was playing both sides, but [Justice Anthony] Kennedy was showing his antipathy to the university—that's good for us," Lorence said. "It's a fool's game to predict an outcome. On this court, the justices are pretty open."

Lorence also noted, with chagrin, Justice Stephen Breyer's suggestion that the case should be sent back for further fact-finding.

In the Court, the justices are notorious for quickly interrupting counsel at the beginning of their 30-minute arguments. Both attorneys said they were struck by how that practice held true.

"You work out answers, and then they kind of slap them down," Lorence said. "You think a while and then pray for wisdom."

"I don't know if it will be simple. This could easily be a 5-4 or 6-3 decision."
—Scott Southworth

Ullman said she prepared three written sentences and managed to get no further before she was also interrupted.

Regardless of any perceived discrepancy of the facts, Ullman said she hoped Southworth would not win on principle. She said the regents were unanimous in supporting the university's position and any rumors to the contrary were unfounded.

Lorence attempted to discount the university's reaction as mere rhetoric.

"The university has been saying this is the end of the world as we know it. This is for public-relations reasons," Lorence said. "Before the Vietnam War, it was very rare for organizations so ideological to receive funding. If we return to the pre-1966 conditions, it won't be the end of the university system."

The three original plaintiffs, Southworth, Keith Bannach and Amy Schoepke, were all in attendance for the morning's arguments, as were Jamie Fletcher and Kendra Fry, the UW-Madison students who signed onto the case after its original filing.

Southworth told a buzzing press corps that UW-Madison orthodoxy is very left-wing and liberal and that a victory for the university would be unconscionable.

"I think it's very clear that we will win the case. It will be a blow to First Amendment rights if we lose," Southworth said. "The university was not well received today. The only justice who sympathized [with the university] was Justice [Ruth Bader] Ginsburg. I believe the Board of Regents are very sympathetic to our case, and if the university loses, which is clearly what will happen, they will be forced to drop this system altogether."

Fletcher, now a first-year graduate student at Northwestern University, said using the WisPIRG as an example of a student service, as Ullman did in her argument and briefs, was dangerous to the university.

"They're not a service because they push politics onto the students," Fletcher said. "I hate to say this, but if we had a [Ku Klux Klan], they would be a service. I would never support anything like that."

Supporters turned out on all sides of the case, including UW System President Katharine Lyall, UW System legal counsel Patricia Brady and regents Gerard Randall and Frederic Mohs.

Members of the Associated Students of Madison student council; United Council, which aims to represent all UW System campuses; and political science Professor Donald Downs also traveled to Washington, D.C., for the proceedings.

Plaintiffs from other prominent student-fee cases, such as Ron Rosenberger from the 1995 University of Virginia case and students from the University of Minnesota, also made an appearance at the Court. Lorence is also representing the Minnesota students in a student-fee case that was held pending the outcome of this case.

"I thought the argument went well. Obviously, a lot of university richness will depend on the outcome of the case. The court clearly appreciates our core mission," said Lyall, speaking on behalf of the university administration and the Board of Regents.

Southworth, who months ago said he expected a vote from the justices unanimously in his favor, noted a change of opinion following Tuesday's arguments.

"I don't know if it will be simple. This could easily be a 5-4 or 6-3 decision," he said.

—Michael Hsu, Colleen Jungbluth, Bryan Kleinmaier, Sarah Maguire, Jennifer Pfafflin and Jessica Steinhoff contributed to this report.

MIKE STAAB/SOUTHWORTH PROJECT

ASM Chair Adam Klaus, right, and a supporter appear after Tuesday's oral arguments in front of the U.S. Supreme Court.

The arguments as seen through student eyes

By Colleen Jungbluth and Kristi Wolff
THE SOUTHWORTH PROJECT

WASHINGTON—UW-Madison students, current and former, turned out for the oral arguments today at the U.S. Supreme Court.

Representatives from the Associated Students of Madison who attended the arguments said questions from the justices indicated a curiosity about the university as a forum for ideas.

"I think it went well. The justices' questions showed the forum is a vital part of what we're doing," said Associated Students of Madison Chair Adam Klaus. "I thought it was important that they brought out the educational mission of the university."

"The student voice hasn't been heard on this."
—Becky Wasserman chair ASM Shared Governance Committee

Some UW alumni said they turned out to hear resolution to the issue that began when they were still students.

"This issue has been discussed for a long time," said UW-Madison alumnus Craig Newby, who served as ASM finance chair in 1995-'96.

Newby predicts a chilling effect will form if the existing system is ruled unconstitutional.

"There will be less speech on campus because groups will have to engage in fund raising," he said.

Student attendance was not limited to UW-Madison students, however.

Seth O'Dell, a third-year law student at the Oakbrook College of Law, a small distance-learning college based in Fresno, Calif., said he came to Washington to watch his professor, Jordan Lorence, argue the case.

"I was very pleased to see the passion of the justices first-hand," O'Dell said. "Lorence held himself well."

While some students said they came to observe the proceedings, others had a much greater interest invested in the trial.

Both lawyers were peppered with difficult questions from the justices, but Jamie Fletcher, a former UW-Madison student and plaintiff in the case, said she thought the university's argument was particularly scrutinized.

"I think the justices really nailed Susan Ullman," Fletcher said.

Naysayers of the university's argument were not limited to its opposition.

UW-Madison sophomore Becky Wasserman, chair of ASM Shared Governance Committee, said she thought the university neglected to represent student opinion.

"The student voice hasn't been heard on this," she said. "Neither side had enough information from students. They were missing factual information."

MIKE STAAB/SOUTHWORTH PROJECT

Swamped by reporters from various media organizations, Scott Southworth answers questions about the case that thrust him to the head of a national debate Tuesday at the U.S. Supreme Court.

Media vary approaches to seg-fees case

By Daynel L. Hooker and Michael Hsu
THE SOUTHWORTH PROJECT

WASHINGTON—In the media whirlwind that surrounds an important U.S. Supreme Court case like Board of Regents of the University of Wisconsin System vs. Scott Southworth, et al., the individual approaches to covering the Court give unique shapes to media reports.

"This case was a clear taker ... it's too juicy and interesting [to pass up]," said Linda Greenhouse, veteran writer for The New York Times.

Greenhouse, a widely admired Pulitzer Prize winner as a Supreme Court beat reporter, has established her own unique method of coverage.

Employing her 20 years of experience and her Yale Law School training, Greenhouse attempts to clarify complicated legal terms.

"It's tricky," Greenhouse said about deciding which legal terms to keep in the story. "Just yesterday, I wrote a story about summary judgment and never used the phrase 'summary judgment.' I prefer to say that the case was dismissed before trial."

Unlike many reporters covering the Supreme Court, Greenhouse said she avoids interviews with the parties of the cases and chooses to focus on the Court proceedings.

"I say to lawyers 'Make your argument to the Court, not to me,'" Greenhouse said.

While Greenhouse de-emphasizes Court personalities, the camerapeople camped out at the base of the courthouse steps give color to television coverage.

Fox News Channel cameraman Rick Cockerham is part of the Washington press corps that regularly covers important events. To facilitate their work, the camerapeople have developed an informal code and culture.

"I know all of these people," said Cockerham, who was born in Baldwin, Wis. "But when we go out of town to cover stories it's a madhouse."

Unfortunately, many reporters covering the segregated-fees case do not have the luxury of specialization but nonetheless have a special interest in the case.

Frank Aukhofer, bureau chief and one of two Milwaukee Journal Sentinel writers in its Washington D.C., bureau, said the lack of additional reporters forces the writers to pick and choose stories that specifically impact Wisconsin residents.

"This is clearly the most important case of the year [for Wisconsin]," said Aukhofer, who studied constitutional rights at Northwestern University Law School for one year.

Peter Schmidt, a writer for the Chronicle of Higher Education who has covered higher education for more than 12 years, said he has been following the seg-fees case since it first made headlines. He said he was surprised that the justices asked very few questions about the constitutional issues in the case.

"They focused more on the nuts and bolts of the case," he said. "I didn't expect that at all."

Coralie Carlson, an intern for the Minneapolis Star Tribune, said she believes her readership has an interest in the case.

"I'm covering this story in light of how it will affect the University of Minnesota case. This case will set the legal precedent for Minnesota," she said.

Court justices show a lighter side during proceedings

By Michael Hsu and Jessica Steinhoff
THE SOUTHWORTH PROJECT

WASHINGTON—High above the Supreme Court chamber, the symbolic marble embodiments of "Justice" and the "Safeguard of the Rights of the People" watch over the courtgoers. Their earthly representatives—the Supreme Court justices and the legal counsel—watch the clock.

In a warped re-enactment of "Schoolhouse Rock," the justices sometimes acted like students in a civics classroom. At one point during the proceedings of the Board of Regents of the University of Wisconsin System vs. Scott Southworth, et al., Justice Stephen Breyer slouched in his black leather chair and stared at the ceiling.

During the lawyers' presentations, Chief Justice of the United States William Rehnquist and Justice Sandra Day O'Connor whispered in a manner akin to schoolchildren.

Although Alexis de Tocqueville said of the Court, "a more imposing judicial power was never constituted by any people," the chamber has an ironically intimate atmosphere, and the justices exude an aura of very human, paternalistic patience.

Being approachable and accessible to the public is a central tenet of the Supreme Court's ideology. Seats are available to every individual—from the president to university students. Widely publicized cases such as this one often attract crowds of people willing to camp out for tickets to witness legal antics in action.

In this cramped forum of unique political expression, marble columns, red curtains, press members, legal experts and opinions of all varieties rub against each other and struggle for standing room.

And everybody stands for the justices, whose individual quirks and expressions provide clues to their personalities and personal opinions of the case.

Rehnquist, a regular class clown, elicited laughter from the crowd on several occasions, muttering colloquialisms and wryly wrinkling his brow.

Another jester of the Court, Justice John Paul Stevens, queried: "What if the newspaper board is captured by a communist board of directors?"

Following the initial burst of laughter, he continued, "That happened all the time in my day."

The justices will soon retire behind closed doors, using their individuality, intellect and the divine wisdom of "Justice" to decide the fate of segregated fees.

OPINION

SegFees

The segregated fees myth

BH 10·25·99

BY JIM EISENMANN

There is a misrepresentation of fact which continues to come up in the debate over the Board of Regents v. Southworth Segregated Fees case currently before the United States Supreme Court. It is a scare tactic which needs to be refuted. Simply stated, this misrepresentation argues that should Southworth win his case, all student services funded by segregated fees will be put in jeopardy, or, worse yet, all of these services will suddenly disappear. Nothing could be further from the truth.

To begin, it should be understood that there are two general types of segregated fees that students pay, non-allocable and allocable. The total segregated fees budgeted this year are approximately $14 million, of which about $11.5 million falls under the non-allocable portion and the remaining $3.5 million are collected as allocable fees. It is important to distinguish between these two, as they are very different in how they are both collected and distributed.

University Health Services will not go away. The Wisconsin Union and its programs will not go away. Funding for the SERF, the Nat and all other sports facilities will not be go away.

All of these services are covered under the non-allocable portion of seg fees. The Associated Students of Madison and the Student Service Finance Committee have no role in the collection or distribution of these fees. The SSFC says that they "may make recommendations, reject or vote to increase the budget," but "the Chancellor [and, thus, the university administration] has ultimate authority over these budgets and a vote by the SSFC is not necessarily binding." They are, in fact, prohibited by the Board of Regents from controlling or directing any portion of the non-allocable fees. In reality, these services would continue to exist even if we had no student government. Thus, the largest portion (approximately 75 percent) of all seg fees are not at all threatened by the outcome of the Southworth case. What about those services funded under the allocable portion of the seg fees budget, however?

Distribution of the allocable portion of the seg fees budget is what is being called into question by the Southworth case. The allocable portion of the budget is that part which is completely controlled by the SSFC and ASM. The allocable budget funds such activities as the Greater University Tutorial Service, student radio, or safe nighttime services, such as the LN busses.

A reading of the legal brief filed with the U.S. Supreme Court by Southworth's attorneys shows that there is no objection regarding the funding of such allocable programs as GUTS, WSUM, the LN busses and other non-political and non-ideological programs. The brief states that "the University can also compel students to pay for services that benefit all students, as long as the service offers a tangible benefit to all students generally."

GUTS passes this test easily, in that it directly benefits and enhances students' ability to learn, and it is not, under any circumstances an organization that promotes or advocates any political or ideological views. WSUM also passes this test, because it provides a vehicle by which students can gain real world, hands-on experience in radio broadcasting and management, as well as provide a neutral forum for student voices, very similar to the way in which Library Mall or a lecture hall are currently utilized as a forum for student voices.

Finally, the LN bus system also has no problem passing this test. It provides safe and convenient, evening and late night transportation on and near campus for all students and has no political or ideological component to it whatsoever. As Southworth himself has pointed out, the buses hold absolutely no political or ideological views.

Southworth and his fellow plaintiffs have stated that they have not "objected to funding such things as student health service, the child care tuition assistance program, the campus shuttle bus or the study center (called GUTS)."

> The whole point of Scott Southworth's lawsuit is the argument is that the First Amendment guarantees not only a freedom of association, but also a freedom from association.

In fact, as a part of their brief, the plaintiffs make a recommendation that the Supreme Court institute a "Subsidized Speech Fund" that each student could opt to pay into by making a positive check mark on their individual tuition bills. The monies raised by this voluntary fund would then be used to fund student organizations that wish to engage in political speech. What an elegant, solomonesque solution to the situation.

In actuality, if ASM wants to seriously guarantee the security of funding for such things as GUTS, WSUM and the LN busses in the future (as well as many of the other student services funded under allocable seg fees), they could easily request that the university administration and the Board of Regents take over the collection and allocation of the fees for these services by folding them into the non-allocable portion of the seg fees budget. It should not be much of a problem arguing that these are services on the same par as UHS, sports facilities and student unions.

Judging from the ruling of the appeals court, though, the decision on the type of opt-out method to be created will most likely be left up the university administration. If all allocable seg fees are affected, then the blame should go to the appropriate party. That party would not be Scott Southworth and his fellow plaintiffs, but rather the university administration for intentionally creating a system so cynical it would defund such worthy programs as GUTS, WSUM and safe nighttime transportation services. Equally culpable would be ASM for refusing to convert such services to non-allocable seg fees to protect them.

The bottom line is this: the only segregated fees funding that should be effected by a Supreme Court decision in Scott Southworth's favor should be that funding that goes to "private organizations which engage in political and ideological activities ... not germane to [the] university's educational mission." (Quoted from the Seventh Court of Appeals in their decision on the Southworth case.)

The whole point of Scott Southworth's lawsuit is the argument that the First Amendment guarantees not only a freedom of association, but also a freedom from association. That is, the university should not compel (i.e. force) anyone to pay to fund political and ideological speech with which they are opposed. Is that not what is fundamental to all Americans, to be individuals? To have the right to express that individuality not only by choosing to speak, but also by choosing not to speak?

Jim Eisenmann received his undergrad and graduate school degrees at UW. He is currently enrolled as a special student.

Seg Fees

New DLS speaker equals same results

Students backtrack in their fight for racial equality during educator Escalante's lecture

By its very nature, the Distinguished Lecture Series generates a great deal of political discourse. By bringing educators, political activists or religious leaders to campus to express their various viewpoints, the series aims to stimulate discussion.

DANIEL W. REILLY
of the Cardinal staff

The arrival of famed educator Jaime Escalante to kick off the 1999-'00 season Thursday night was no exception. The question should be posed, however: What kind of discourse was created and who was responsible?

More so now than in recent memory, race is the topic of discussion. From the implications for minority student organizations in the Board of Regents of the University of Wisconsin vs. Scott Southworth et al. case to the uproar surrounding outspoken Associated Students of Madison Vice Chair Amelia Rideau's recent stance on campus race issues, the oft-ignored quagmire of race is surfacing in discussion all over campus.

With the issue of race popping up all over, it begs many questions on racial discourse. Who generates the way in which the students of UW-Madison talk about race? What are the avenues for doing so?

When Ward Connerly came to town as part of last year's lecture series, rather than celebrating a successful black man ... students literally shouted him off the stage.

While this column does not aim to discuss Rideau's aforementioned comments, the author agrees with most of them. As a white, middle-class student with friends of primarily the same disposition, unfortunately Rideau's view of campus race relations is primarily true.

Rideau's assertion that "this campus is inherently racist"—while probably not as overtly conspiratorial as the comment indicates—rings true on many subtle levels due to preexisting stereotypes.

In light of the salience of racial issues, the conclusion of Escalante's lecture was extremely disappointing. Escalante came bearing a universal message of determination. He spoke of the inherent talents in all people and discussed at length how all that was necessary to unlock one's potential was the idea of "ganas" (essentially, drive and determination).

He was the perfect ambassador of the Latino population to an impressionable white audience. During the question-and-answer session, however, a few Latino students turned hostile, attacking his anti-bilingual education stance. Discussion turned quite tense as the two sides debated the merits of bilingual education.

Speaking on an overwhelmingly white campus to a predominately white audience, Escalante's lecture would have been a perfect opportunity to help dispel some of the stereotypes that Rideau and others argue are so prevalent. Instead, those in attendance witnessed a bitter educational-policy debate.

On stage during the question-and-answer period, Escalante looked visibly nervous and caught off guard. His speech was not titled "The State of Educational Policy and Latino Students," and nowhere in his speech did he refer to bilingual education.

His "Stand and Deliver" theme seemed to echo his message of the inherent ability we all have to succeed, no matter what the circumstances. A barrage of questions, however, kept forcing the issue.

The unfortunate consequences of the impromptu debate were that it marred yet another opportunity for the alleged "racist" community of Madison to view a positive representative of Latinos everywhere.

With his practically unparalleled success as an educator and his amicable demeanor, Escalante could have, even if ever so slightly, helped to dispel the stereotypes of the community.

This harks back to a larger concept. If the community does inherently hold unfair biases of people (a viewpoint with which the writer happens to agree), then how can these walls be torn down if the same group who accuses the masses of being racist attacks one of its own when he comes to speak to the community?

The answers are to be found in inclusive discourse. ... Perhaps in the future, positive minority voices can be linked with the rest of the student body rather than drowned in a chorus of dissent.

When Ward Connerly came to town as part of last year's lecture series, rather than celebrating a successful black man (he was the first African-American named president of the University of California Board of Regents), students literally shouted him off the stage.

How is the student community supposed to form a positive discourse on race when our outlets to other nationalities are drowned out by dissenters? I agree with Rideau's comments and, to a degree, with those who opposed Escalante's views on bilingual education.

The question arises: How are we as a community supposed to move forward in the racial arena if positive minority voices are drowned out?

The answers are to be found in inclusive discourse. Rideau's comments only served to further distance between two already disjointed viewpoints. All hope is not lost, however. Perhaps in the future, positive minority voices can be linked with the rest of the student body rather than drowned in a chorus of dissent.

Daniel W. Reilly is a junior majoring in political science. Send letters to the editor, 250 words or fewer, to letters@cardinal.wisc.edu.

Group gets girls Web, software savvy

Madison program aimed at closing computer skills gender gap among teens

MJS, 10-24-97

By Brennan Nardi
Special to the Journal Sentinel

Madison — Susannah Camic sat in front of a computer five years ago and decided she was scared.

The information age was on the verge of exploding into every school in America, and the 13-year-old Madison middle school student felt totally unprepared.

She knew she wasn't alone.

While the boys in her class were surfing the Internet, designing Web sites and running software programs, the girls felt alienated from the new technology.

"I thought, 'Wouldn't it be great if girls could learn about computers and be as confident as the boys are?' " said Camic, now 18 and a freshman at Yale University.

Today, more than 100 girls are living out Camic's dream by taking part in the Lilith Computer Group, a twice-a-week, school-based program founded by Camic to narrow the computer skills gender gap.

The group, which is now in place at four Madison middle schools, is taught by volunteers from the Madison School District, the University of Wisconsin-Madison and private businesses.

The non-profit Madison Community Foundation announced last week that Lilith would receive a $50,000 grant to hire a coordinator, implement new programs and expand the group into other

Please see **LILITH** *page 2*

Lilith/Group helps narrow computer skills gender gap

From page 1

schools in the district.

And Camic also earned national recognition for her pioneering efforts last week. She was one of only 10 teenagers nationwide chosen to receive the Hitachi Foundation's 1999 Yoshiyama Award for Exemplary Service to the Community.

She will travel to Washington on Monday to accept a $5,000 award. This year's winners were chosen from a pool of 470 applicants.

"The Yoshiyama awardees are young people who create things that don't exist already," said Barbara Dyer, Hitachi Foundation president and CEO. "They encourage and inspire others. They really are leaders."

Dyer said the Lilith program "ought to be cloned nationally."

The Lilith Computer Group started in the fall of 1997 after Camic wrote an essay on girls and computers, describing the gender learning gap she and her girlfriends had experienced.

"Most of the software emphasized a lot of competition and the values that boys are very interested in," Camic said. "Some of it was directly degrading to women."

One computer program was especially unsettling.

"We were supposed to design a roller coaster. The idea was that some pretend characters would test it and comment on it," Camic said. "There were these women dressed in tight outfits wearing a lot of makeup who said, 'I'd rather ride your roller coaster than make out with my boyfriend.' "

Camic said her original idea was to organize a computer conference for girls named after Lilith Fair, the popular summer women's music festival. The computer conference has become an annual event sponsored by the UW-Madison College of Engineering.

"I heard about the legend of Lilith, this goddess figure who was created before Eve, but she refused to be submissive to Adam, so she was expelled from Eden," Camic said. "We all thought that was a cool girl-power legend."

Eva Rebholz, 12, a seventh-grader at Wright Middle School, said the Lilith Computer Group has given her more confidence in what she can do and what she can achieve.

"After we're all graduated and gone, people will take it further than us and keep it going and going," she said. "It'll be awesome."

seg fees

Understanding case origins: The plaintiff speaks: An interview with Scott Southworth

Interview by Amy Kasper
The Southworth Project

Scott Southworth and his fellow plaintiffs have made members of student organizations throughout the University of Wisconsin System rethink—or at least take notice of—mandatory segregated fees and their distribution across campus. He has led like-minded conservative students to speak out and has drawn student leaders into a battle to protect the organizations to which he objects but they hold dear.

What ignited the years-long courtroom fight that will finally culminate in November? In the following interview excerpts, Southworth explains his reasons for filing the segregated-fees lawsuit against the UW System Board of Regents, the importance of the First Amendment rights he feels are violated and how he hopes the Supreme Court will rule in the case.

The Southworth Project: What events led up to your decision to fight the mandatory segregated fee?

Scott Southworth: When I was a senior, I was involved in the dissolution of Wisconsin Students Association, the old student government. In the fall of '94, just after WSA dissolved, a WisPIRG intern led an effort to organize a new student government, which we now know as the ASM. I did speak out at the meeting against what they were planning to do. They went ahead with it anyway. Once that came to pass, I then contacted in early 1995 the Alliance Defense Fund at the encouragement of another law student, Keith Bannach. They informed me that I would need to hire an attorney that would then have to apply for funding. [The Alliance Defense Fund] gave me the name of an attorney, Jordan Lorence. We met in the fall of 1995 and then mailed a letter to the University of Wisconsin Board of Regents because we as Christians believe it's best not to litigate at first. We allowed the Board of Regents a way out by giving us a refund before turning to litigation. They didn't even respond to the letter. By early 1996, we realized we were being ignored. We filed the lawsuit on April 2, 1996.

SP: Was the exigence that led to the lawsuit the fact that a new student government was being recreated or was it the fee system?

SS: The concern was with the fee system. But, I am not a big fan of student government. I don't think it works on campuses. Am I opposed to student government? No. I believe they could set up a student government, or, as I say, student association, that could represent student interests on campuses by sitting on committees. That doesn't happen. The complaint is with the fee system not with the student government. In fact, one of the criticisms that has come out of this lawsuit is that there isn't enough student involvement. And my reaction is that there is nothing for them to be involved in. I didn't sue the ASM. I sued the University of Wisconsin. This is far beyond the ASM. They're not apart of the debate anymore. The day we filed the lawsuit we took it off campus and into the courts.

SP: What do you find repugnant about the current system?

SS: It forces every student on campuses regardless of religious, ideological and political beliefs to fund any number of organizations which, but for the fact that it's mandatory, they would not otherwise fund. Whether or not you're a Christian conservative, as I am, or a Buddhist, a Muslim, a Democrat, a Reform Party member, regardless of any of your beliefs, no one should be forced to fund private student organizations that they disagree with.

SP: What is your response to those who argue that ironically in the name of the First Amendment your fight will actually reduce the amount of speech at public universities?

SS: That's ridiculous. First of all, there is absolutely no proof of that. Second, I would say that's not my problem. The First Amendment does not require people to pay for other people's speech. If we were to use that argument ... I would say, "why don't we then build people's churches so they can exercise their rights of freedom of religion? Why don't we buy people printing presses so that they can exercise their rights to freedom of the press?" You can see that the university's argument is ridiculous.

SP: The university has maintained that the current system is not subsidizing political speech but rather is simply funding a forum where students can benefit from hearing all kinds of speech. Why do you believe that the current system is not simply funding a forum?

SS: The point of funding the forum just makes it more unconstitutional. Violating more people's rights doesn't make it more right. It just makes it more wrong. The fact that they fund some conservative, very few, and they fund a whole bunch of liberal groups doesn't make it right.

SP: Why did you target only 18 student organizations in your lawsuit, like the UW Greens, the Ten Percent Society and WisPIRG, rather than all student organizations that engage in ideological and political activities?

SS: For standing in court, you have to have a valid reason for being in court. I can't object to funding the Pro-Life Action, which I was a member of. Sure, I can say I don't believe students should be forced to pay. That's an interesting argument, but you have to have a basis for the suit. The 7th Circuit addressed this issue. The fact that we objected to groups that we found personally offensive was an important part of the case.

SP: What role has the Alliance Defense Fund played thus far and what values do you share with this organization?

SS: Ideologically I'm right in line with the Alliance Defense Fund. They have a mission to fund cases around the country that affects the sanctity of human life, family issues and religious freedom issues. In every one of those cases, I ideologically identify with that organization. They are funding my legal fees. Thus far they have funded to the tune of about

See INTERVIEW, page 8

Student apathy rears its ugly head

By Bryan Kleinmaier and Sarah Maguire
THE SOUTHWORTH PROJECT

A two-part question to help students prepare for upcoming midterms: Have you heard of the Southworth vs. Grebe case? Do you understand what it is about? If your answer was "no" to one or both of these questions, you are not alone.

"We have to realize this is a complicated issue with the segregated-fee process," said Roger Howard, UW-Madison associate dean of students. "It is difficult to get this information out to students."

Observers agree—the Southworth case promises to be monumental in terms of setting precedent for segregated-fee structures throughout the country. UW-Madison prides itself on its political awareness and activity. It seems, however, few students are paying attention to this important case.

UW-Madison political science Professor Donald Downs said he thinks most students know about the case but are uninterested in it.

"Most students are not that active in politics and think they're not affected by [the case]," Downs said. "They don't see the ways it affects them."

Downs said he believes the university never reached out to students to make them aware of the legal issues in the case, but said he feels the university is justified in its actions.

"I think it would be wrong for the university to take a side," Downs said.

Another reason for students' lack of awareness may be the complexity of the case, Howard said.

"There is widespread ignorance on the part of students on what these fees go to," Howard said. "They may not be aware that student government has much to do with it. Many students do not see student government or the fees having anything to do with them, with the exception of the bus pass."

Student government and other organizations recognize the need to inform students of this case and importance of segregated fees.

Associated Students of Madison Chair Adam Klaus said ASM and other student organizations are attempting to develop an awareness campaign. Klaus said ASM is also planning widespread activities on the day of the oral arguments.

According to Dave O'Brien, director of the Lesbian, Gay, Bisexual, Transgender Campus Center, the awareness campaign is its developmental phase.

"I think, unfortunately, far too many students are in the dark when it comes to the case and student segregated fees," he said. "They do not know what they are paying for."

In addition to helping to develop the awareness campaign, O'Brien said the LGBTCC is trying to inform students on what the organization does.

"We are active in trying to get people into the center and make them aware of what we do," O'Brien said. "A lot of students participated in Wisconsin Welcome events."

UW-Madison was voted the fourth most politically active campus in a 1998 issue of the national progressive magazine Mother Jones. UW-Madison topped that list in 1997 and was listed among the top 20 in 1995 and 1996.

Turnout for ASM elections sharply contrast with those polls. Approximately 1,100 students voted in the 1998 ASM fall elections, roughly 3 percent of the student population, according to election records.

"In a historical sense, [voter turnout] has been pretty comparable to other years," Student Election Commissioner Mike Thalasinos told the Daily Cardinal last fall.

Thalasinos is right. Only 2.5 percent of the students voted in the 1996 elections, and only 2.9 percent did in the 1997 elections. This lack of interest may be the reason an awareness campaign for the Southworth case is necessary.

Klaus said he wants to raise awareness not only of the case, but also of what he calls a conservative attack. The Alliance Defense Fund, a conservative Christian advocacy group, agreed to finance the plaintiffs' suit. Klaus said he recognizes students cannot influence the outcome of the case at this point, but he wants students to know where the money is coming from.

"The bottom line is that this lawsuit is funded by an out-of-state religious fundamentalist group as part of an attack across the country trying to defund the left," Klaus said.

Regardless of where the money comes from, Howard said he wants students to recognize the importance of this case.

"An amazing array of services are run by students and supported by segregated fees," Howard said.

Interview

Continued from page 5

$105,000. Other than expenses and praying for us and providing moral support, they have nothing to do with the litigation. My attorney and I have also become very close friends. He is also a Christian conservative.

SP: What type of system of funding could you live with?

SS: I could live with one of two things. My preference is for the university to get out of the business of funding student groups all together. But, constitutionally speaking, they could go with a voluntary check-off system.

SP: Would you be comfortable with a student having to actively taking those steps to opt out of the funding, rather than having the option presented to the student?

SS: That's the negative check-off. That's unconstitutional under the 7th Circuit opinion. Refunds of any sort are unconstitutional. I would fight that type of system.

SP: Do you have a prediction on the Supreme Court's upcoming ruling?

SS: I am fairly confident we're going to win. I think the University knows it, and that's why Attorney General Doyle isn't arguing the case. Instead we have Assistant Attorney General Susan Ullman arguing the case on behalf of the state. The university knows they're going to lose. It's just a matter of developing a new system.

SP: If you succeed at the Supreme Court level, what effect do you think this case will have on the debate of political issues on campus?

SS: I certainly think that when students have the choice of where to put their money, we may see much better debate. Intellectual socialism leads to intellectual poverty. Right now, we have intellectual socialism at the University of Wisconsin. They take the money, they decide who benefits and those groups then get to speak. When everyone is on the same playing level and everyone has to compete in the marketplace of ideas, we'll have intellectual freedom. Everyone will be best served by that.

Seg Fees

An introduction to The Southworth Project

"I don't hold any kind of animosity for the university. ... I sued it because I loved it and I wanted it to be better."

"The whole culture on campus flourishes under a system which funds all kinds of speech..."

"...the money is being used for concrete political action. It is this type of activity that crosses the line."

"This doesn't have the usual liberal-conservative breakdown. I don't think the outcome is at all predictable."

By Colleen Jungbluth and Kate Kail

THE SOUTHWORTH PROJECT

It is a decision that will affect university students across the nation.

The Southworth vs. Grebe segregated-fees lawsuit, pending in the U.S. Supreme Court, challenges the constitutionality of mandatory student fees at public universities. The outcome, whether the decision is for the plaintiffs or the defendants, will affect the manner in which universities allocate money to student organizations.

It is a decision that affects every public-university student and every taxpayer, whether they realize it or not. Every student pays some form of tuition, and every fee-paying student at UW-Madison has the right to participate in student organizations.

As plaintiff Scott Southworth has said, it is not about the money. Rather, he claims the suit is about individual rights under the First Amendment of the U.S. Constitution.

The Southworth Project seeks to inform about the facts and the motivations of all the players in the case. Some students may align themselves with Southworth's point of view, while others may prioritize the existence of student organizations over personal ideologies. No matter what an individual's viewpoint may be, this case will set a precedent in what has been a provocative, ongoing debate.

The team is comprised of students from the UW-Madison Law School, the School of Journalism and Mass Communication and The Daily Cardinal. Candidates underwent an extensive review process, and those selected spent the summer gathering the documents, interviewing those at the forefront of the case and preparing themselves for further intensive study.

Team members will receive academic credit for their work with The Southworth Project, but the team members are motivated by education about the First Amendment, an understanding of the impact of the case and the experience of

See SOUTHWORTH PROJECT, page 12

The progression of events

From filing to high-court appeal

By Amy Kasper and Jessica Steinhoff
THE SOUTHWORTH PROJECT

DC 8.26.99

In April 1996, three UW-Madison law students, Scott Southworth, Keith Bannach and Amy Schoepke, challenged the University of Wisconsin System's mandatory segregated-fee system, alleging the system violated their First Amendment rights to freedom of speech and association. The plaintiffs, all self-proclaimed political conservatives and Christians, believe the current fee system forces them to fund groups based on political and ideological beliefs with which they disagree.

The plaintiffs named student organizations such as the UW Greens, the Lesbian, Gay, Bisexual, Transgender Campus Center and the International Socialist Organization as politically and ideologically based groups they believe they should not have to support through the mandatory fee.

"These groups are violently politically partisan, anti-Christian or opposed to Christianity, advocate radical environmentalism or call for the overthrow of the U.S. government and the capitalist system," Southworth recalled in a recent interview.

Southworth began his quest to amend the segregated-fees system by having his attorney, Jordan Lorence with the Northstar Legal Center in Fairfax, Va., send a letter to the UW System Board of Regents in 1995 demanding that the university halt its collection of segregated fees because it violated the First Amendment.

According to Southworth, by not responding to this letter, the regents accepted his challenge, and in November 1996 the Western District Court of Wisconsin ruled in favor of Southworth on the free speech and association claims.

Despite the ruling in favor of the plaintiffs, Southworth and the regents failed to devise a new funding system that satisfied both parties. In December 1996, the regents appealed the case to the 7th Circuit Court of Appeals.

"The regents have continued the same position all along by appealing," said Wisconsin Assistant District Attorney Susan Ullman, lead counsel for the defendants' case. "They believe the First Amendment is furthered [by the segregated-fees system] because it lets everyone speak and lets students hear all sorts of interesting speech."

Following the initial appeal, the case was returned to the district court on a jurisdictional problem in June 1997. In July 1997, District Court Judge John Shabaz presented a framework for a different system of funding student groups, affirming that the plaintiffs' First Amendment rights had been violated.

cont.

Southworth Project

Continued from page 11

working on a project that will gain national attention.

The product: news articles distributed to local and national newspapers. Law students will, following extensive research, comprise a speakers bureau of experts on the case. These experts will be available to provide unique insight to help the public draw their own conclusions about the lawsuit through lectures at universities and appearances on the talk-show circuit.

All materials will be entirely produced by students. The team is receiving guidance and administrative assistance from Daily Cardinal board member Jeff Smoller, School of Journalism professor Robert Drechsel and Madison-area attorney Brady Williamson, who teaches at the Law School.

The project will be funded through corporate grants and private donations, with additional resources provided by the Daily Cardinal, its alumni and the Law School.

"This is a very important case. It involves two constitutional rights pitted against each other: the right to associate freely and the right not to associate," Williamson said. "The case has legal significance to be sure, but it also has practical significance. Whenever you have two constitutional rights colliding, it makes law."

Team members will make the journey to Washington, D.C., in late fall to provide first-hand reports and commentary on the Southworth vs. Grebe oral arguments. The project does not end there. The Southworth Project team members will aim to keep the public informed throughout the post-decision discussion and any changes that may occur at public universities.

Students participating in the Southworth Project are: Charlotte Daugherty, Daynel L. Hooker, Michael Hsu, Colleen Jungbluth, Amy Kasper, Kate Kail, Bryan Kleinmaier, Adam W. Lasker, Sarah Maguire, Jennifer Pfafflin, Sam Rosenthal, Jessica Steinhoff and Kristi Wolff.

Send your comments and questions to southworth@journalism.wisc.edu

Both Southworth and the Board of Regents found Shabaz's remedy inadequate for various reasons. The regents subsequently appealed the case to the 7th Circuit Court.

On Oct. 27, 1998, a three-judge panel from the 7th Circuit affirmed the district court's holding that "forcing objecting students to fund private organizations which engage in political and ideological activities violates the First Amendment." The court found the current segregated-fee system to be contrary to core First Amendment values, such as "the right not to speak" and "the right not to be compelled to subsidize others' speech."

The 7th Circuit reasoned that mandatory fees must only fund activities "germane to a legitimate governmental interest" and relied on a line of cases dealing with mandatory funds to state bars and labor unions. These prior cases held that mandatory funds could legally be used to fund governmental interests like regulating the legal profession or collective bargaining, but they could not be used to finance concrete political action, like lobbying or campaigning for a particular candidate.

In this case, the court found the current segregated-fee system to not be germane to the university's mission, and even if it was, the plaintiffs' First Amendment rights outweighed any compelled funding of political activity. It ordered the UW System to devise a system consistent with its opinion.

Nevertheless, the regents and others have consistently argued that the segregated fee does not subsidize political activity against students' wills but rather a funds a neutral forum in which students have the opportunity to experience robust debate from diverse voices.

While four other UW-Madison students have signed on to the plaintiff's case, Rebecka Vander Werf, Rebecca Bretz, Kendra Fry and Jamie Fletcher, other student leaders have expressed their fear that many organizations will not be able survive under a new system, eliminating the ability for students to engage in organized political debate that lies at the heart of the First Amendment.

"The whole culture on campus flourishes under a system which funds all kinds of speech and [where students] can benefit from the forum," said Adam Klaus, Chair of the Associated Students of Madison.

But Donald Downs, a UW-Madison professor of political science and law, dismisses the argument that the money is only funding a forum and not speech.

"Given the nature of student governments today and given the fact that student organizations are doing very direct lobbying and political campaigning, this money is not simply funding a forum," Downs said. "Rather, the money is being used for concrete political action. It is this type of activity that crosses the line."

The Board of Regents met in November 1998 and voted to appeal the 7th Circuit's decision to the U.S. Supreme Court. Approximately 100 UW System students rallied before the regents' meeting, urging the regents not to appeal the decision. The students expressed a fear of setting precedent adverse to other universities that may have a better chance of winning on this issue.

Several regents expressed annoyance by the students' change in opinion, pointing out that the students encouraged the regents to appeal the district court's decision in August and now, four months later, did not understand the need to back down.

On March 29, 1999, the U.S. Supreme Court agreed to review the 7th Circuit's decision. Downs said he believes the 7th Circuit's decision will be upheld.

"The 7th Circuit's opinion is very consistent with a lot of developed First Amendment doctrine," Downs said. "It didn't come out of nowhere. But the Supreme Court will likely do a better job of defining what is meant by ideological and political activity that should not receive involuntary funding."

Case origins: Lorence's letter to regents

"DC 8.25.99

I am an attorney who specializes in First Amendment law. I am writing on behalf of Scott Southworth, a second-year law student at the University of Wisconsin-Madison. He also earned his undergraduate degree in 1994 from Madison.

I am writing to ask if the university will set up a system by which students will not have to pay the portion of their mandatory student fee that goes to fund political and ideological groups on campus that espouse views the individual students do not want to fund. From our discussion with the bursar's office in Madison, currently there is no way students can be exempted from paying the mandatory fee or get a refund of it. If students fail to pay the mandatory fee, the bursar's office told us the students will not be allowed to graduate or will not receive their grades.

As you probably know, students at Madison are required to pay a mandatory student fee (called the segregated fee) along with their tuition. This fee funds a variety of groups, many of which offer educational benefits to students.

"If you think we are misunderstanding the constitutional principles in this situation, we want to know that. ... However, I conclude from my reading of these relevant cases that the university has an affirmative duty under the U.S. Constitution to allow students to opt out of paying the segregated fee."

—Jordan Lorence, plaintiff's attorney

However, a number of the groups funded by the student government advocate controversial political or ideological points of view. These groups include the Lesbian, Gay, Bisexual Center, the UW Greens, WisPIRG and others. All of these groups take controversial stands on issues such as gay rights, the environment, social welfare legislation, etc. Scott Southworth disagrees with the points of view advocated by these groups because of his personal ideological and religious beliefs. He would not voluntarily contribute money to them, and he does not want the university to compel him to fund them.

Of course, these groups should have all appropriate freedom to promote their viewpoints on campus. However, I think it is clear that the First Amendment prohibits the university from forcing students to fund advocacy groups which the students object to. Scott Southworth and I do not see how the educational value derived from funding these advocacy groups allows the university to override the First Amendment freedoms of expression and association that students have. The Supreme Court has ruled in other cases that people cannot be forced against their will to fund the advocacy of a group.

For example, the Supreme Court has said that it is unconstitutional for unions to compel nonmembers who pay union dues to pay for ideological expenses unrelated to collective bargaining. Abood vs. Detroit Board of Education, 431 U.S. 209 (1977). The Supreme Court later extended that First Amendment protection to attorneys compelled to pay a mandatory bar-association fees. Keller v. Slale Bar of California. 496 U.S. 1 (1990).

Justice [Sandra Day] O'Connor suggested last June in a concurring opinion that this First Amendment protection should extend to university students forced to pay mandatory fees funding political and religious groups. In Rosenberger vs. Recror and University of Virginia (1995 WL 382046), Justice O'Connor said: "Finally, although the question is not presented here. I note the possibility that the student fee is susceptible to a free speech clause challenge by an objecting student that she should not be compelled to pay for speech with which she disagrees."

Also, the most recent decision in this area of law by the California Supreme Court ruled in favor of students seeking refunds of student fee money used to fund political and ideological groups. Smith vs. Regents of the University of California, 4 Cal.4th 843, 16 Cal.Rptr.2d 181, 844 P.2d 500 (1993). The definite trend in the courts is that it is unconstitutional to force students to pay a mandatory fee, fund political and ideological groups with the proceeds and give dissenting students no way to receive back their money or not pay it in the first place. The Supreme Court has ruled that the right to be exempt from paying for the ideological advancement of other groups requires governmental entities follow at least the minimal pay to restore those funds quickly. Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986).

Scott Southworth completed his first year of law school at UW-Madison last spring and will begin his second-year law studies in January 1996. He is a member of the Wisconsin Army National Guard and currently is in special training at the Aberdeen Proving Ground in Maryland. I am writing to inquire whether the university will permit him and other students to opt out of paying the portions of the student fee that fund ideological and political groups. In particular, Scott Southworth wants to opt out of paying the portions of the segregated fee that fund the GSSF (General Student Services Fund), the activity fee, the United Council fee and the WisPIRG Fee. For the second semester '94-'95, the total paid to those four fee categories was $7.99.

If you think we are misunderstanding the constitutional principles in this situation, we want to know that. We are open to correction in this matter. However, I conclude from my reading of these relevant cases that the university has an affirmative duty under the U.S. Constitution to allow students to opt out of paying the segregated fee. I am also sending this letter to the university legal counsel and some other university officials. I look forward to your response in this matter.

Sincerely,

Jordan Lorence

—from a letter dated Oct. 4, 1995

"

Fall 1995

Oct. 1995—Plaintiff sends letter to UW System Board of Regents

"Scott Southworth and I do not see how the educational value derived from funding these advocacy groups allows the university to override the First Amendment freedom of expression and association that students have."

—Jordan Lorence, plaintiff's attorney

April 1996—Plaintiffs file Southworth vs. Grebe

"This could basically go to the Supreme Court. I think on this case we would."

—Scott Phillips
assistant general counsel for the Alliance Defense Fund
April 4, 1996

Nov. 1996—Western District Court rules in favor of plaintiffs

"Any freshman would take your side as easily as I could on this issue. Any decent American would argue against individuals who try to limit free speech."

—author Kurt Vonnegut to an audience at Chadbourne Residence Hall
Dec. 2, 1998

Dec. 1996—Regents appeal to 7th Circuit Court of Appeals

"It is a sad paradox; to protect the freedom of speech for a few, we had to take away the rights of the many who support the selfless work of the LGBCC, the Campus Women's Center and the other groups Southworth cited."

—*Daily Cardinal* staff opinion
Dec. 12, 1996

July 1997—Judge John Shabaz clarifies his previous decision

Oct. 1998—Three-judge panel from the 7th Circuit Court upholds district court decision

"Whatever the Board of Regents decides we'll have to go with, but we're not very excited about having to decide what's political or ideological. It forces us to draw lines that haven't even been defined for us."

—Ted Robles
former Student Services Finance Committee chair

Nov. 1998—Board of Regents votes to appeal to Supreme Court; students rally against their decision

"If the regents are so dedicated to the marketplace of ideas and the importance of the 'sifting and winnowing' motto UW holds so dear, it will understand why buying time to discuss the proposals is so vital to the livelihood of the UW System.

—*Daily Cardinal* staff opinion
Nov. 6, 1998

March 1999—U.S. Supreme Court announces it will hear Southworth vs. Grebe

"The Supreme Court reverses two-thirds of the cases they grant review in. I think we are in the one-third that they affirm. I don't view this as bad news at all."

—Jordan Lorence, plaintiff's attorney

Fall 1999—Oral arguments scheduled in front of U.S. Supreme Court

Fall 1999

Strategies, perspectives collide as case heads to capital

By Daynel L. Hooker,
Bryan Kleinmaier and Sarah Maguire
THE SOUTHWORTH PROJECT

UW-Madison enjoys a national reputation as a haven for ideological freedom even in the face of conflict.

In 1996, a group of UW-Madison students challenged that reputation when they sued the UW System over segregated fees they were required to pay. In less than three years, the fees fight rose through the courts as Southworth vs. Grebe, with the parties preparing to do battle in the nation's high court.

Oral arguments in this case are expected to be heard this fall in the U.S. Supreme Court.

The irony of this battle, one the UW System could lose, is that "in the name of free speech, we will actually reduce the amount of free speech on [college] campuses," Wisconsin Attorney General James Doyle said.

This precedent-setting battle began in Madison when Scott Southworth, then a UW-Madison student and member of the College Republicans, examined the campus organizations he and other students supported through fees.

"I was utterly frustrated and outraged that they could and would do something like this to the students," Southworth, 27, said of the UW System Board of Regents, the system's governing body. "I was absolutely appalled that WisPIRG could get $50,000 from the student fees."

"I don't dislike the UW System, in fact, I'm really proud to say that I'm a graduate from undergraduate and the law school. It's my alma mater. I don't hold any kind of animosity for the university. I love UW. I'm still a Badger fan. I sued it because I loved it and I wanted it to be better."

—Plaintiff Scott Southworth

In the 1970s, the Board of Regents, introduced the current segregated fee system. UW-Madison students are required to pay a segregated fee each semester. Students refusing to do so may not graduate or receive their grades.

The funds generated by the fees are controlled by both the regents and the students. The students exercise control through their student government, the Associated Students of Madison.

The segregated fee is divided into two main categories: nonallocable fees and allocable fees. At issue in the Southworth vs. Grebe case are the allocable fees, which may be distributed to registered student organizations.

According to court documents, each full-time UW-Madison student paid $190 in segregated fees for the first semester of the 1996-'97 school year. With the allocable portion of the fee, ASM is able to subsidize approximately 140 registered student organizations.

By this time, Southworth was a UW-Madison law student. Once he and others realized how much money organizations collected from mandatory fees paid by all students, he contacted the Alliance Defense Fund to request legal support.

The conservative Christian advocacy group eventually agreed to finance the legal battle that began in federal court after the regents ignored Southworth's request to end the current segregated fee system. Southworth and the other plaintiffs sued the university over this funding, objecting specifically to 18 student organizations the fee funded, claiming these were political and ideological organizations not devoted to academic pursuits.

The plaintiffs also claimed the segregated fee violated their First Amendment right to free speech because it forced them to financially support organizations that they disagreed with ideologically.

District Court Judge John Shabaz agreed and awarded the plaintiffs summary judgment on Nov. 29, 1996. The 7th Circuit U.S. Court of Appeals affirmed that decision in part. It ruled that the university's use of a mandatory fee to fund private organizations engaging in political and ideological speech violated the free-speech rights of students objecting to such funding.

"It would not have surprised me either way because it's a very close and very tough call," Doyle said of Shabaz's ruling. "This doesn't have the usual liberal-conservative breakdown. I don't think the outcome is at all predictable."

The university appealed in January to the high court, and in March the U.S. Supreme Court agreed to hear the case.

While it's not the first time the U.S. Supreme Court has ruled on the mandatory-student-fee issue, this is the first time it will address this narrow aspect of the issue.

"This case most clearly presents the question of what the university can do to enhance student life and student activity," Doyle said. "The strongest argument for the university system is that the students have input here.

"This is not a decree from the powers that be. Student fees enhance, not detract, from the quality of student life at the university."

While both sides have strong views about why the segregated-fee system should remain or be deemed unconstitutional, the outcome will affect public universities around the nation.

"A ruling against the Board of Regents will sharply restrict the amount of student activities and student life," Doyle said. "There will be less exchange of ideas, less discussion. The response around the country will be a pulling back of university support of student activities."

If the UW System loses this case, it must find a way to continue promoting ideological freedom without violating student rights. To prepare for that possibility, the regents instructed administrators to develop contingency plans. The committee, which included student representation, developed two plans, but the regents have not yet reviewed the plans. Reviews were stalled as the university made a decision to appeal the case to the U.S. Supreme Court.

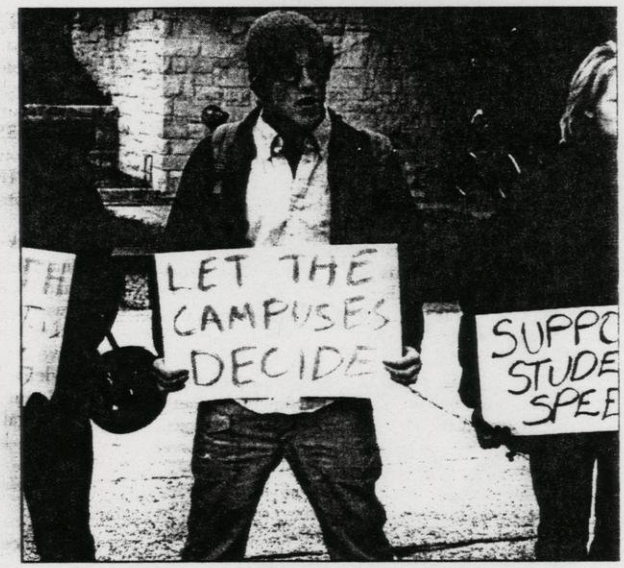
Why the abrupt shift in strategy?

Both the district court and court of appeals rejected the regents' initial refund-proposal plan. The court of appeals ruled that this alternate plan, where students could request a refund of the segregated fee, did not adequately protect the objecting students' constitutional rights.

"One reason for waiting on the contingency plans is the 7th Circuit made itself clear, while the Supreme Court may deem a refund to be acceptable," said Patricia Brady, senior UW System legal counsel.

Under one contingency plan, a committee would review all registered student organizations the segregated fee funds and determine which were primarily political and ideological groups. Of those that were deemed primarily political and ideological

See CASE HISTORY, page 14



Opinions clash in November as demonstrators urge the UW System Board of Regents not to appeal its case to the U.S. Supreme Court.

MAC WRENN/THE DAILY CARDINAL

Independent and still taking liberties: Wisconsin Union music committee

By Brian Gettler 8.25.99
OF THE CARDINAL STAFF

Throughout the years, Madison has earned the reputation of a city that hosts an extremely transient music scene. Many of those involved in the scene see the city as a temporary home, and clubs—and bands—often appear and disappear in the blink of an eye.

But one Madison venue has always remained vital—the Wisconsin Union.

The Wisconsin Union Directorate's Music and Entertainment Committee runs the entertainment program. Over the years, it has consistently showcased top-notch performers at both Memorial Union and Union South, and this fall will be no exception.

Last year, WUD brought acts as diverse as sometimes-Mekon Sally Timms, neo-swingster Andrew Bird with his band, Andrew Bird's Bowl of Fire, Archer Prewitt of The Coctails and The Sea and Cake, jazzman Joshua Redman and emo faves The Promise Ring.

How do the performances planned for this fall stack up against those of previous years? Steve Reidell, the summer music co-coordinator and Web master for the committee, said the fall concert schedule more than lives up to seasons past.

"As far as Memorial Union is concerned, our fall lineup is much, much stronger than it was last fall," Reidell said. "We have a lot more larger-name acts, and the styles of music cater to larger partitions of the student population than they did last fall."

Indeed, this semester's Memorial Union schedule features groups spanning the musical spectrum, from indie-rock to world beats, alt-country to old-style jazz.

Kristin Hersh, who will be appearing Sept. 4, has achieved a sizeable reputation for her work as a part of alt-rock giants Throwing Muses, as well as her three well-received solo efforts. The Mason Jennings Band has taken the Minneapolis music scene by storm and appears here Sept. 24. Chicago's Handsome Family brings its insurgent country Sept. 25, New York alt-rockers Madder Rose drop by Oct. 8, and the Slip offers jazzy East Coast jam Oct. 9.

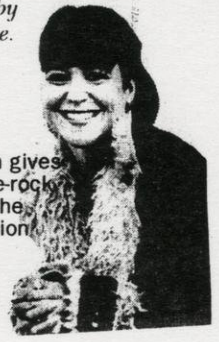
Club 770, Union South's live-music venue, tends to cater more to indie-rock leanings than those who have performed at the Memorial Union. Although this year's Union South lineup isn't complete yet, the current lineup offers another dose of indie-styled rock.

Music currently scheduled for Club 770 includes the electronic sounds of ICU Sept. 10, the Bevis Frond, Mary Lou Lord and Sean Na Na Oct. 15 and the emo-punk stylings of Sarge and Discount on Nov. 4.

Next time you're looking for a cost-effective study break, head up to either union and check out the tunes at the area's finest all-ages club—you should find something up your alley.

Shows at Memorial Union are always free and for all ages and usually begin at 9:30 p.m. Performances given early in the season will take place on the Memorial Union Terrace, weather permitting, and those falling later in the semester will be held in the Rathskeller.

Union South shows vary by time and date.



Kristin Hersh gives into her indie-rock leanings at the Memorial Union Sept. 4.

MEMORIAL UNION CONCERT DATES

Aug. 26: Phat Phunktion
Aug. 27: The Lash
Aug. 28: The Marmadukes
Sept. 3: First Friday Blues with Pistol Pete
Sept. 4: Kristin Hersh
Sept. 10: Ultimate Fakebook
Sept. 11: Pretty Good Bluegrass Band
Sept. 17: Cigar Store Indians
Sept 18: Youngblood Brass Band
Sept. 24: Mason Jennings Band
Sept. 25: Handsome Family
Oct. 1: First Friday Blues with Vance Kelly
Oct. 2: Ulele
Oct.8: Madder Rose
Oct. 9: The Slip
Oct. 15: Tin Hat Trio
Union South dates not finalized

cont.

Case History

Continued from page 13

individual students could check off those groups they wished to fund.

ASM Chair Adam Klaus said he opposes this plan.

"There are groups that offer vital services to the campus that would suffer," said Klaus, who said he believes it would be too difficult for a committee to accurately determine which groups are primarily political and ideological.

"The individual check-off system would be devastating," said Erin Clare Quinn, a member of the UW Greens, one of the 18 organizations named in the lawsuit. Quinn, however, believes the second contingency plan proposed has more merit. Under the second plan, all groups funded by segregated fees would be deemed political and ideological. Individual students could then choose to help fund all of the groups or none of them.

As both the state and Southworth work to shore up their oral arguments to be made in the U.S. Supreme Court, one thing is clear: The outcome of the case will occupy the national spotlight. As for UW System students, there is no sure way to tell just how much this will change the quality of their lives.

But before the showdown in the nation's capital begins, Southworth said he wants to dispel any thoughts that he no longer views himself as a Badger.

"I don't dislike the UW System. In fact, I'm really proud to say that I'm a graduate from undergraduate and the Law School," he said. "It's my alma mater. I don't hold any kind of animosity for the university. I love UW. I'm still a Badger fan. I sued it because I loved it and I wanted it to be better."

Seg Fees

Let the students decide: Campus orgs revealed

By Charlotte Daugherty, Kate Kail, Jennifer Pfaffiin and Jessica Steinhoff
THE SOUTHWORTH PROJECT

The plaintiffs in the Southworth vs. Grebe segregated-fees lawsuit named 18 student-funded organizations with which they ideologically or politically disagreed.

Although some of the named organizations are now defunct, members of some of the remaining organizations described their group's missions and activities, affording the public a chance to learn for themselves about the groups in question as the case proceeds to Washington, D.C.

Wisconsin Student Public Interest Research Group

WisPIRG is a nonprofit, nonpartisan, statewide and student-directed organization that works to solve some of the major problems facing students and citizens, WisPIRG board member Jessica Tritsch said.

Tritsch said WisPIRG educates about current issues and encourages students to take an active role in addressing those issues.

"Every time that we bring a speaker onto campus or organize an event or register students to vote, we add to the discussion and civic participation on campus," Tritsch said.

WisPIRG organizes various information campaigns and events to fight specific issues such as homelessness, environmental degradation and overrepresentation of wealthy businesses' interests. Past events have included the Book$wap program, in conjunction with the Associated Students of Madison, a hunger cleanup in which students clean community shelters to raise money for poverty-fighting groups and a campaign to discourage oil drilling on the Arctic National Wildlife Refuge.

Tritsch said WisPIRG members see their activities as "political" in a strictly nonpartisan way.

"Students choose campaigns that range from direct community service to grassroots political organizing. However, we do not support politicians or get involved in electoral politics in any way," Tritsch said.

Tritsch said WisPIRG believes the current segregated-fee system is just for a number of reasons.

"Students currently vote for student government representatives to give out student fees to educational groups. This is a democratic process. WisPIRG holds a campus-wide referendum every three years where students have voted overwhelmingly in support of us," Tritsch said.

Lesbian, Gay, Bisexual, Transgender Campus Center

Dave O'Brien, director of the UW-Madison LGBTCC, says his group exists to provide direct support and opportunities for LGBT students on campus. He said by working with all students, gay and straight, his group aims to create an educated campus community.

The LGBTCC, born in the early 1980s, is now located on the second floor of Memorial Union, 600 Langdon St.

He said the group's budget, upwards of $30,000, is provided almost entirely through segregated fees by the Student Services Finance Committee.

The group facilitates support groups in their office, provides space to Sex Out Loud, a fellow student organization, and sports a full library of resources open to students. O'Brien said the group is essential to the campus.

"People fail to realize the huge number of issues LGBT people deal with," he said.

Still, he said he is fairly certain that the Supreme Court will rule in the favor of the regents. Until a decision would force the group to change the way they operate, it is business as usual.

"Our students need to suffer as little from this as possible," he said. "By changing what we do, we'd be hurting those students from within."

UW Greens

In the basement of the Catacombs Coffee House on Library Mall lies the centerpiece of the work of the UW Greens.

There, the UW Greens maintain their Infoshop, a collection of hundreds of files, videos, books, publications and newsletters on everything from Coca-Cola to ecofeminism. The group fights and educates on environmental and social justice, and the Infoshop is the only resource like it in the area, UW Greens member and staffperson Brendan O'Sullivan said.

The Infoshop is open to the general public, and a dozen other activist organizations often use the space for their operations.

The Greens received $18,301 in funds from the Student Services Finance Committee for this year's operations, and another $5,500 to relocate the Infoshop to University Square, O'Sullivan said. That funding pays for membership fees, rent and salaries for approximately five paid employees.

One common misconception, O'Sullivan said, is that the UW Greens are affiliated with the political Green Party. But while he said the group identifies itself as politically and ideologically left, the group has no stake in local or national politics and does not make political endorsements.

"Because we cover so many issues, it attracts people who don't have the same politics," O'Sullivan said.

The group does do some fund raising and receives individual donations, but without SSFC funding, he said, the Infoshop could not continue to operate.

Progressive Student Network

Chances are students have not noticed the group behind the annually produced "Disorientation Manual." But students may have noticed the manuals themselves, as they stood in line for financial aid, strolled across Library Mall or visited the farmer's market.

The group: the Progressive Student Network, which shares a tiny office with the UW Greens on Library Mall.

"[The manual's purpose] is cutting through all the glossy propaganda that you get [from the university]. It educates the students about the UW and the way it's structured," member Erin Clare Quinn said.

The group has commented on topics such as the campus ROTC program and the origins and funding of campus construction projects through educational exposés in the manual, Quinn said.

Quinn said the Progressive Student Network's main goal is "to offer a different perspective, and hopefully to prompt [students] to get more involved in their community."

Quinn said the impact of the court decision on her group will depend on what kind of fee system is implemented.

"I'm unsure about the impact of this decision on our specific group, but our specific group is not the issue. The issue is the open, democratic forum that exists on campuses across the country," she said.

United States Student Association

The United States Student Association seeks to expand access to higher education, USSA Vice Chair Ali Fischer said. The national organization determines its direction each time its constituent associations vote. Fischer said UW-Madison is one of the USSA's referendum members—USSA's highest ranking for constituent campuses—meaning UW-Madison students help to determine the USSA's direction.

Fischer said USSA acts as a resource for student associations around the nation, dispensing information about access to higher education, visiting campuses and talking with students about their concerns.

"We're completely a grass-roots organization, so the ability to organize is what our group relies on," Fischer said.

USSA is the nation's oldest and largest student organization, Fischer said. The organization celebrated its 50th anniversary in 1997. The organization has strong affiliations to Wisconsin, as the USSA's archives are located on the UW-Madison campus.

Community Action on Latin America

"[Community Action on Latin America] is committed to educate the UW and Madison communities about the underlying social, political and economic problems that are inherent in U.S. relations with Latin America and to support the struggle for peace and social justice in Latin America," CALA Coordinator Marcelo Suarez said.

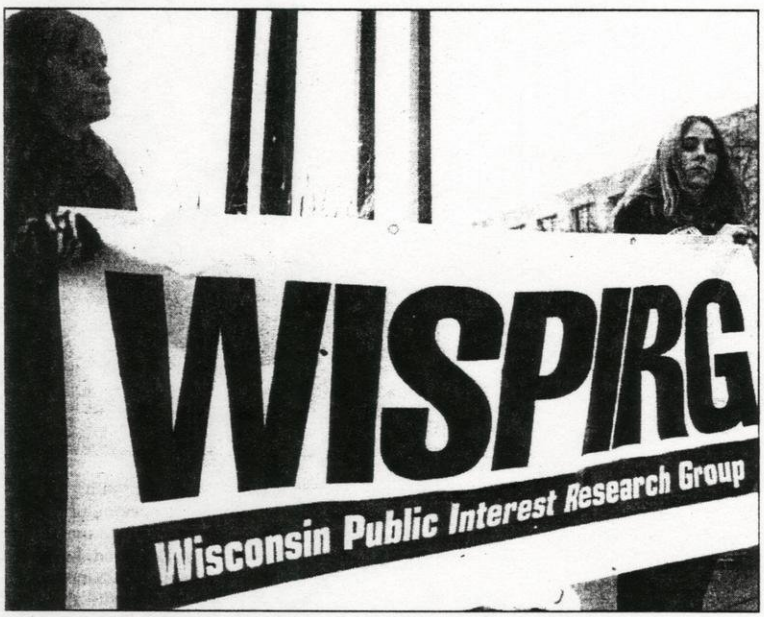
CALA augments the educational mission of the university by inviting Latin American speakers, collaborating with other social justice groups and offering resources for Latin

"Our group provided the UW community the chance to meet hundreds of human rights advocates ... authors, artists, etc.," Suarez said.

CALA also sends humanitarian aid to countries such as Chiapas, Guatemala and Honduras.

Suarez said he believes CALA's activities are beneficial to the educational mission of the university because they represent an

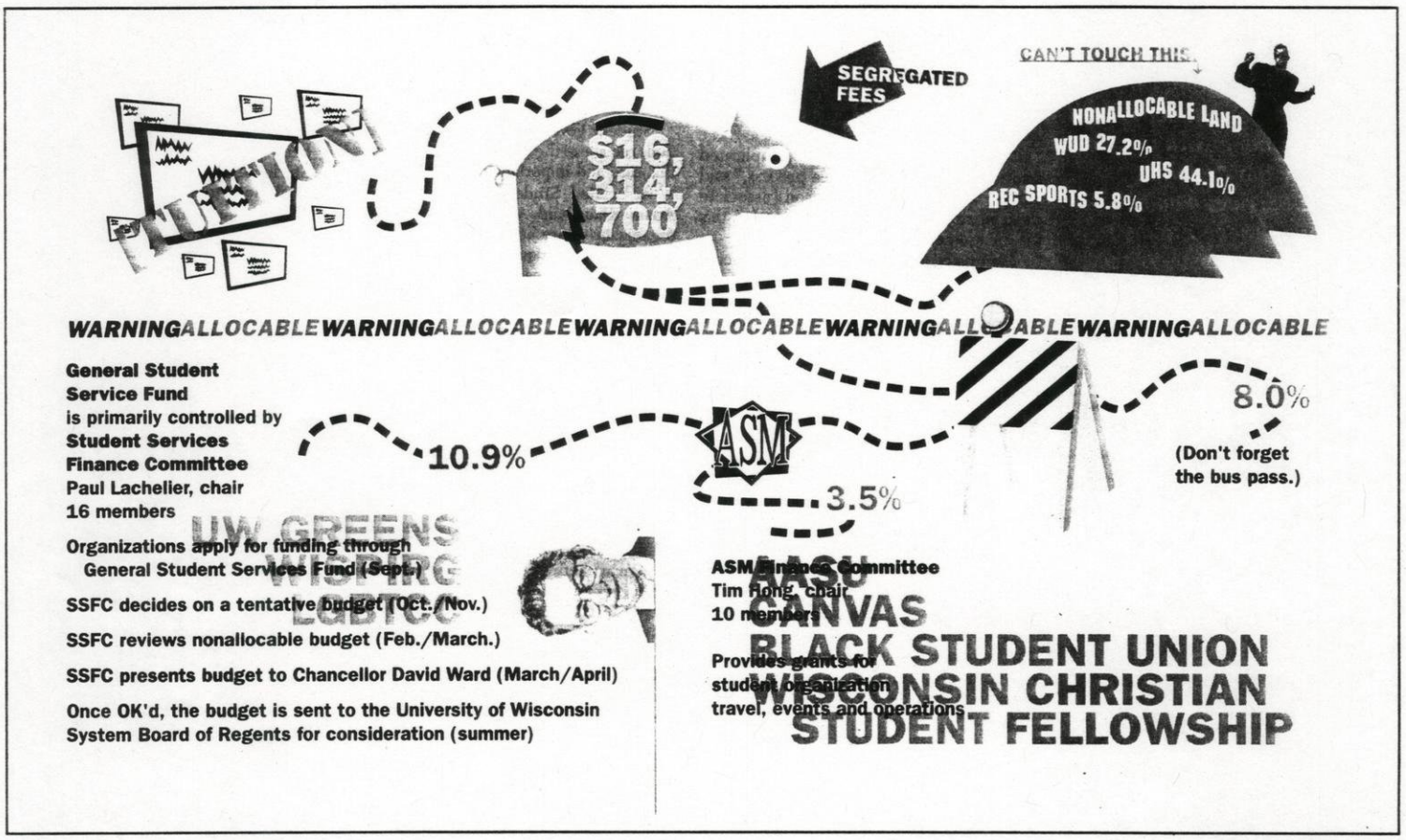
See PROFILES, page 7



CARDINAL FILE PHOTOS

WisPIRG and the Ten Percent Society are two among the 18 student organizations scrutinized in Southworth vs. Grebe for their allegedly political or ideological activities.

How a (dollar) bill becomes a law (suit):



SEAN WEITNER/CARDINAL GRAPHIC

Tuition does not just buy a seat for lectures from Nobel Prize winners and discussions with lively teaching assistants. When University of Wisconsin-Madison students pay their tuition bills, they send their money on a journey through a murky alphabet soup of acronyms—GSSF, SSFC, WisPIRG, BOR, SERF... Where does it go? Who handles it? The above magical mystery tour of the segregated fee answers those questions. Students and their money will never be the same.
ALL PERCENTAGES ARE OF THE SEGREGATED FEES TOTAL: $16,314,700.
SOURCE: 1999-2000 student segregated fee summary, provided by Paul Lachelier, SSFC Chair

—Research by Michael Hsu

Profiles

Continued from page 6

often-overlooked perspective.

"We're the only UW group working on social justice issues throughout Latin America, and our [guest speakers] are the ones that can expose the social reality of Latin America that is rarely reflected on the local, national and mainstream media," Suarez said.

Madison Treaty Rights Support Group

The Madison Treaty Rights Support Group, a student group affiliated with the Midwest Treaty Network, educates about Native American issues such as sovereignty and treaties and provides a public forum for Native American perspectives, according to co-founder Zoltan Grossman.

The group strives to provide a diversity of perspectives and information but does not support political candidates or organizations, Grossman said.

"Our emphasis is on education, not on big government or lobbying," Grossman said. "We think that change really comes from people rather than government, and for people to make decisions, they must be well-informed."

To help spread information about Native American issues, the group hosts conferences and speakers representing various Native American perspectives on current topics such as the Crandon mine construction and spear fishing.

La Colectiva Cultural de Aztlan

While descendants from Mexico, or Chicanos, have a vastly different cultural background than do other Latino students, all students are welcome to find support within La Colectiva Cultural de Aztlan.

The group's chair, sophomore Diana Aguilar, said the student organization's prime goal is to provide an academic and social support system for all Latino students at UW-Madison. The group is a resource in which Latino students can get connected to the right places and people, she said.

While it wasn't always so, she said, "As the years have gone by, we're becoming a little more political."

La Colectiva is housed in the Red Gym's Multicultural Center, 702 Langdon St. The group was granted the space through an application process when the center was created, so the group operates rent-free, Aguilar said.

The group's budget varies depending on which activities it participates in throughout the year, but last year Aguilar said the group received $300 from ASM in grants.

The group's membership hovers around 30 students, including two officers and three paid or work-study positions. Members create and facilitate programming in the MCC and on campus, and also attend conferences relevant to Latino issues elsewhere.

Aguilar said members have, in the past, attended the Women of Color Conference, Hispanic Leadership Conference, and this year are helping host the Mujer Latina Conference at UW-Madison in spring. The organization is also planning events for Latino Heritage Month, Sept. 15 through Oct. 15.

Aguilar said without the segregated-fee money from ASM, La Colectiva would be limited to on-campus activities.

"The little money that we get from ASM is definitely essential to starting off our organization. It gives us security," she said. Without it, she said, "We would be able to operate solely for the campus."

As for the political aim of the organization? "I think that we're named a liberal organization because of people think what we do is solely aimed for Chicano students and Latino students," she said. "The reality is, it's a pretty big campus. We would never reject anybody who wanted to learn about our culture."

Amnesty International/International Socialist Organization

Spokespersons for Amnesty International and the International Socialist Organization—both kinetic local chapters of national political organizations—say even with outside funding, the future of the groups at UW-Madison are at stake.

"We'll probably manage better than a lot of the targeted organizations because we do have some outside funding," said Moses Klein, spokesperson for the UW-Madison chapter of Amnesty International, an organization that serves as a source of information about human rights. "We'd still be able to send out letters appealing for human-rights cases, but we'd be a lot more limited in the special events ... that we could organize. We sometimes get some funding from [Amnesty International USA] for those, and our local affiliate has its own direct-mail fund raising which helps, but we really need to tap seg fees, too."

See PROFILES, page 8

Profiles

Continued from page 7

International Socialist Organization representative Kate O'Neil said she is less optimistic about the future of her group if segregated fees are taken away from student organizations.

"If we do not receive UW-Madison funding, we'll have some big problems," O'Neil said. "We are a national organization, but our local funding [outside of ASM grants] comes from individual donations at meetings and fundraisers. What this means concretely, is we'll be much less able to stop the KKK from coming to town as we did last winter, help stop the university from using sweatshop labor to make school clothes and fight to save the innocent from being executed on death rows across the country."

According to O'Neil, the loss of segregated fees would be a blow to student groups of a political persuasion.

"An organization must have money to promote its ideas, and without school sponsorship many—particularly those which stand up for poor and oppressed sections of society—will be severely limited in their capabilities," she said.

The 18 student groups named in the suit are: the Wisconsin Student Public Interest Research Group, the Lesbian, Gay, Bisexual (and now Transgender) Campus Center, the Campus Women's Center, the UW Greens, the Madison AIDS Support Network, the International Socialist Organization, the Ten Percent Society, the Progressive Student Network, Amnesty International, United States Student Association, Community Action on Latin America, La Colectiva Cultural de Aztlan, the Militant Student Union of the University of Wisconsin, the Student Labor Action Coalition, Student Solidarity, Student NOW, MADPAC and Madison Treaty Rights Support Group. For more information about these organizations, call the Student Organizations Office at 263-0365.

Arboretum hopes visitors will reap benefits of expansion

By Andrew Krueger 9.15.99
OF THE CARDINAL STAFF

Plans to expand the UW Arboretum's McKay Visitor Center and add a Wisconsin native plant garden are set to move ahead since the University of Wisconsin System Board of Regents approved plans last Friday.

Pending approval from the State Building Commission, construction could start next spring and finish in late 2001.

Arboretum Director Greg Armstrong said the project came out of an Arboretum master plan completed in 1994,

"The programs at the Arboretum have grown quite a bit in the past few years, so we undertook a comprehensive long-range planning study," Armstrong said.

The McKay Center, built in 1977, was deemed inadequate for the large groups that often participate in Arboretum programs.

Armstrong said the building plans, developed by Taliesen Architects, will mirror the current structure.

"The existing building has a low-profile, prairie style, and we wanted to continue that theme," Armstrong said. "Taliesen has done an extraordinary job."

The addition will include a 250-seat auditorium, an exhibit hall and room to expand offices in the future. It will more than double the size of the current building.

Arboretum Education and Communications Director Molly Murray said the building will be environmentally friendly. She said materials such as siding will be guaranteed not to come from old-growth forests, and solar cells on the roof will provide energy.

"We are choosing to make the building as 'green' as we can," Murray said.

The four-acre garden will include specimens of plants native to Wisconsin. Armstrong said it will be a place to introduce and interpret the more than 1,000-acre Arboretum.

"This is a totally new thing at the Arboretum," he said. "Currently [what we have] is a collection of restored communities. [This garden] will be mini-representations of the communities . . . in a more condensed place for interpreting their meaning."

Arboretum Assistant Director Donna Thomas said the building and garden will give visitors greater access to all the Arboretum has to offer.

"Not only will it enhance educational opportunities, but it will also afford opportunities to appreciate our natural heritage," Thomas said.

"It could take away student segregated fees as we know it. We may not have a tutoring program, or a bus system, or a child care assistance program. No one really knows."
Laura McKnight

"We have one of the most rich and diverse arrays of student organizations in this country. Clearly this will result in a decrease in the number of student organizations at the UW."
Mary Rouse

"This decision does not just effect the groups named in the lawsuit. It will effect every single student group that receives funding from ASM."
Angela Smith

Segregated Fees

UW LOSES SEG FEE LAWSUIT

Students may not have to pay some segregated fees

By Jason Shepard BH
News Editor Dec. 2, 1996

A federal judge on Friday ruled that UW-Madison students do not have to fund organizations they do not support.

In a landmark decision that has shocked and outraged UWauthorities and student government leaders, U.S. District Judge John Shabaz said the current system of mandatory segregated fees is unconstitutional.

"I think it's a victory for the First Amendment and it's a victory for students regardless of their political or ideological views," said Scott Southworth, one of the three students who filed the lawsuit. "No students should have to pay for the political or ideological activities of any group on campus, no matter what they believe."

But top UW officials say the decision will have devastating effects on the diversity of student groups at UW-Madison.

"We have one of the most rich and diverse arrays of student organizations in this country," said Dean of Students Mary Rouse. "Clearly this will result in a decrease in the number of student organizations at the UW."

Southworth and two other UW-Madison law students filed the lawsuit in federal court last spring. They alleged that their First Amendment rights to free speech and association were being violated by the segregated fee policy. They objected to their money being given to groups they do not support, including WisPIRG and the Lesbian, Gay, and Bisexual Campus Center. Southworth said he was a devout Christian who opposes abortion and homosexuality and supports most of Gov. Tommy Thompson's plans.

"The student government has been violating the First Amendment rights of students for years," said Jordan Lorence, the Fairfax, Va. attorney who represented the three law students. "It has been a flagrant disregard and I'm not surprised the judge's decision was so strong."

Judge Shabaz said in his ruling that he balanced the constitutional rights of the plaintiffs not to subsidize speech that they object to against the UW's mission to hold a marketplace of ideas.

"This court finds that the balance between the competing interests in this case tips in favor of the First Amendment rights not to be compelled to speak or associate," Shabaz said.

The decision means that all allocable student fees — those fees that the Associated Students of Madison has primary control over — will be able to be refunded to students.

The refunding method will be devised by a UW officials after consulting with the three plaintiffs.

■ FEES See page 3

WHERE DO MY FEES GO?

Highlights of the landmark decision:

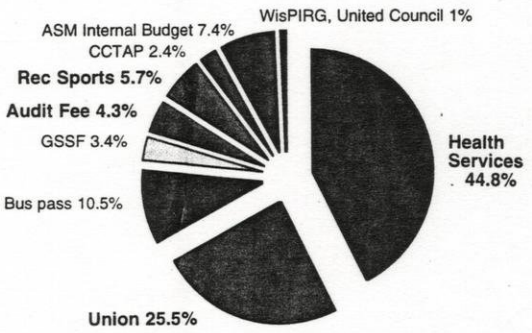
■ Federal Judge John Shabaz ruled that students do not have to pay for student groups that they do not support. He wrote: "The mandatory segregated fee policy violates the First Amendment to the United States Constitution."

■ If the decision stands, the university will have to devise a way to refund upset students their allocable fees. This semester's allocable fees totaled $37.41, or about 24 percent of the total student segregated fee.

■ Regent Brigit Brown said she will ask the Board of Regents on Friday to file an appeal to the decision. State Rep. Tammy Baldwin also said she would urge the Regents to appeal.

■ Dean of Students Mary Rouse said a system to return certain segregated fees to students would be an "accounting nightmare."

Breakdown of Student Fees



The items above which are bolded are considered "non-allocable" and do not qualify as refundable fees under Judge Shabaz's decision.

GSSF Groups for Fall 1996

SAFEride Late Night Bus	$100,000
Madison Legal Information Center	$10,626
UW Greens	$7,100
GUTS tutoring	$57,223
Madison AIDS Support Network	$25,004
Lesbian, Gay, and Bisexual Campus Ctr	$27,300
Student Radio	$476,903
Rape Crisis Center	$28,185
Student Leadership Program	$12,792
Adventure Learning Program	$13,129
United States Student Association	$38,000
Vets for Vets	$8,624
Tenant Resource Center	$21,900
Unallocated GSSF money	$32,824
Student Judiciary Committee	$19,488

Student groups shocked

By Christina Beecher
State Editor BH
Dec. 2, 1996

In the wake of Friday's court decision on student fees, student groups at UW-Madison are unsure how the ruling will transfer into action and affect various campus organizations.

"The decision makes a lot of questions come up," Velvet Hazard, State Board Chair of WisPIRG, said Sunday. "We just need to look at how this will affect organizations."

The three students who filed the lawsuit expressed political, religious and ideological opposition to funding a number of campus groups, including the UW Greens, WisPIRG, the Campus Women's Center and the Lesbian, Gay and Bisexual Campus Center.

"I still want more information. It's unbelievable that something like this could happen in the '90s," said Heather Colburn, a volunteer with the Madison AIDS Support Network, another group cited in the brief. "There's been so much information about the importance of these organizations."

Reaction from members of targeted groups ranged from surprise and disbelief to a sense of expectation.

"I wasn't surprised," said Rob Buchanan, assistant director of the LGBCC. "I thought the students who had filed the brief had a very good argument. Their opinions have some validity...There are some groups that partake in political activities. But the group I am involved in doesn't.

■ FEES From page 1

The plaintiff's case

The main thrust of the plaintiff's argument was that several student groups used segregated fee money for purposes that the three students didn't support. They cited the following as examples in their brief:

■ WisPIRG: The Wisconsin Public Interest Group, which received $50,985 for the 1996-97 school year, lobbied legislators on mining bills and supported political candidates by providing a scorecard on particular issues. The student group also protested Gov. Thompson's budget and opposed expansion of Highway 12. The plaintiffs said they opposed WisPIRG's stances but were forced to fund them.

■ Lesbian, Gay, and Bisexual Campus Center: The LGBCC received $27,300 and promotes "gay positive University policies." The plaintiffs objected to several actions by the LGBCC, including promoting pro-homosexual religious groups, and attacked items in the center's newsletter.

■ Campus Women's Center: The center received $35,281 for the 1996-97 school year. The plaintiffs objected to an article in the center's newsletter that urged people to block a controversial bill that would require a 24 hour waiting period before a woman could have an abortion. The plaintiffs also attacked an article in the newsletter written by State Rep. Tammy Baldwin which advocated same-sex marriages.

■ UW Greens: The student group received $7,100 in segregated fee funding for the 1996-97 school year. The plaintiffs alleged the UW Greens lobbied legislatures for mining bills, and said the group supported presidential candidate Ralph Nader.

The plaintiffs also attacked 14 other student groups for "political or ideological" purposes.

"In this case, in order to attend the UW-Madison law school, the three student-plaintiffs must subsidize groups that contradict their views opposing abortion, homosexuality, socialism, extreme environmentalism, etc. The students must support groups that contradict their views in support of the free enterprise system, Governor Tommy Thompson's policies, keeping sex within marriage, the death penalty, the Bible as a standard of truth, and support for widening U.S. Highway 12 from two lanes to four lanes. The students must choose between obtaining a University education or refusing to support political and ideological viewpoints they oppose," the brief states.

Expert analyzes decision

UW Political Scientist Donald Downs, an expert in constitutional issues, said Shabaz's decision was weak and may be overturned in an appeal.

"I think that having to put money into a pool in which all students fund is part of university citizenship. The real problem is where that money is being used," Downs said. He said the university already has a policy in place that bans segregated fee funding of political groups or events. He said WisPIRG is a clear violation of the policy, and does violate constitutional principles. But he said the funding of other student groups, such as the Lesbian, Gay, and Bisexual Campus Center, does not necessarily violate the Constitution.

"If you want to fund student groups and activities, then inevitably some of that fee is going to go to groups that individuals don't like. If you take this judge's decision seriously, you won't have any more funding of student groups," Downs said.

Downs said the plaintiff's argument could be extended to professor's speech in classrooms. Students pay tuition, which in turn pays professors salaries. If a student objected to a professor's comments, could he or she request to be reimbursed the portion of the professor's salary?

"To some extent, your obligation as a university citizen is to fund activities with which you disagree," he said.

Baldwin, students attack decision

"I think the most disappointing aspect of this decision is the lack of recognition to how important extracurricular activities to students," State Rep. Tammy Baldwin, D-Madison, said Sunday night. She also attacked the decision because it undermines the democratic system in place for students to allocate their fees.

"I think that mandatory student fees are very much parallel to our paying of income taxes," she said. "There are often places where those tax dollars go that we object to. And yet, opting out is not available for tax payers. It urges people to participate in the democracy that allocates it."

Baldwin said she will urge Regents to appeal the decision.

Tim Casper, president of the United Council of UW Student Governments, said the decision has the potential to restrict student leadership opportunities.

"When a student enters the university, part of the experience is outside the classroom. Without that opportunity, we may be graduating less qualified students in the long run," Casper said. "This decision has the potential to strike the range of ideas that are debated on the Madison campus."

Student Services Finance Committee Chair Laura McKnight said the decision may wipe out student government as anyone knows it.

"No one knows what is going to happen," she said. "It could take away student segregated fees as we

■ GROUPS

"I know LGBCC is one of the targeted groups," he added. "Gay people exist, but this isn't ideological."

Despite the initial shock, several students don't believe this decision will be final.

"We're assuming the university will appeal. I don't think it [refunding fees] is very feasible," said John Peck of UW Greens, explaining that with 600 student groups on campus, having students choose which groups to fund is not a practical option.

"I'm hoping the Regents will appeal," Hazard said. "It seems like there aren't many answers in the decision."

Others are puzzled by the amount of money involved.

"I am questioning the number of students dying to get their $6.50 back," Buchanan said.

Peck said he found it surprising that a lawsuit resulted from the relatively small amount of money that these groups receive from student funding.

"They spent five years of our budget on this lawsuit," Peck said.

"I find it sad that these students find us threatening," he added. "I would rather they discussed it with us rather than trying to shut us up [by de-funding us.]"

Another UW Greens member commented on the loss for the campus if groups should disappear due to lack of funding.

"We're disappointed that three students don't support a lot of opportunities for students on campus," said Dan Rodman, a UW Greens member. "I feel this [decision] is against the university idea of providing opportunities for students."

"The implications for the whole university are scary," Rodman added. "I hope the university appeals it."

Both Peck and Rodman compared students choosing which fees to pay is like citizens deciding which programs they want their tax dollars to be spent on.

"What if I went to the U.S. government and said I don't want to pay for military spending?" Rodman asked. "A fact of democracy is that everyone participates."

Students are worried that if this decision stands, time spent looking for funding will detract from time spent on programming.

"This [decision] makes the focus on how we fund groups rather than what groups are doing," Hazard said. "It means I need to spend more time dealing with this rather than working with interns."

"Anytime you take money away from an organization... that needs to look at its budget to plan programming, it's obviously hurting a program already under budgetary constraints," Colburn said.

But even fewer student funds will not stop these organizations.

According to Buchanan, as the decision stands, every group will take a cut, but he predicted the affect on the LGBCC to be minimal.

"We are going to remain open until the university directly contacts us and informs us that we are closed," Buchanan said. "We are going to stay open and keep working."

Segfees

THE WISCONSIN WEEK WIRE - March 31, 1999
for UW-Madison faculty and staff
(issue on Web at http://www.news.wisc.edu/wire/i033199/)
==========

Selected stories from this issue of Wisconsin Week ...

(issue on Web at http://www.news.wisc.edu/wire/i033199/)
==========

Front Page

FACULTY SENATE CONSIDERS RESETTING 'TENURE CLOCK'
Campus departments could get more flexibility in calculating how long new assistant professors can take to earn tenure under a proposal to be reviewed by the Faculty Senate.
(Full story in Wisconsin Week, page 1)
http://www.news.wisc.edu/wire/i033199/tenure.html

WORKERS SPRUCE UP CAMPUS LECTURE HALLS
A new remodeling program, called the Instructional Technology Improvements Program, targets large lecture halls for renovation, transforming them from drab, uninspiring chambers into bright, engaging learning environments with state-of-the-art teaching technology.
(Wisconsin Week, page 1)
http://www.news.wisc.edu/wire/i033199/remodel.html

LEADERSHIP INSTITUTE BROADENS PERSPECTIVES, PARTICIPANTS SAY
Participants in UW-Madison's Leadership Institute, a yearlong program to build leadership skills in junior- and senior-level faculty and staff, gain a keener awareness of self and others as they broaden their perspective as leaders.
(Wisconsin Week, page 1)
http://www.news.wisc.edu/wire/i033199/lead.html

Profile: Monty Nielsen

BASEBALL ENERGIZES REGISTRAR
Buried deep in new registrar Monty Nielsen's vita is a curious reference to baseball. What does being a registrar have to do with baseball? Everything, if you're Nielsen.
(Wisconsin Week, page 4)
http://www.news.wisc.edu/wire/i033199/nielsen.html

Features

TINY MEDICAL TOOLS GIVE NEW MEANING TO 'CUTTING EDGE'
They look more like stray computer parts than precision medical tools, but Amit Lal's research creations could give surgeons an incomparable new edge in medicine.
(Wisconsin Week, page 16)
http://www.news.wisc.edu/wire/i033199/memstools.html

150 YEARS:
INTERNATIONAL ALUMNI CONVOCATION PLANNED IN MAY
International alumni representing 30 countries and virtually all of the university's schools and colleges are expected to return to Madison May 3-7 for a convocation.
(Wisconsin Week, page 5)
http://www.news.wisc.edu/wire/i033199/intlconv.html

Learning

SERVICE LEARNING BROADENS EDUCATION

The idea of volunteering as coursework has been gaining momentum in the last several years, both at UW-Madison and other institutions. Next month UW-Madison will host a three-day national conference to explore the mission of land grant colleges and universities concerning service learning.

(Wisconsin Week, page 11)

http://www.news.wisc.edu/wire/i033199/service.html

DEMAND INCREASING FOR PHARMACY GRADUATES

America's burgeoning elderly population, which is using sophisticated drug therapies in record quantities, has helped make highly educated pharmacists one of the hottest commodities in health care, School of Pharmacy researchers say.

(Wisconsin Week, page 3)

http://www.news.wisc.edu/wire/i033199/pharm.html

Research

MADISON STUDENTS IN UW PROJECT USE VIDEO TO EXPRESS DIVERSITY

A new School of Education project called the Kid-to-Kid Video Exchange Project aims to develop a network of K-8 classrooms that create and share videos as an essential element of their social studies curriculum.

(Wisconsin Week, page 6)

http://www.news.wisc.edu/wire/i033199/video.html

STUDY: CHILD ABUSE CAN ALTER BRAIN DEVELOPMENT

For children suffering from severe abuse, anger is a danger sign they dare not overlook. Spotting it early becomes a survival skill. A new study by a campus psychologist suggests that this survival skill is strong enough to actually trigger biological changes, altering the way the brain processes anger.

(Wisconsin Week, page 6)

http://www.news.wisc.edu/wire/i033199/brain.html

NEW APPROACH BOOSTS 5TH GRADERS' MATH AND SCIENCE LEARNING

University researchers have helped achieve a startling effect by using models to teach mathematics and science to elementary school students: Fifth graders are performing at 12th grade levels.

(Wisconsin Week, page 10)

http://www.news.wisc.edu/wire/i033199/model.html

NEW BOOK: SCHOOL CULTURE CAN BE TOXIN–OR TONIC

The culture of a school–a web of values, traditions and symbols–can be toxin or tonic for education reform.

(Wisconsin Week, page 10)

http://www.news.wisc.edu/wire/i033199/school.html

UW LEADS NATIONAL CLINICAL TRIAL OF CANCER DRUG
The Comprehensive Cancer Center has been chosen as one of two sites in the nation to conduct human tests of endostatin, a promising potential cancer treatment that seems to work in part by disrupting the growth of blood vessels that nourish tumor cells.
(Wisconsin Week, page 2)
http://www.news.wisc.edu/wire/i033199/endostatin.html

RESEARCH DIGEST
Acid linked to soil aging; study shows women's farm role; pesticide study grants offered.
(Wisconsin Week, page 6)
http://www.news.wisc.edu/wire/i033199/rd.html

Awards

This issue of Wisconsin Week features the faculty, academic staff and classified staff who have been chosen from among their peers for outstanding achievement.

Distinguished Teaching Awards
(Wisconsin Week, page 7)
http://www.news.wisc.edu/wire/i033199/dta.html

Academic Staff Excellence Awards
(Wisconsin Week, page 8)
http://www.news.wisc.edu/wire/i033199/asa.html

Classified Employee Recognition Awards
(Wisconsin Week, page 9)
http://www.news.wisc.edu/wire/i033199/csa.html

Campus News

U.S. SUPREME COURT PLANS TO DECIDE STUDENT FEE CASE
The U.S. Supreme Court agreed Monday, March 29 to decide whether the mandatory fees violate students' free-speech rights. Their decision will affect student fee systems at all public universities.
(Wisconsin Week, page 3)
http://www.news.wisc.edu/wire/i033199/segfees.html

PROGRAM SEEKS MORE MILWAUKEE STUDENTS OF COLOR
The university is stepping up recruitment of students of color in the state's largest city–with assistance from their school district and potential future employers. A new university initiative–the Pre-College Enrollment Opportunity Program for Learning Excellence, or PEOPLE–will enroll 100 Milwaukee ninth-graders beginning this summer.
(Wisconsin Week, page 3)
http://www.news.wisc.edu/wire/i033199/people.html

CONFERENCE FOCUSES ON BREAK-UP OF MULTI-ETHNIC FEDERATIONS
About 100 prominent Central and East European scholars and writers plan to gather on campus Friday, April 16, for a groundbreaking workshop examining the disintegration of multi-ethnic federations associated with the break-up of the former communist states.
(Wisconsin Week, page 2)
http://www.news.wisc.edu/wire/i033199/ethnic.html

U.S. NEWS RANKS GRADUATE PROGRAMS
The university received several high rankings in the 1999 rating of graduate programs released Friday, March 19 by U.S. News & World Report.
(Wisconsin Week, page 3)
http://www.news.wisc.edu/wire/i033199/rank.html

NEWSMAKERS
UW-Madison Libraries recognized for excellence; environmental toxicologist Warren Porter publishes a major pesticide finding; entomologist David Bowen touts natural pest control; and negotiations between students and administrators regarding ROTC's anti-gay discrimination policy is highlighted.
(Wisconsin Week, page 3)
http://www.news.wisc.edu/wire/nm.html

On Campus
(Events calendar: http://calendar.news.wisc.edu)

WILLIAM BOWEN TO LECTURE ON RACE-SENSITIVE ADMISSIONS
William G. Bowen, co-author of the new book "The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions," will speak at UW Wednesday, April 7 at 7:30 p.m.
(Wisconsin Week, page 2)
http://www.news.wisc.edu/wire/i033199/bowen.html

PACK OF JOURNALISTS TO VISIT
April is showering the campus with high-profile visitors from the media, including Washington Post columnist David Broder, NPR science correspondent Richard Harris, Washington Post business correspondent Sharon Walsh and senior Financial Times correspondent Wolfgang Munchau.
(Wisconsin Week, page 16)
http://www.news.wisc.edu/wire/i033199/scoops.html

FORMER MISS AMERICA TO SPEAK ABOUT SEXUAL ASSAULT ISSUES
Former Miss America Marilyn Van Derbur will speak about sexual assault and her recovery from incest Tuesday, April 6, on campus.
(Wisconsin Week, page 13)
http://www.news.wisc.edu/wire/i033199/vanderbur.html

Wisconsin Week
For Faculty and Staff of the University of Wisconsin-Madison
November 18, 1998

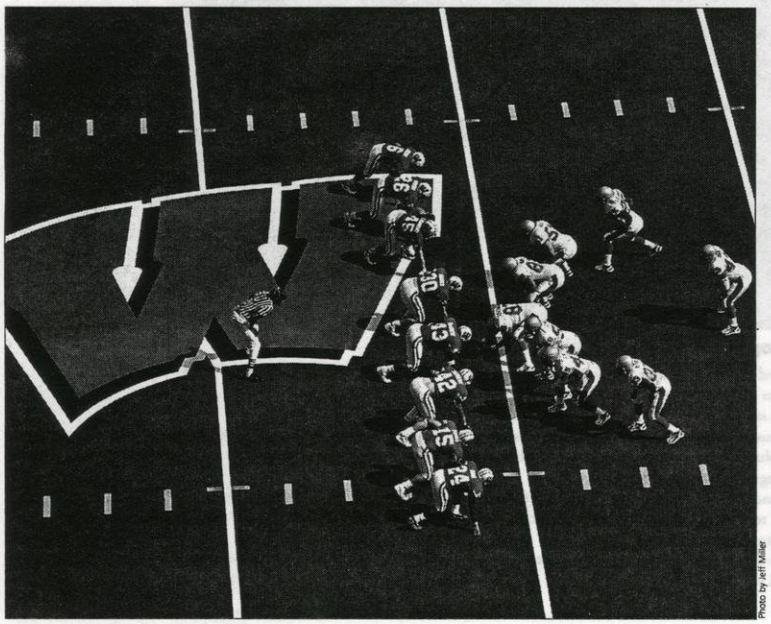


Photo by Jeff Miller

The Badgers return home Saturday for their final Camp Randall appearance this season. Campus officials are working to make Saturday's football game a safe and fun experience for excited fans expecting the team to snare a Rose Bowl berth. Stepped-up security, physical changes and other measures will help, but campus police urge fans to show responsible behavior at the game. For more details, see page 12.

Regents: Fee appeal stands strong chance

Supreme Court may consider in spring

Erik Christianson

Toby Marcovich, UW System regent, sees a bright spot in the 7th U.S. Circuit Court of Appeals' ruling last month against the UW-Madison student fee system.

In that decision, the court decided not to reconsider an earlier ruling that struck down the mandatory fees as unconstitutional. The decision supported the contention of three UW-Madison students, who sued the university in 1996 because student fees were used to fund several student groups they opposed on political, ideological or religious grounds. They said the mandatory fees violated their free speech rights.

Yet the Oct. 27 appeals court ruling includes two strongly worded dissenting opinions. Marcovich, an attorney, says those dissents could provide a strong foundation for the board's appeal of the case to the U.S. Supreme Court. The regents voted to appeal Nov. 6.

"This decision has generated the best dissent in some time," Marcovich told the regents before their vote. "I feel there is a good chance that this case will be reversed by the Supreme Court."

The attorney for the students who filed suit against UW-Madison says the dissents articulate a defense of the current system that is better than any other he has seen in the courts.

"But I still think the analysis is wrong," stressed Jordan Lorence, general counsel for the Northstar Legal Center in Fairfax, Va.

The dissenting opinions provide a succinct preview of the arguments that will likely be made in favor of the current fee system if the nation's top court agrees to hear the case. The UW System has until late January to

continued on page two

Campus-community project examines childhood asthma

Judy Kay Moore

A new Madison project doesn't involve higher taxes or a referendum, but it does require a positive pregnancy test and a history of allergies or asthma.

Those are some of the eligibility criteria for a major study that seeks to explain why some young children develop full-blown asthma and others don't. Robert Lemanske, a nationally recognized asthma expert and professor of pediatrics and medicine at the Medical School, announced details of the study Wednesday, Nov. 18.

The federally funded research is testing the suspicion that children who develop asthma by about age three do so because of a combination of heredity and viral respiratory infections.

The theory, based on preliminary human observations and laboratory research, is that a young child who is genetically predisposed to allergies or asthma and gets the right respiratory infection at the right time will develop asthma.

The child who escapes either strike is at a much lower risk. "It's important to remember that asthma is not a single disease with a single cause, but for childhood asthma, this combination of factors might be a predominant pathway by which it develops," Lemanske says.

Lemanske, supported by $1.3 million from the National Institutes of Health to conduct this study, is recruiting up to 200 expectant couples through clinics, physicians and an array of organizations.

Asthma is a disease in which the airways in the lung become inflamed and narrowed, causing sufferers to wheeze and cough as they struggle to breathe. About 4.8 million children in the United States have asthma, making it the most common chronic disease among children in the nation.

While asthma can strike at any age, for many, the disease has its roots in infancy. Studies show that young children who have asthma inherit an imbalance of immune system hormones called cytokines, which are secreted by cells.

Lemanske suspects a viral respiratory infection may tip the balance toward asthma. In the lab, Lemanske has clearly shown that animals must have a cytokine imbalance and a virus that causes a respiratory infection before they develop the features of human asthma. He suspects the same is true in young children.

Expectant parents and children in his study will undergo a series of tests as experts track which children develop asthma and which don't.

"The societal benefits of this study may be invaluable," says Lemanske. "If we can figure out more about what starts the whole process of asthma and how these kids are characterized in infancy, we could potentially intervene sooner with appropriate therapy and better preserve lung function over time."

Participants who complete the study will be paid $500.

For information, contact the project coordinator, 263-8539. ■

Speech code gets review

The UW-Madison faculty speech code's proposed revision is moving forward – and colleges and universities nationwide are watching with great interest.

The University Committee, the executive arm of the Faculty Senate, discussed the proposed legislation at its last two meetings, and the Faculty Senate will consider the issue Dec. 7.

For 18 months, a committee of faculty, academic staff and students has worked to rewrite the 17-year-old policy, one of the first faculty speech codes in the nation.

Both sides of the debate are previewed in this issue of *Wisconsin Week*. On page 11, readers will find commentaries on the code written by members of the majority and minorities sides of the Ad Hoc Committee on Prohibited Harassment Legislation.

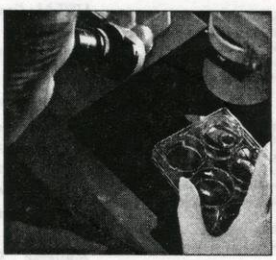
The university's attempt to revamp its code — one that some contend is already too prohibitive, but under which no professor has ever been formally disciplined — has received widespread attention from academia and First Amendment watchers. Some observers say the new code would lead to more academic freedom and clearer communication in the classroom, while others fear it could foster censorship and have a chilling effect on free speech.

For a full reading of the speech code committee's work and related information via the World Wide Web at http://www.news.wisc.edu/wire/scode/. ■

Representatives state their views, page 11

Inside

Departments



Stem cells are the rage on world stage.

Page 6

BRIEFS

RESEARCH FUNDING COMPARED

Both public and private spending on agricultural research pay off in similar large increases in farm productivity, according to two UW-Madison researchers. But the payback from private spending accumulates quickly and then fades, while public research investments take longer to yield their full return.

Jean-Paul Chavas and Tom Cox, economists at the UW-Madison College of Agricultural and Life Sciences, described this tortoise-and-hare pattern of returns from public and private research spending in series of papers.

"Over the last few decades, spending by agricultural companies for research has been rising while public spending has increased little," Cox says. Private spending for agricultural research has exceeded public spending since 1982 and by 1996 the difference was nearly $1 billion.

"Under these conditions, farm productivity might actually accelerate in the short term," Cox says. "But over the longer term, say 15 to 25 years from now, the current relative decline in public research may lead to slower productivity growth."

The difference in the peak impact of public and private spending probably reflects the fact that companies spend most money on projects likely to produce quickly marketable products.

PROJECT AWARDED $173,000

The General Library System will help the African Studies Program preserve its slide, photograph and video collections through a National Leadership Grant from the Federal Institute of Museum and Library Services.

The award of $173,000 is one of 41 awards nationwide. The Africana project, which expands on the highly successful Southeast Asian Images and Text (SEAIT) project (www.library.wisc.edu/etext/seait/), will make the digitally recorded images, videos and audio clips available through CD-ROM, the Web and other media.

NOTE TO READERS

Wisconsin Week will not publish during the week following Thanksgiving. The next issue will be dated Wednesday, Dec. 9.

On campus

Staff get more time off

Faculty and academic staff with annual appointments now have three additional days of personal leave each year, under a proposal approved by the UW System Board of Regents.

An advisory committee recommended the change as a way of restoring parity in leave for certain faculty and staff in comparison with other state employees.

Current plans entitle classified staff to the equivalent of more than four more days of paid sick leave than unclassified staff. Rather than add to sick leave, the Fringe Benefits Advisory Committee recommended expanding paid personal holidays for unclassified staff to match the days offered to other state employees.

The regents approved the measure at their Nov. 6 meeting. The personal days take effect immediately, although UW System officials say they might not be listed on employee leave statements until January.

The board also approved pay raises of 5.2 percent in each of the next two years for faculty and academic staff, as recommended by the UW System administration.

PROFS, the Public Representation Organization of the UW-Madison Faculty Senate, asked the regents to boost the pay raises to 7.7 percent. PROFS President Ronald D. Schultz, professor of medical microbiology and pathobiological sciences, said in a memo to the regents that the 7.7 percent raises would bring faculty only to the midpoint of salaries for professors at the university's peer institutions.

The pay raise proposal now goes to the Department of Employment Relations and the Legislature's Joint Committee on Employment Relations for review.

In other action, the regents held their annual trust fund public forum on Nov. 5. Fifteen speakers urged the board to make more socially responsible investments in its endowment. The board was not expected to take any action on the issue. ■

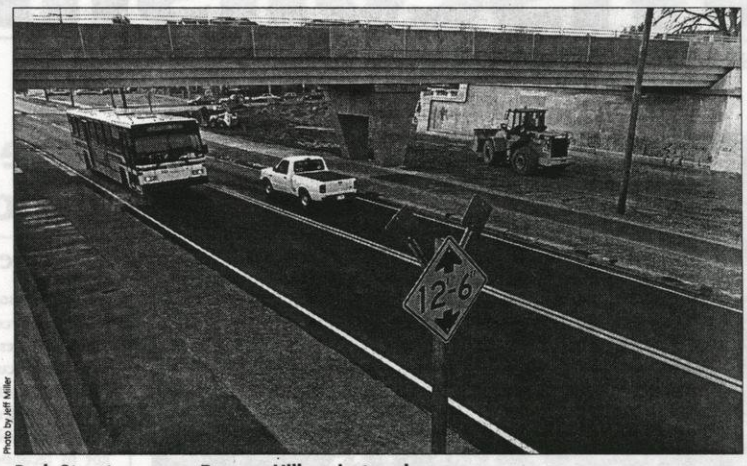


Photo by Jeff Miller

Park Street reopens; Bascom Hill project underway

There is some good news for campus area travelers — late last week the city reopened Park Street between Regent and Dayton streets. Next spring, crews will begin building the new four-lane roadway, but one lane in each direction will remain open while that work is being done.

Last week's wet and windy weather delayed the progress of the Bascom Hall Fire Protection and Water Project slightly. The first phase of construction, between Liz Waters and Bascom Hall's Lot 11, should be completed by this weekend. It began Nov. 9.

If all goes well and the weather cooperates, the next phase should begin next week. At that time, Observatory Drive from Lot 11 to the front of Bascom Hall will be closed for approximately two weeks. Access to Lot 11 will be from Charter Street only during that period.

Campus buses will continue to be rerouted until construction moves from Observatory Drive to Bascom Hill. The project will result in a greater supply of water to buildings for both fire protection and general use. ■

SECC campaign moves toward fundraising goal

With just over a week to go, the State, University and UWHC Employees Combined Campaign of Dane County (SECC) has raised more than $866,000, or 43 percent of its $2.03 million goal for 1998. Organizers say that is a normal pace for this point in the campaign.

As of Nov. 13, contributions made by university employees, including UW-Madison, UW System Administration and UW Extension Administration, totaled $314,000. State agency employees had raised $552,000 by that date. The figures for UW Hospital and Clinics were not available yet.

There is still time to make a contribution. If you misplaced your campaign brochure or pledge form and would like another one, contact Patrick Myers, 263-5510. Though the seven-week campaign officially ends on Nov. 30, late contributions are always welcome. Those made on or before Jan. 31, 1999 will be credited to the 1998 campaign.

This year's SECC includes more than 300 nonprofit agencies. Employees have the option of designating the specific agencies they wish to support, and that is what the majority of employees do. In addition, they may make their contribution through a convenient payroll deduction.

The campaign is celebrating its 25th anniversary this year. ■

Wisconsin Week

Vol. XIII, No. 16, November 18, 1998

Wisconsin Week, the official newspaper of record for the University of Wisconsin-Madison, carries legally required notices for faculty and staff.

Wisconsin Week (ISSN 890-9652; USPS 810-020) is published by University Periodicals, Office of News and Public Affairs, biweekly when classes are in session (18 issues a year). Send information to 19 Bascom Hall, 500 Lincoln Drive, Madison, WI 53706; phone: (608) 262-3846. E-mail:wisweek@macc.wisc.edu.

Second-class postage is paid at Madison, WI 53706; Postmaster: Send address changes to Wisconsin Week, 19 Bascom Hall, 500 Lincoln Drive, Madison, WI 53706.

Subscriptions for U.S. mail delivery are $18 a year or $9 for six months. Send checks, payable to Wisconsin Week, to the above address.

Address changes

The Wisconsin Week labels are printed from the files of the UW-Madison Employee Compensation and Benefits Office. Send a Person File Information Form to revise employee addresses. Other addresses may be changed by correcting the label and mailing it to Wisconsin Week.

Editor: Tim Kelley
Designer: Jeffrey Jerred
Program assistant: Debby Sumwalt
Publications assistant: Eileen Gilligan
Director of Periodicals: Cindy Foss
Editorial adviser: Amy Toburen
Contributing writers: Office of News and Public Affairs
Photographers: Jeff Miller, Hannah Swacker, Ryan O'Hara Theisen
Distribution: UW-Madison Truck Service
Publication dates: Dec. 9, Jan. 13, Jan. 27, Feb. 10

To receive Wisconsin Week news via e-mail, visit http://news1.news.wisc.edu/cgi-bin/wireadds on the World Wide Web and subscribe to the Wisconsin Week Wire. Wisconsin Week is also available on UW-Madison's gopher server in the folder called News Releases, Newsletters and Newspapers.

Fee appeal

continued from page one

submit its appeal, and the high court could take up the case in its spring 1999 term.

In one dissent, Judge Ilana Rovner criticizes the comparison between the student fee system and Supreme Court cases involving dues paid to a teachers union and a state bar association.

In those cases, the dues were used for lobbying and to support political candidates. But student fees are paid to the UW-Madison student government, which then funds student groups regardless of viewpoint, Rovner wrote.

"Because the 'speech' of the individual groups cannot be attributed to the student government, it necessarily cannot be attributed to the students paying the fees to the student government," she wrote.

Political and ideological speech by student groups is central to a university's educational mission — a mission the Supreme Court supports concerning "robust debate and free expression in a university setting," Rovner added.

"Our focus should be on the funding by the student government, and whether the expression of ideology by the student group promotes the educational mission, regardless of whether that was the intent of the group," she wrote.

Judge Diane P. Wood argued in her dissent that the student fees support a neutral forum for speech, similar to if the student government used student fees to build an auditorium and opened it to anyone. She says the 7th Circuit's ruling contradicts the 1995 Supreme Court ruling in the Rosenberger-University of Virginia case.

That decision, Wood continued, "provides strong support for the characterization of the student activity fee as a forum for speech." And access to that forum cannot be discriminatory, the Supreme Court ruled. In Rosenberger, the University of Virginia student government denied funds for a campus-based Christian student magazine.

Attorney Lorence takes issue with both dissents. He says Rovner's dissent fails to note that many student groups don't receive money from student government. Moreover, the university decides where some of the student fees are disbursed, such as for University Health Services.

He believes there is a fundamental difference between a forum for speech continuously supported by money and a physical forum, like an auditorium.

"The forum of money gets consumed," Lorence says. "WisPIRG (Wisconsin Public Interest Research Group) gets $50,000, and it gets spent. When WisPIRG uses an auditorium, the auditorium is still there when they are done. I think of it much more like a direct subsidy than funding a platform for public speaking."

And even if the forum for speech is viewpoint-neutral, Lorence says that students shouldn't be compelled to support it.

"I think the question of how money is distributed is distinct from how money is collected," he says.

Ironically, Lorence says the Rosenberger case was part of the impetus for the lawsuits around the country that are challenging the student fee systems at many universities. Lorence says he and other attorneys saw the decision as an opening to challenge mandatory student fees as a violation of free speech guaranteed in the First Amendment. ■

Seg Fees

Notable

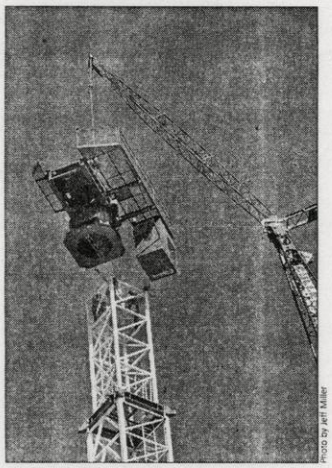


Photo by Jeff Miller

Workers cap a crane that will be used to build a $38.9 million chemistry research tower underway at Johnson and Charter streets.

Regents face choice on student fee use

UW System leaders plan to decide this week how to respond to a federal appeals court ruling that prohibits UW-Madison from using mandatory student fees to finance political groups opposed by some students.

With four judges dissenting, the 7th U.S. Circuit Court of Appeals in Chicago earlier refused to reconsider its decision in the case. A three-judge panel ruled in August that UW-Madison's use of student-activity fees to fund activist groups violates some students' rights.

The UW System Board of Regents this week will receive a committee report on how to collect fees in the wake of the ruling. The board is expected to decide in closed session whether or not to appeal the ruling to the Supreme Court. Depending on that decision, the board may then discuss the two options offered by the committee:

- Defining which campus groups are political or ideological and letting students opt out of funding them; or
- Placing all student organizations, events and activities in an "opt out" category.

Higher-education officials and legal experts nationwide are closely watching the UW-Madison case, saying it could have broad implications for all colleges and universities. A similar lawsuit has been filed against the student-fee system at the University of Minnesota.

Student representatives are unlikely to see sunshine in either of the regents' options. The Associated Students of Madison student government has argued that dismantling UW's current system, with fees collected by the university and distributed by student government, will diminish diversity and free expression on campus.

The federal panel ruled in favor of three UW-Madison students who sued the university in 1996 because they objected to using student fees to fund at least 18 student groups including the Lesbian, Gay and Bisexual Campus Center and the Wisconsin Public Interest Research Group.

All UW System students must pay fees each semester. The fees at UW-Madison this year are $404, and student groups receive about 10 cents to 30 cents from each student. ■

Search committee appointed for engineering dean; nominations sought for Bollinger's successor

An 18-member search and screen committee has been named to find a successor to John Bollinger, who will step down in July 1999 as dean of the UW-Madison College of Engineering.

W. Harmon Ray, chair of the committee, says the group will hold its first meeting in November to prepare a position description and advertisements for the national search. Ray says the committee will likely be accepting applications and nominations through February of next year. The tentative goal is to have five finalist recommendations to Chancellor David Ward before the end of the 1999 spring semester.

Ray, a professor of chemical engineering, says he would like the search to attract a proven leader capable of promoting the college's goals of education, research, technology transfer and outreach. Candidates should also have an understanding of emerging technologies that are changing engineering's future, such as biotechnology, advanced materials and high-performance computing, he says.

Nominations for the position can be sent to the search committee, secretary of the Faculty Senate, at room 133 of Bascom Hall. Committee members include:

Teresa Adams, professor of civil and environmental engineering; Susan Babcock, professor of materials science and engineering; Mary Behan, professor of comparative biosciences; John Booske, professor of electrical and computer engineering; Patricia Brennan, professor of industrial engineering and nursing; David Foster, professor of mechanical engineering; Douglass Henderson, professor of engineering physics; Leon Janssen, a manager with GE Medical Systems and member of the college's Industrial Liaison Council; Thomas Kuech, professor of chemical engineering; Lawrence Landweber, professor of computer sciences; Jessica Rannow, student; Sheri Severson, engineering academic staff; Gary Sundwen, assistant dean of the College of Agricultural and Life Sciences; Vera Tong, member of the college's Vision 2000 Leadership Council; Donald Walker, professor of engineering professional development; Hercules Wang, associate dean of the College of Letter and Sciences; and Eric Wedig, student. ■

On campus

Law school, CIMC plan open houses

Two open houses are coming up on campus:

- The Law School will sponsor its first-ever open house Tuesday, Nov. 10 in conjunction with the Midwest Association of Pre-Law Advisors (MAPLA) Law School Caravan in Memorial Union.

The caravan will offer a venue for up to 90 law schools to talk with prospective students. Anyone interested in law school, either at Wisconsin or elsewhere, is welcome to attend the open house. However, advance registration is required. To register, for more information or for a complete list of activities, call Laurel Rosseter, 262-5914, or e-mail: rosseter@facstaff.wisc.edu.

- An open house and instructional technology fair Nov. 20 will help mark the recent merger of the School of Education Computer Lab with the Instructional Materials Center.

The new Center for Instructional Materials and Computing was created through an administrative merger of the two units to provide one-stop shopping for instructional resources. CIMC is located on the third floor of the Teacher Education Building, where newly remodeled space houses the former Computer Lab.

A reception and open house will be held from 10 to 10:30 a.m. in 301 Teacher Education Nov. 20. From 10:30 to 1 p.m. will be a fair showcasing ways in which SOE faculty are integrating instructional technology into their classrooms. ■

Education Week observance features talk on standards

Academic standards, literacy and get-tough approaches to troubled schools are themes for the School of Education's second annual observance of American Education Week, Nov. 16-21.

The keynote event will be a free public lecture by Lauren Resnick, a psychology professor at the University of Pittsburgh and one of the leaders in the movement to set high academic standards for K-12 students. She will discuss the ways that classrooms, schools and school districts must be reorganized in order to support radical, sustainable education reform.

The talk is scheduled for Thursday, Nov. 19 at 7:30 p.m. at the State Historical Society. A reception will follow.

An internationally known cognitive scientist, Resnick is the co-founder and co-director of New Standards, a consortium of states and school districts that are developing a system of academic standards for American students.

Also on Thursday, Professor Jennifer O'Day of the UW-Madison educational policy studies department will give a luncheon presentation titled "Schools That Fail Our Children: Is Reconstitution the Answer?"

O'Day is researching the controversial practice of reconstitution, which involves transferring or even firing the staff of failing schools.

The luncheon will start at 11:45 a.m. at the University Club. The cost is $8; to make a reservation, call 262-5023.

On Friday, Nov. 20, a day-long symposium at the Memorial Union will be devoted to the topic "Literacy at School and in the World: Dilemmas and Directions for Today and Tomorrow." Guest presenters include Gunther Kress, a professor at the University of London and one of the world's leading scholars on language and literacy, and Jabari Mahiri, a professor at the University of California Berkeley and the author of "Shooting for Excellence: African American and Youth Culture's Role in New Century Schools."

James Paul Gee, the Tashia F. Morgridge Professor of Reading at UW-Madison, will discuss the School of Education's newly restructured program in reading licenses and literacy. Also speaking will be a panel of Wisconsin educators.

The symposium fee, which includes lunch, is $20 for the general public and $12 for UW-Madison students, faculty and staff. Members of the UW-Madison community may attend any of the individual presentations for free, but advance registration is required. To receive a complete schedule, call 262-0054.

Other events during the week include a one-day workshop titled "Reading the Americas: Latino Literature for Children and Teenagers" Tuesday, Nov. 17. For more information call 262-4477.

Also, an instructional technology fair will be held at the new Center for Instructional Materials and Computing, 368 Teacher Education Building, Friday, Nov. 20, 10 a.m.-1 p.m. School of Education faculty and staff will demonstrate uses of instructional technology. ■

NEWS MAKERS

MAN OR MOUSE MORE FAITHFUL?
When it comes to monogamy and mating for life, man could learn a lot from the male California mouse, says Deborah Blum, UW-Madison journalism professor and author of "Sex on the Brain," recently published in paperback.

Blum wrote the book long before the presidential sex scandal broke, but she acknowledges that it is more timely now than when first published in hardcover last year — particularly the chapter on monogamy, which describes research about the sexual behavior of field mice.

Blum, who discussed the book on a recent National Public Radio program and in the St. Louis Post-Dispatch (Oct. 6), says the California mouse mates early and stays with that one mate for life – unusual because monogamy in nature is the exception, not the rule. In contrast to the California mouse, the Midwest field mouse is not monogamous at all, she noted. As a former California resident turned Midwesterner, Blum declined to speculate on the reason for that difference.

SUBURBANITES TURN GREEN
Developers and conservationists are clashing in many metropolitan areas around the country as suburban governments try to decide what to do with the dwindling, increasingly valuable land near existing developments.

"We're seeing more and more of this conflict between developers and local and federal environmental regulatory agencies," said Richard Green, professor of real estate and urban land economics, in the *Chicago Tribune* (Aug. 30).

"Fighting for fewer resources and against a public anti-growth backlash, builders are scrambling to figure out where they're supposed to develop to meet ongoing housing demands."

In the same article, real estate professor Steve Malpezzi said regulators such as the Army Corps of Engineers don't have hard and fast rules about what land must be protected, especially when dealing with wetlands. "Because of the volatile nature of the housing business, builders like to reduce risks to black and white. But federal agencies like the corps often require discretion in defining what constitutes a wetland."

BUT DOES THE SUPPLEMENT AGE WELL?
New research suggests that swallowing a supplement packed with nutrients may be just as effective in preventing heart disease as sipping a good cabernet. John Folts, a UW-Madison researcher, gained nationwide media attention Oct. 21 with his announcement that tests showed "significant and encouraging" reductions in platelet activity using the supplement.

The nutrients are flavonoids, vitamin-like compounds that occur naturally in tea and in fruits and vegetables. They make blood cells called platelets less prone to clotting and act as antioxidants, countering the artery-damaging potential of highly reactive free radical chemicals.

A supplement manufacturer funded the study. Larger studies are planned. Red wine's role in warding off heart trouble was made famous by research showing that France, where red wine is a staple, has low rates of heart disease.

More campus newsmakers: www.news.wisc.edu/wire/nm.html.

A pioneer of interdisciplinary scholarship

Retired geographer explores many realms

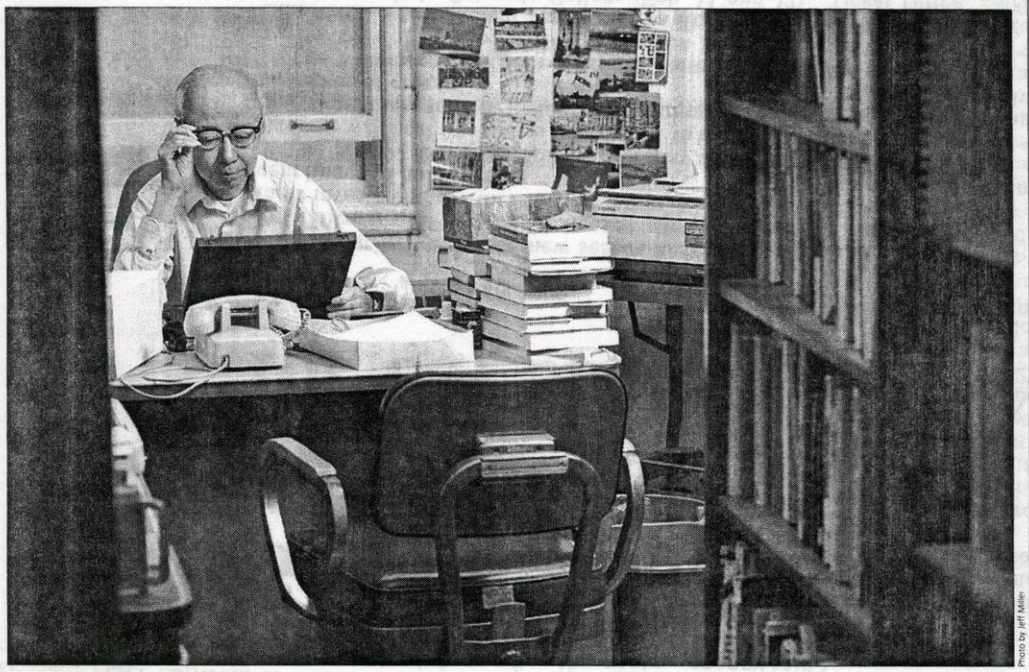


Photo by Jeff Miller

Barbara Wolff

Isn't the study of morals odd terrain for a geographer? Not for Yi-Fu Tuan, the UW-Madison Vilas and John Kirtland Wright professor of geography who recently retired.

A pioneer in interdisciplinary scholarship, Tuan's work enters and often transforms seemingly unrelated academic realms of philosophy, psychology, urban planning, landscape architecture and anthropology.

Tuan's dozen books range from the cultural role of pets to the moral implications of urban design. He has devoted his 40-plus years of scholarship to investigating how we fashion personal and cultural realities, and how that process reflects our collective and personal scenarios of a good life.

"I think the expression 'I am a camera' fits me because I am always looking," Tuan said shortly after his arrival on campus in 1983. He also served on the faculty of universities in Minnesota, New Mexico, Indiana and Canada.

"You start thinking about the meaning of your life when you reach your teens. I guess I never outgrew the subject," he says.

Indeed, Tuan began his retirement by starting to write his autobiography. Born into a diplomatic family in Tientsin, China, Tuan was educated in China, Australia and the Philippines. He received his bachelor's and master's degrees from Oxford; he earned his Ph.D. from the University of California-Berkeley.

One conclusion Tuan has reached in his scholarly pursuits is that our moral code has the potential to help unify the culture. Incorporating moral studies into the college curriculum might provide similar cohesion for higher education, he says.

"There have been enormous changes in it since I was in graduate school in the 1940s and '50s," he says. "Then, the heroes of academia included people like T.S. Eliot, C.S. Lewis and American theologian Reinhold Niebuhr, all outspoken Christians who shared that moral and spiritual orientation. Today, the measure of an intellectual is atheism, which carries conflicting and ambiguous moral imperatives and which shows no interest in divinity at all."

Embedded in America is a particular moral charge, he adds: "The United States is seen by both its own people and the rest of the world as setting an example of a better, more moral way to live."

Even with this view, he adds, "I'm always amazed at the kindness of strangers."

"I think the expression 'I am a camera' fits me because I am always looking."

For example, "When I was teaching at the University of Minnesota in Minneapolis, I got my car stuck in a snowstorm. A man on foot helped me get out, and I drove him home.

"He told me he had gone out in his car early that morning, and he too had gotten stuck. The storm forced him to leave his car where it was and continue on foot.

"While he was walking he encountered car after car — including mine — stuck in the snow and helped the drivers free their vehicles.

"Two things impressed me: That he was able to help others, even though he couldn't help himself, and that he told me this without any sense that he had done anything remarkable."

Tuan says he'll never forget that incident. It filled him, he says, with a sense of wonder he has tried to pass along to his students.

"I wanted to provide them with a framework so they could explore the world and its people. In the last analysis, the specific landscape they chose to consider was entirely up to them. But to their explorations I hope I was able to add a note of exaltation and of mystery." ■

Here is an excerpt from a recent address by **Yi-Fu Tuan** on one possible explanation for what he believes is a decline of the humanities:

"I suggest that one answer lies in the growth of postmodern critical theory, which says that the larger world is a hegemonic social construction, not worth bothering about. Even science falls under that category. Why bother with these overblown constructions when your own little construction — the unhegemonic, caring folkways of your own people — is just as good and at hand?

"When scientists deconstruct, they gain prestige. When humanists deconstruct, they lose prestige. Why the difference? I believe the answer lies again in the notion of challenge — the idea that prestige goes with difficulty overcome.

"Biological scientists have recently recognized botany and zoology as essentially social constructions, categories that arose out of the needs of a particular time. So they deconstructed them. In their place, major research universities have created an umbrella entity called the Biological Sciences, under which are organized such new subfields as molecular biology, genetic engineering and so on. By deconstructing the older categories, biologists have come up with new areas of study that make even greater intellectual demands. Hence the gain in prestige.

"By contrast, when humanists deconstruct large, overpowering figures such as Shakespeare and Newton or large entities such as society, civilizations, nation-state, and science, they make life easier for themselves: they come up with smaller units that are easier to study, that require less rather than more technical competence, less rather than more comprehensive knowledge, to master. The result is a further loss of prestige."

Regents ask for review of fees lawsuit

Erik Christianson

A recent UW System Board of Regents decision means legal proceedings will continue in a lawsuit seeking to overturn UW-Madison's mandatory student fee system.

The regents are asking the 7th U.S. Circuit Court of Appeals to rehear the case. The request came 10 days after a three-judge appeals court panel ruled that the university's mandatory student fees are unconstitutional.

The panel ruled in favor of three UW students who sued the university because they objected to using student fees to fund at least 18 student groups such as the Lesbian, Gay and Bisexual Campus Center and the Wisconsin Public Interest Research Group.

The judges said the mandatory fee system violates the First Amendment protection of freedom of belief.

In response, the regents voted in closed session Aug. 20 to request the review from the full appeals court. News reports indicated dissension among the regents about whether to appeal. In a statement released after the vote, Regent President San W. Orr Jr. did not explain the board's decision.

"They are keeping that to themselves," said UW System spokesman Peter Fox. "That's not unexpected in legal cases like this."

Higher education officials and legal experts nationwide are closely watching the UW-Madison case, saying it could have broad implications for all colleges and universities. A similar lawsuit has already been filed against the student fee system at the University of Minnesota.

All UW System students must pay segregated fees each semester with tuition, or they cannot receive grades or graduate. The fees at UW-Madison this year are $404, and student groups receive about 10 cents to 30 cents from each student.

Student government representatives from UW-Madison and the UW System lobbied the regents to seek the a full court hearing.

They said the appeals court panel decision strikes at the very heart of education, and they also criticized the lawsuit itself, saying it was planned and financed by out-of-state conservative political and legal organizations.

"This fee system is at the core of who we are as an institution," said Eric Brakken, chair of the Associated Students of Madison.

But the plaintiffs in the case and their attorney contend that mandatory fees force students to support political and ideological causes with which they disagree, thus violating their constitutional rights. U.S. District Judge John Shabaz first ruled in favor of the plaintiffs in 1996, prompting an appeal from the UW System. ■

REGENTS SUPPORT PROJECT PLANS

As part of its biennial budget request, the UW System Board of Regents requested $290 million for UW-Madison construction, including $9 million for renovating Chamberlin Hall and $7 million for utility upgrades at UW-Madison.

"We're pleased the regents incorporated the Madison initiatives in the budget," said John Torphy, vice chancellor for administration. "We are looking forward to working with the governor and the Legislature to obtain the resources we need."

UW stadium-area bars seek more time

Owners say city's limits on outdoor service could affect their post-game business

MJS, 8-12-98

By Kevin Murphy
Special to the Journal Sentinel

Madison — Camp Randall Stadium area tavern owners are huddling this week in hopes of convincing the city to lift new restrictions on outdoor beer gardens on days when the University of Wisconsin-Madison plays football.

Responding to noise, public intoxication and vandalism complaints from stadium-area residents, the Plan Commission last week enacted an 8 p.m. closing time for outdoor eating areas, or 10 p.m. for Madison games with a 5 p.m. or later kickoff time.

The restrictions were sought because permits for beer gardens had been issued on a site-specific basis, with some bars receiving permission to keep their beer gardens open until midnight, while others had been limited to 6 p.m. The widely varying hours of operation were confusing to the police and public alike, said Peter Laritson, of the city Planning and Development staff.

"The city had a laid-back attitude about outdoor eating areas and beer gardens and a number of them have been approved over the past decade, and the city counted them as part of the festive atmosphere around Camp Randall during game days. But there's been a shift in the competition. More customers and live music and bigger sound systems have been brought in, and had quite an impact on the adjacent neighborhoods," said Bill Roberts, a city planner.

All but two of the 13 stadium-area bars or groups licensed to sell alcohol already close their outdoor areas before 8 p.m. said Roberts, and the city still can grant variances to those who can make a compelling case.

Stadium Bar owner Mike Franklin said he was "upset . . . but keeping an open mind" until the Plan Commission hears his request at the end of August to reconsider the restriction on operating hours.

"If the city doesn't want us to have music after 10 p.m., we're fine with that. It's the Homecoming game we're all worried about. It has a 7:30 p.m. start time and we want people to come back here after the game just like they always have," Franklin said.

If stadium neighbors are concerned about noise and vandalism to their property, Oakcrest Tavern owner James Luedtke suggests keeping the beer gardens open, so that Bucky's fans have a place to go after the games. Closing the beer gardens early may result in fans wandering the neighborhoods causing more problems than already exist, Luedtke said.

Football Saturdays are the "gravy" to operating a restaurant business in the Regent St. area, said Luedtke, who three years ago bought a failed pizza restaurant and opened a beer and burger place that features one of the area's larger beer gardens.

Tess Mulroonev, Vilas Neighborhood Association president, said noise complaints have fallen on deaf ears in the past. The 8 p.m. closing is just what's needed in a residential neighborhood that puts up with drunks and rowdies, she said.

"We're not trying to single out the bars, but different bars have different rules applied to them and a uniform closing time would mean that one bar doesn't feel singled out," Mulrooney said.

Good teams, odd schedule for UW skaters

By Andy Baggot
Sports reporter WSJ 8/12/98

So, what will all those new season-ticket holders for University of Wisconsin hockey games get for their investment? By the looks of things, a pretty decent lineup of home games.

The 1998-99 schedule released Tuesday shows the Badgers will host five teams that played in the NCAA tournament last season, including defending national champion Michigan.

The Wolverines will join Michigan State in Madison for the College Hockey Showcase Nov. 27 and 29. Other NCAA tournament teams on the Kohl Center schedule include Colorado College (Feb. 11 and 13) and North Dakota (Feb. 27 and 28). UW will also play Yale in the semifinals of the Badger Hockey Showdown at the Bradley Center in Milwaukee Dec. 27.

UW will play its earliest opener in history Oct. 3 when Notre Dame, projected to be a force on the national scene, comes to the Kohl Center for the College Hockey Hall of Fame exhibition game.

■ Complete UW hockey schedule/5B

Another high-profile series is set for Oct. 30 and 31 when WCHA rival Minnesota comes to town.

The transition from the Dane County Coliseum (8,100 capacity) to the Kohl Center (15,100 capacity) brings a boost in attendance and amenities for the hockey Badgers, but also some scheduling conflicts with UW men's and women's basketball.

In addition to a pair of Saturday-Sunday series — Mankato State Jan. 23 and 24 as well as North Dakota — the Badgers play an uncommon Thursday-Saturday series with Colorado College. Even more unusual is the 11:05 a.m. faceoff for the second game against CC, which was done to accommodate a men's basketball game against Penn State that night.

According to figures supplied by the UW Athletic Department, nearly 6,000 individuals purchased season tickets during the month-long reseating marathon that ended for the general public Friday. The process wiped out a decades-old waiting list that included approximately 3,000 names.

"We're definitely pleased with the response from the hockey community," UW associate athletic director Vince Sweeney said.

According to figures supplied by the UW Athletic Ticket Office, 2,400 general-public seats remain for Night One games and 1,500 for Night Two. Except for a few singles, all are located in the 300 level, which is the farthest from the ice.

Sweeney said plans are being finalized for the sale of more than 2,000 season tickets to UW students. "We have to get a few more people in (the Kohl Center)," Sweeney said.

Segregated Fees

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

SCOTT HAROLD SOUTHWORTH, AMY SCHOEPKE and KEITH BANNACH,

Plaintiffs,

v.

MICHAEL W. GREBE; SHELDON B. LUBAR; JONATHON B. BARRY; JOHN T. BENSON; BRIGIT E. BROWN; JOHN BUDZINSKI; ALFRED S. DE SIMONE; LEE S. DREYFUS; DANIEL C. GELATT; KATHLEEN J. HEMPEL; RUTH MARCENE JAMES; PHYLLIS M. KURTSCH; VIRGINIA R. MACNEIL; SAN W. ORR, JR.; GERARD A. RANDALL, JR.; JAY L. SMITH and GEORGE K. STEIL, SR., all in their official capacities as members of the Board of Regents of the University of Wisconsin System,

Defendants.

MEMORANDUM and ORDER

96-C-0292-S

Plaintiffs commenced the above entitled action against defendants for declaratory and injunctive relief for the alleged violations of plaintiffs' rights to freedom of speech, freedom of association, free exercise of religion, and their rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb. Plaintiffs seek a declaration that defendants' imposition of mandatory student fees upon students enrolled as students at the University of Wisconsin is unconstitutional because it compels students to fund private ideological and political groups on the Madison campus. Jurisdiction exists pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343.

Copy of this document has been mailed to the following:

Lorena Ullman & Furlow

this 29th day of Nov. 1996

By S. Bruce

Secretary to Judge John C. Shabaz

The University of Wisconsin System

Office of General Counsel
1738 Van Hise Hall, 1220 Linden Drive
Madison, Wisconsin 53706
(608) 262-2995 FAX(608) 262-3985

Charles J. Stathas (608) 262-6166
John B. Tallmar 262-0747
Patricia A. Brady 262-6497
Edward S. Alschuler 265-2960

12/2 - Get copy to Sue TREBACH!

FACSIMILE COVER SHEET

Date: 11-2996 Time: _____

To: Susan Trebach

Department: _____

Fax #: 2-2331

From Pat Brady

Office of General Counsel
The University of Wisconsin System

If transmission is incomplete or if there are any questions, please contact the General Counsel secretary at 608/262-2995.

__ __ Pages are being sent including this cover sheet.

Message/Comments: _____

O:\COUNSEL\BAT\FAX.DOC

The action is currently before this Court on the parties' cross motions for summary judgment.

FACTS

Plaintiffs Scott Harold Southworth, Amy Schoepke and Keith Bannach are three law students currently enrolled at the University of Wisconsin Law School. Plaintiffs Southworth and Bannach are in their third year of law school while plaintiff Schoepke is a second year law student. Defendants are members of the Board of Regents of the University of Wisconsin System being sued in their official capacity. The Board of Regents governs the University of Wisconsin educational system pursuant to authority granted in § 36.09(1), WIS. STATS.

Every student at the University of Wisconsin at Madison ("UW-Madison") is required to pay a mandatory, nonrefundable fee each semester. This fee, called the segregated university fee or the segregated fee, is deposited in the state treasury upon receipt by the university. Students refusing to pay the segregated fee may not graduate or receive their grades from UW-Madison.

Section 36.09, WIS. STATS., gives both the Board of Regents and the students control over the funds generated by the segregated fee. The students' interests are represented on campus at UW-Madison by the student government organization Associated Students of Madison ("ASM"). The Student Services Finance Committee ("SSFC") exists as part of ASM to review both the internal ASM budget and the external university budgets that are funded by the

segregated fee.

The segregated fee is divided into two main [illegible] nonallocable fees and allocable fees. The nonallocable [illegible] used to fund items such as debt service, fixed operating [illegible] auxiliary operations, required reserves, the Wisconsin Union [illegible] first and second year of the recreational sports building [illegible] University Health Services. The SSFC is permitted to comment [illegible] how the nonallocable funds are distributed. However, the chancellor has ultimate authority over these funds, and the students' input concerning the distribution of the nonallocable funds is not binding upon the chancellor's decisions.

Section 36.09(5), WIS. STATS., provides:

> (5) Students. 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 governance of 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 [of regents] shall have the responsibility for the disposition of those student fees which constitute substantial support for campus student activities. The students of each institution or campus shall have the right to organize themselves in a manner they determine and to select their representatives to participate in institutional governance.

(emphasis added). The Board of Regents has determined that student responsibility for the direct disposition of student fees exists only for the allocable portion of the segregated fee. At UW-Madison, the allocable category of the segregated fee funds the General Student Service Fund ("GSSF"), the Child Care Tuition Assistance Program, the Wisconsin Union Directorate Distinguished

Lectures Series, the third year of the recreational sports budget, the ASM budget, Wisconsin Public Interest Research Group ("WISPIRG") and the United Council.

As previously stated, ASM, in conjunction with SSFC, act on behalf of the students at UW-Madison with respect to the distribution of the allocable portion of the segregated fee. All students at UW-Madison are eligible to participate in the process of reviewing and approving the allocations by running for election to ASM or SSFC. Students are also permitted to attend ASM and SSFC meetings where allocation determinations are made. The process for reviewing and approving allocations for funding is administered by ASM and SSFC in a viewpoint-neutral fashion.

Grants from the UW-Madison student government are available primarily to registered student organizations. To be eligible to register as a registered student organization, a student group must be a not-for-profit, formalized group; composed mainly of students; controlled and directed by students; related to student life on campus; abide by all federal, state, city and university nondiscrimination laws and policies; identify a student as a primary contract person for the organization; provide the Student Organization Office with the information required on the registration form; and abide by the financial and other regulations specified in the Student Organization Handbook.

Registered student organizations can seek funding from the segregated fee in one of three ways. First, a student organization can apply to the SSFC for GSSF funding. Applications for GSSF

funding are open to all registered student organizations, in addition to university departments and community based services. GSSF funding provides a source of funds for those services which provide direct, ongoing services to significant numbers of UW-Madison students. Second, registered student organizations can seek funding from ASM's Student Activity Fund. These funds also come from the segregated fee and are divided into three different types of grants: operations grants, event grants and travel grants. Finally, registered student organizations can seek funding through a student referendum, whereby the UW-Madison student body approves a specific assessment for a registered student organization by vote during a campus election.

Once ASM and SSFC have approved the disbursements of the allocable portion of the segregated fee, their decisions are sent to the chancellor and the Board of Regents for their review and approval. The Board of Regents has final authority to approve or disapprove the allocations of funds by ASM and SSFC. Student organizations receiving funding from the segregated fee do not get cash or a lump sum payment from the ASM. The organizations must submit a requisition or other appropriate business form requesting payment. An employee of the Office of Dean of Students working with ASM orders the disbursement of the money. Except for membership fees paid in lump sum to WISPIRG, United Council and other multi-campus membership organizations, no money actually goes to the student organizations to pay their bills. Employees of the organizations receiving allocations from the segregated fee receive

their salaries or stipends from the university payroll system.

Full-time students attending UW-Madison during the 1995-96 school year were required to pay the segregated fee of $165.75 each semester, for a total of $331.50. The segregated fee for each semester during the 1995-96 school year was distributed as follows:

$79.34	University Health Service
$16.51	Memorial Union and Union South
$13.42	General Student Services Fund (GSSF)
$8.20	System Audit Liability Fee
$7.78	Intramural and recreational sports
$4.76	Child Care Tuition Assistance Program
$4.28	Associated Students of Madison (ASM)
$.75	United Council
$.71	Wisconsin Public Interest Research Group (WISPIRG)
$165.75	

During the first semester of the 1996-97 school year, full-time students at UW-Madison paid a segregated fee of $190.45 for the first semester, which was distributed as follows:

$85.39	University Health Service
$48.64	Memorial Union and Union South
$20.08	Bus Pass privileges on Madison Metro Transit System
$6.48	General Student Services Fund (GSSF)
$8.12	System Audit Liability Fee
$10.89	Intramural and recreational sports
$4.56	Child Care Tuition Assistance Program
$4.63	Associated Students of Madison (ASM)
$.95	United Council
$.71	Wisconsin Public Interest Research Group (WISPIRG)
$190.45	

With funds generated from the allocable portion of the segregated fee, ASM and SSFC subsidize approximately 140 of the 623 total registered student organizations. Most of these organizations are devoted to academic, cultural or recreational pursuits. The Food Science Club, American Society of Landscape Architects, and the Recreation Education Club are random, typical examples of registered student organizations receiving

distributions. However, other registered student organizations which obtain funding from the segregated fee are organized, at least in part, to pursue political or ideological goals. Plaintiffs specifically object to the following eighteen student organizations that are funded by ASM or SSFC with proceeds from the allocable portion of the segregated fee: WISPIRG; the Lesbian, Gay, Bisexual Campus Center; the Campus Women's Center; the UW Greens; the Madison AIDS Support Network; the International Socialist Organization; the Ten Percent Society; the Progressive Student Network; Amnesty International; United States Student Association; Community Action on Latin America; La Colectiva Cultural de Aztlán; the Militant Student Union of the University of Wisconsin; the Student Labor Action Coalition; Student Solidarity; Student NOW (Students of National Organization for Women); MADPAC; and Madison Treaty Rights Support Group.

18

Plaintiffs contend that ASM and SSFC's use of the mandatory segregated fee to subsidize student organizations such as the eighteen aforementioned groups which plaintiffs allege pursue political or ideological goals violates their First Amendment[1] rights to freedom of speech, freedom of association, free exercise of religion, and their rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb. Both parties have moved for summary judgment on the constitutionality of the use of the

[1] Technically, of course, the Fourteenth Amendment is relevant for the limited purpose of incorporating the First Amendment. Thiel v. State Bar of Wisconsin, 94 F.3d 399, 404 (7th Cir. 1996) (citing McIntyre v. Ohio Elections Com'n, 115 S.Ct. 1511, 1514 n.1 (1995)).

segregated fee to fund political or ideological activity by registered student organizations.

MEMORANDUM

Summary judgment is appropriate when, after both parties have the opportunity to submit evidence in support of their respective positions and the Court has reviewed such evidence in the light most favorable to the nonmovant, there remains no genuine issue of material fact that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). A fact is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual issue is genuine only if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. Id.

In this case, the parties agree that no genuine issue of material fact exists. Accordingly, this Court is left to determine which of the moving parties is entitled to judgment as a matter of law.

Freedoms of Speech and Association

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Just as the First Amendment prohibits abridgements of the rights to speak and associate, the United States Supreme Court has recognized that among the First Amendment protections are the rights not to speak and not to associate. West Virginia State Board of Education V. Barnette, 319 U.S. 624, 642 (1943). Because the imposition of mandatory fees implicates both freedom of speech and freedom of association, the Court must consider plaintiffs' claims using a strict scrutiny analysis. Strict scrutiny provides that a state may infringe upon one's First Amendment right to freedom of speech or freedom of association if it serves a compelling state interest, unrelated to the suppression of ideas, and cannot be achieved through less restrictive means. Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292, 303 n.11 (1986).

In this case plaintiffs contend that the use of the mandatory segregated fees to subsidize student organizations that are engaged in political and ideological activities violates their First Amendment rights not to be compelled to speak and associate. Defendants argue that the mandatory segregation fee does not compel speech on behalf of plaintiffs, but rather funds fora for the expression of different views at the University of Wisconsin. To the extent that the segregated fee infringes plaintiffs' first amendment rights, defendants claim that such infringement is justified by the university's compelling interest in providing opportunities for free and wide-ranging discussion of competing viewpoints. Accordingly, the parties' arguments in this case requires the Court to strike a balance between two very significant

competing interests: the plaintiffs' constitutional right not be compelled to financially subsidize political or ideological activities balanced against the Board of Regents' authority to promote the university's educational mission by providing opportunities for the free expression of diverse viewpoints on difficult and challenging issues.

The United States Supreme Court was presented with similar competing interests in two early mandatory fee cases. In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), teachers in the Detroit school system challenged the constitutionality of an agency-shop agreement whereby teachers who declined to join the teachers' union would be subject to termination unless they paid a services fee to the union for benefits received on their part as a result of the union's collective bargaining efforts. The Abood Court held that the board of education could compel the non-union teachers to pay a services fee to the teachers' union even though they chose not to join the union. Id. at 222-23. However, the Supreme Court found that the union was restricted in the manner it used the non-union employees' service fees. The Court held that the constitutional prohibition against compelled speech and association prohibited a union from using a non-union employee's service fees to fund the expression of political and ideological views that were not germane to the union's purpose of collective bargaining. Id. at 234.

The First Amendment principles that underlie the decision in Abood were revisited by the United States Supreme Court in Keller

v. State Bar of California, 496 U.S. 1 (1990). Keller was concerned with the mandatory payment of dues by lawyers to a state bar association. The plaintiff attorneys in Keller objected to the state bar's use of their mandatory dues to fund lobbying on social issues that had little to do with the practice of law, such as nuclear weapons, abortions, prayer in public schools and busing. Id. at 15. The state bar defended its position arguing that it was authorized to fund activities "in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice." Id. (citation omitted). Affirming Abood's holding that the use of mandatory fees must be germane to the purpose of the funded organization, the Supreme Court elaborated in Keller:

> Abood held that unions could not expend a dissenting individual's dues for ideological activities not germane to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.

Id. at 13-14. "To summarize, Keller and Abood teach that the state may compel a person to support an organization if there is a sufficiently compelling reason to do so, and that the organization's use of mandatory contributions must be germane to the purposes that justified the requirement of support." Smith v. Regents of the University of California, 844 P.2d 500, 508 (Cal. 1993).

Defendants argue that the mandatory fee doctrine established by the United States Supreme Court in Abood and Keller is not applicable for two reasons. Defendants first contend that the mandatory fee doctrine is inapplicable to this case because the student organizations that are being subsidized by the segregated fee do not purport to speak for all students, unlike the union in Abood and the state bar association in Keller. This argument is without merit. An individual's rights to freedom of speech and freedom of association are protected by the First Amendment regardless of whether or not the infringement of said rights is perceived by others. Thus, the fact that the student organizations do not purport to speak on behalf of all students is irrelevant to the determination of whether or not plaintiffs' First Amendment rights have been infringed. If, as in this case, an individual is compelled to subsidize political or ideological activity with which he or she disagrees, First Amendment protections apply because the individual is being forced to support something with which he or she disagrees. Whether or not a third person attributes a student organization's political or ideological position to an individual student does not eradicate the fact that the individual student knows that he or she is financially supporting an organization that is engaging in activity which he or she finds repugnant. These concerns are identical to those that the Supreme Court considered when it developed the mandatory fee doctrine in the Abood and Keller decisions.

Defendants also contend that Abood and Keller are inapplicable

to this case because unions and bar associations do not offer the opportunity for dissenting members to work in the democratic process, unlike ASM and SSFC, the student government organizations in this case. This is a distinction without a difference. It is true that the dissenting teachers in Abood were not members of the union and therefore did not have a role in the democratic process for electing representatives for the union leadership. However, the dissenting attorneys in Keller were required to be members of the state bar association and therefore were provided an opportunity to work within a democratic system to elect their own representatives. The Keller Court did not find this distinction relevant when it affirmed its holding in Abood. Because the Supreme Court did not find this distinction to be relevant in Keller, it follows that the same distinction is also irrelevant in this Court's application of the mandatory fee doctrine.

Further support for the fact that Abood and Keller are applicable to the issues presently before this Court exists in Justice O'Connor's concurrence in the United States Supreme Court's decision in Rosenberger v. Rector and Visitors of the University of Virginia, 115 S.Ct. 2510 (1995). Justice O'Connor stated that "although the question is not presented here, I note the possibility that the [mandatory] student fee is susceptible to a Free Speech Clause challenge by an objecting student that she should not be compelled to pay for speech with which she disagrees." Id. at 2527. In support of this statement, Justice O'Connor cited both Abood and Keller, obviously believing that

Rosenberger

these cases were pivotal in determining the constitutionality of mandatory student fees being used to subsidize political and ideological student organizations. Id. Accordingly, the mandatory fee doctrine as addressed by the United States Supreme Court in Abood and Keller is applicable to facts involving a university requiring students to pay mandatory student activity fees.

The First Amendment implications of the mandatory fee doctrine were considered in the context of mandatory student fees funding political and ideological student organizations by the California Supreme Court in Smith v. Regents of the University of California, 844 P.2d 500 (Cal. 1993). In Smith, a number of students at the University of California at Berkeley ("UC-Berkeley") challenged a mandatory activity fee they were required to pay each semester. A portion of the funds generated by this fee was transferred to a student association which financed the UC-Berkeley student government as well as other student activity groups. The plaintiffs objected to funds from their mandatory student fees being used to subsidize sixteen student organizations in addition to the student government because they engaged in political or ideological activity. The plaintiffs claimed that compelling them to provide contributions to these organizations violated their rights to freedom of speech and freedom of association as guaranteed by both the California and United States Constitutions.

The Smith court began its analysis by reviewing the United States Supreme Court's mandatory fee decisions in Abood and Keller. The court then discussed the educational function of a state

university, describing it as "extremely broad; it potentially encompasses all of life." Id. at 508. Given the broad function a state university serves, the Smith court recognized the possibility that activities germane to the educational function of a university could impermissibly infringe a dissenting student's constitutional rights. Id. The California Supreme Court then reasoned that it must set a rational limit on the use of mandatory student fees in order to protect the constitutional rights of dissenting students. Id. In order to set that rational limit the court considered two court of appeals decisions involving universities using mandatory student fees to subsidize research and advocacy groups that were involved in political and ideological activities.

In Carroll v. Blinken, 957 F.2d 991 (2d Cir. 1992), students at the State University of New York at Albany ("SUNY") challenged the use of a portion of their mandatory student activity fee to fund the New York Public Interest Research Group, Inc. ("NYPIRG"), which is a statewide public research and advocacy group that spent money both on and off the SUNY campus. The Second Circuit Court of Appeals recognized that forcing students to contribute to NYPIRG was an infringement on their First Amendment rights not to be compelled to speak. Id. at 999. However, the Second Circuit found that while the on-campus NYPIRG activities were narrowly tailored to the function of the university so as to justify the infringement, NYPIRG's off-campus activities were not narrowly tailored and could not be justified as germane to the purpose of SUNY. Id. at 1001-02. Similarly, in Galda v. Rutgers, 772 F.2d

1060 (3d Cir. 1985), students challenged the university's policy of funding the New Jersey Public Interest Research Group ("NJPIRG") with mandatory student fees.[2] The Third Circuit Court of Appeals recognized that NJPIRG offered some educational benefits to students, however the court found that such benefits were incidental to the organization's primarily political and ideological purpose. Id. at 1065-67. Accordingly, the Galda court found that the incidental educational benefits NJPIRG offered were insufficient to justify the infringement of the dissenting students' speech and associational rights. Id.

The California Supreme Court determined that the cumulative holdings in Carroll and Galda, in addition to Abood and Keller, stood for three principles. First, a state university may support student organizations through mandatory student fees because the use of funds can be germane to the university's educational mission. Smith, 500 P.2d at 511. Second, at some point, the educational benefits that the funded student groups offer become incidental to the groups's primary function of advancing its own political and ideological interests. Id. Third, while the funding of those student groups may still provide some educational benefits to students attending the university, the incidental benefit to the students' education will not justify the burden on the dissenting students' constitutional rights. Id. To reiterate using strict scrutiny vernacular, a state university has a compelling

---

[2] NJPIRG is the New Jersey counterpart to NYPIRG in the Carroll case.

governmental interest in promoting the free expression of ideas on campus by funding student organizations that offer educational benefits. However, at the point where the educational benefits offered by a student organization become incidental to the organization's political and ideological purposes, the funding of said organization is no longer germane to the university's function and therefore is not narrowly drawn or carefully tailored to avoid the unnecessary infringement of dissenting students' constitutional rights.

Defendants acknowledge the existence of the California Supreme Court's decision in Smith. However, defendants contend that the Smith decision is not persuasive in this case because it is the law only in California and has been widely criticized. While it is true that the Smith decision is the law only in California and therefore not binding on this Court, it is the only decision that has considered a First Amendment challenge to mandatory student fees being used to fund student organizations engaged in political and ideological activities.[3] In support of their argument that the Smith decision has been "widely criticized," defendants cite two student written law review articles.[4] However, two critical law

---

[3] While the courts in Carroll and Galda considered First Amendment challenges to mandatory student fees being used to fund specific political organizations, Smith is the only case where students challenged the entire mandatory student fee system funding all political and ideological student organizations on First Amendment grounds. See 957 F.2d at 993-94; 772 F.2d at 1064.

[4] See Robert L. Waring, Comment, Talk Is Not Cheap: Funded Student Speech at Public Universities on Trial, 29 U.S.F. L. Rev. 541 (1995); Carolyn Wiggin, Note, A Funny Thing Happens When You

review articles written over the course of nearly four years since the Smith decision was announced are hardly sufficient to warrant the "widely criticized" label so quickly applied by defendants.

This Court finds the Smith decision to be persuasive in this case because the California Supreme Court carefully weighed the same two competing interests in Smith as are presently pending before this Court. The Smith court ultimately found that the dissenting students' First Amendment rights prevailed over UC-Berkeley's interest in promoting the free expression of ideas. The Smith holding coincides with the purposes our founding fathers acted upon when they created the Bill of Rights: to protect the individual from compelled speech or association by the government. As Thomas Jefferson once said, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." Abood, 431 U.S. at 234-34 n.31 (quoting Brant, James Madison: The Nationalist 354 (1948)). Because the Smith court recognized the importance of protecting the individual's First Amendment rights in contrast to the power of the government, its analysis is persuasive to this Court in its resolution of the instant case.

Accordingly, just as the Smith court found that the students at UC-Berkeley were forced to support groups whose primary function was to promote political and ideological activities, plaintiffs are being compelled to subsidize student organizations at UW-Madison

---

Pay for a Forum: Mandatory Student Fees to Support Political Speech at Public Universities, 103 Yale L.J. 2009 (1994).

whose educational benefits to the UW-Madison campus are incidental to some student organizations' political and ideological activities. This Court need not determine if each and every of the eighteen groups that plaintiffs specifically challenge offer educational benefits that justify the infringement of plaintiffs' speech and associational rights. As long as more than a de minimis number of student organizations are using their funding from the segregated fee to engage in primarily political and ideological activity, defendants infringement of plaintiffs' First Amendment rights cannot be legally justified.

While many of the eighteen student organizations challenged by plaintiffs provide more than incidental educational benefits to the UW-Madison campus, some of them do not. The UW Greens, the International Socialist Organization, the Lesbian, Gay, Bisexual Campus Center and the Ten Percent Society are examples of student organizations registered at UW-Madison that engage primarily in political or ideological activity. The UW Greens is a student organizations whose primary purpose is to advance environmentally related causes. Among other activities, the UW Greens sought introduction of bills in the Wisconsin Assembly, distributed literature supporting the Green Party USA and Ralph Nader for President, and was one of the organizers of a march to the State Capital where they demonstrated their opposition to Governor Thompson's budget by composting it. The International Socialist Organization's primary purpose is to promote socialism on the UW-Madison campus. While this student organization has provided some

educational benefits to the UW-Madison campus, such as co-sponsoring debates, these benefits are incidental to its purpose of advocating a political and ideological agenda. The International Socialist Organization is really no different that the College Republicans or College Democrats, all of whom are primarily concerned with promoting political and ideological positions. Similarly, the Lesbian, Gay, Bisexual Campus Center is a student organization that is primarily concerned with advancing the homosexual agenda and promoting pro-homosexual political activism. While it does offer some educational services to UW-Madison students, these services are incidental to the center's primary purpose of promoting political and ideological goals. Finally, the Ten Percent Society describes itself as a pro-homosexual group that educates members of the UW-Madison campus on issues that affect the homosexual community as well as being politically active concerning homosexual issues such as same sex marriages and domestic partner insurance. While there is some educational component to the Ten Percent Society, it clearly is secondary to the group's primary purpose of promoting its political and ideological agendas.

These four student organizations are examples of the type of student organizations at UW-Madison that are engaging in primarily political or ideological activity while being subsidized by the mandatory segregated fee. Even though the existence of these student organizations on the UW-Madison campus contributes to one of the university's functions of promoting the free exchange of perhaps controversial ideas, the primarily political or ideological

nature of these student organizations results in the likelihood of some of these groups' positions being repugnant to students who hold a differing political or ideological position. Compelling students who are strongly opposed to the positions that these student organizations advocate to subsidize these organizations which offer no more than limited, incidental educational benefits to the UW-Madison campus is not narrowly tailored to prevent the infringement of the dissenting students' First Amendment rights. The university's compelling interest in promoting the free exchange of ideas by subsidizing the political and ideological student organizations does not justify such infringement because the university has not carefully tailored the implementation of its interests so as to avoid the unnecessary infringement of the First Amendment rights of those students who disagree with the political and ideological messages being advocated by certain student organizations. This is not to say that these political and ideological student organizations cannot be funded by the segregated fees of those students who do not object. These political and ideological student organizations contribute in a limited manner to the educational function of state universities and can be funded by mandatory student fees such as the segregated fee, however, the university must provide some sort of opt-out provision or refund system for those students who object to subsidizing political and ideological student organizations with which they disagree. Because the parties have agreed to fashion their own remedy in the event a violation of plaintiffs'

constitutional rights exists, this court will not address at this time that which it believes may be that appropriate remedy.

Defendants' primary argument in support of the constitutionality of the segregated fee system is that the university is not compelling students to speak and associate with political and ideological student organizations, but rather the segregated fee is being used to create a forum for the expression of diverse views. They claim that the segregated fee provides student organizations with the means to present educational opportunities consistent with each organization's purpose, philosophy and goal. Defendants further contend that because the segregated fee creates a forum for the expression of diverse views and which are being distributed in a viewpoint-neutral manner, the mandatory segregated fee does not violate plaintiffs' First Amendment rights. "As the 'speakers corner' of Hyde Park in London provides a platform for the espousing of social, religious and political ideas by various and divergent individuals, so the student association funds provide the monetary platform for various and divergent student organizations to inject a spectrum of ideas into the campus community." Lace v. University of Vermont, 303 A.2d 475, 479 (Vt. 1973).

The United States Supreme Court has found that in some sense student activities fees constitute a forum for speech or association. Rosenberger, 115 S.Ct. at 2517. Other courts have found that a university's use of mandatory student activity fees to fund a student newspaper did not violate the dissenting students'

First Amendment rights because they provided a public forum for the students to speak and associate. See Hays County Guardian v. Supple, 969 F.2d 111, 123 (5th Cir. 1992); Kania v. Fordham, 702 F.2d 475, 479 (4th Cir. 1983); Arrington v. Taylor, 380 F. Supp. 1348 (M.D.N.C. 1974); Veed v. Schwartzkopf, 353 F. Supp. 149 (D. Neb. 1973). These cases are distinguishable from the this case, however, because they all involved challenges to campus newspapers that were being funded at least in part by student activity fees. Clearly, a newspaper is a forum whereby students may express diverse viewpoints.

In this case, there are clearly many instances where portions of the segregated fee are being used to create a forum for student organizations to express their views. However, there are a number of situations where portions of the segregated fee are being used clearly to fund political or ideological activity, not to provide a forum for the free exchange of ideas. For example, both the UW Greens and the Progressive Student Network sought the introduction of two environmental bills in the Wisconsin Assembly. WISPIRG and the UW Greens lead a march to the State Capitol to compost Governor Thompson's budget in order to demonstrate their opposition to it. WISPIRG uses student interns to lobby state legislators concerning numerous environmental issues. The International Socialist Organization organized pro-labor rallies at the State Capitol and in Congressman Scott Klug's office, in addition to participating in a demonstration around a predominantly black church in protest of speakers opposing homosexuality. These activities engaged in by

student organizations funded by a portion of the segregated fee can hardly be said to be creating fora for the exchange of ideas on the UW-Madison campus. In fact, most of these activities did not even occur on the UW-Madison campus. Furthermore, it would be distorting the facts to say that these activities, which are purely political and ideological in their nature, are offering students services or creating a forum for the exchange of ideas.

In an effort to save their forum argument, defendants argue that the segregated fees were not used to fund any political or ideological activities. Therefore, defendants contend that they are entitled to summary judgment because plaintiffs have not demonstrated that portions of the segregated fee directly funded the political or ideological activities to which plaintiffs object. This argument is without merit because whether or not proceeds from the segregated fees actually funded the political or ideological activities is irrelevant. By subsidizing overhead expenses of a political or ideological organization the university subsidizes the entire effort of the particular student group. When faced with a similar argument in the collective bargaining context in Abood, the United States Supreme Court reasoned:

> It is plainly not an adequate remedy to limit the use of the actual dollars collected from dissenting employees to collective-bargaining purposes:
> "[Such a limitation] is of bookkeeping significance only rather than a matter of real substance. It must be remembered that the service fee is admittedly the exact equal of membership initiation fees and monthly dues ... and that ... dues collected from members may be used for a 'variety of purposes, in addition to meeting the union's costs of collective bargaining.' Unions 'rather typically' use their membership dues 'to do those things which the members authorize the union to do in their

> interest and on their behalf.' If the union's total budget is divided between collective bargaining and institutional expenses and if nonmember payments, equal to those of a member, go entirely for collective bargaining costs, the nonmember will pay more of these expenses than his pro rata share. The member will pay less and to that extent a portion of his fees and dues is available to pay institutional expenses. The union's budget is balanced. By paying a larger share of collective bargaining costs the nonmember subsidizes the union's institutional activities." Retail Clerks v. Schermerhorn, 373 U.S. 746, 753-54.

Abood, 431 U.S. at 237 n.35. Accordingly, it is irrelevant whether the political or ideological activities of student organizations are directly funded with proceeds from the segregated fees. If the student organizations are subsidized at least in part with portions of the mandatory segregated fee, plaintiffs' First Amendment rights are implicated because they are being compelled to support political and ideological activity with which they disagree.

Conclusion

For the aforementioned reasons, this Court finds that the balance between the competing interests in this case tips in favor of plaintiffs' First Amendment rights not to be compelled to speak or associate. Plaintiffs have established that proceeds from the mandatory segregated fees are being used to subsidize student organizations whose primary purpose is to advance political or ideological causes. Because it has been determined that the educational benefits of some of these student organizations are only limited and incidental to their primary political or ideological purposes, the funding of these student organizations is not germane to the university's function and accordingly not

narrowly tailored to avoid the unnecessary infringement of plaintiffs' First Amendment rights.

Because this Court finds that the mandatory segregated fees violate plaintiffs' First Amendment rights to freedom of speech and association, it need not address the alleged violations of plaintiffs' First Amendment rights to free exercise of religion and their rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb.

ORDER

IT IS ORDERED that plaintiffs' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that defendants motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that judgment be entered declaring that the mandatory segregated fee policy violates the First Amendment to the United States Constitution.

Entered this 29th day of November, 1996.

BY THE COURT:

JOHN C. SHABAZ
District Judge