Supreme Court, U.S.
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No. 98-1189

In The

Supreme Court of the United States

THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, ET AL.,

Petitioners,

vs.

SCOTT HAROLD SOUTHWORTH, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF UNITED COUNCIL OF UNIVERSITY OF WISCONSIN STUDENTS, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

BELL, GIERHART & MOORE, S.C.
MARK B. HAZELBAKER
Counsel of Record
44 East Mifflin Street
Madison, WI 53701-1807
(608) 257-3764

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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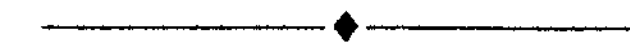
SUMMARY OF ARGUMENT

The United Council of University of Wisconsin Student Governments, Inc. (hereinafter "United Council") is the statewide association of the student governments of the campuses of the University of Wisconsin System.[1] United Council respectfully contends that the Seventh Circuit Court of Appeals erred in analyzing the student fee system at issue under the principles of First Amendment law developed in the context of union "fair share" or "agency" fees. University of Wisconsin student governments have a unique role in the governance of University of Wisconsin System institutions as the result of adoption of sec. 36.09(5), Wis. Stats. That statute empowers students to "tax" themselves through fees to finance student services which are approved by the democratic process. As such, student fees in the University of Wisconsin are a form of taxation and government expenditures, not "fair share" fees. The fees, therefore, should be analyzed under the First Amendment. Viewed as a form of taxes and government expenditures established through the student political process, student fees do not violate the First Amendment.



[1] This brief was drafted in whole by Attorney Mark B. Hazelbaker of Bell, Gierhart & Moore, S.C. No person or entity other than *amicus curiae*, United Counsel of University of Wisconsin Students, Inc. made any monetary contributions to aid in the preparation or submission of this brief.

ARGUMENT

1. INTRODUCTION

This First Amendment case arises in the context of a unique structure of university governance. The issues are critically affected by that context. This Court has recognized that the unique nature of university governance requires a different framework of analysis. In *N.L.R.B. v. Yeshiva University*, 444 U.S. 672, 100 S.Ct. 856, 63 L.Ed.2d 115 (1980), this Court held that the faculty of Yeshiva University could not form a union. The Court's opinion centered on the faculty's role in running the University through its governance system, finding that the National Labor Relations Act could not be applied in the university context. The Court wrote:

> The [National Labor Relations]Act was intended to accommodate the type of management-employee relations that prevail in the pyramidal hierarchies of private industry. Ibid. In contrast, authority in the typical "mature" private university is divided between a central administration and one or more collegial bodies. See J. Baldridge, *Power and Conflict in the University* 114 (1971). This system of "shared authority" evolved from the medieval model of collegial decisionmaking in which guilds of scholars were responsible only to themselves. See N. Fehl, *The Idea of a University in East and West* 36-46 (1962); D. Knowles, *The Evolution of Medieval Thought* 164-168 (1962). At early universities, the faculty were the school. Although faculties have been subject to external control in the United States since colonial times, J. Brubacher & W. Rudy, *Higher Education in Transition: A History of American Colleges and Universities*, 1636-1976, pp. 25-30 (3d ed. 1976), traditions of collegiality continue to play a significant role at many universities, including Yeshiva. For these reasons, the Board has recognized that principles developed for use in the industrial setting cannot be "imposed blindly on the academic world." Syracuse University, 204 N.L.R.B. 641, 643 (1973).

Yeshiva University, 444 U.S. 672, 681, 100 S.Ct. 856, 63 L.Ed.2d 115 (1980).

The principle of the *Yeshiva University* case applies in this case because Wisconsin state law has made students a part of the governance of the University of Wisconsin System and campuses. In the instant case, the Students argue that the collection of the Mandatory Activity Fee as a condition of their matriculation at a State institution and the distribution of a portion of the proceeds to the various student groups compels them to speak in support of beliefs they do not hold and infringes on their freedom to not associate with an organization with which they strongly disagree.

It is well-established that the freedom of speech and association protected by the First Amendment of the United States Constitution includes the freedom to choose "both what to say and what not to say." *Riley v. National Federation for the Blind*, 487 U.S. 781, 797, 108 S.Ct. 2667, 2677, 101 L.Ed.2d 669 (1988); *see also Wooley v. Maynard*, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977). Moreover, the United States Supreme Court has held that the First Amendment can be violated when the government compels an individual to subsidize "political

and ideological purposes," with which he or she disagrees. *Lyng v. International Union, United Auto Workers*, 485 U.S. 360, 369, 108 S.Ct. 1184, 99 L.Ed.2d 380 (1988), *Chicago Teachers Union Local No. 1 v. Hudson*, 475 U.S. 292, 301, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234-35, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977). However, the government does not violate an individual's right to free speech and association every time it collects money from citizens and spends it. For the reasons set forth below, United Council respectfully suggests that both the collection of funds through the mandatory student activity fee, and the dispersement of those funds to student organizations that may or may not be political in nature, is constitutional.

2. THE AUTHORITY OF UNIVERSITY OF WISCONSIN STUDENTS TO IMPOSE AND ALLOCATE SEGREGATED FEES IS AN ADDITIONAL BASIS UPON WHICH THIS COURT CAN CONCLUDE THAT THE UNIVERSITY'S FEE PROGRAM DOES NOT VIOLATE THE FIRST AMENDMENT.

United Council is a statewide association of the student governments at the University of Wisconsin campuses and the community colleges in the University of Wisconsin Center System. United Council advocates the interests of student governments and students in the United States Congress, the Wisconsin Legislature, before the University of Wisconsin Board of Regents (the "Regents"), and in litigation. United Council appears in the matter to supplement, but not to disparage, the argument offered by the Regents. United Council endorses the

analysis offered by the University, and believes the Seventh Circuit Court of Appeals erred in concluding that the segregated fees imposed at the University of Wisconsin-Madison violate the First Amendment.

United Council appears herein as amicus curiae for the purpose of noting an additional basis upon which the United States Supreme Court can reverse the Seventh Circuit Court of Appeals. Because of the unique legal status of student governments allocating fees in the University of Wisconsin system, the fees are essentially a form of taxation. The use of fees, therefore, should be analyzed as are government expenditures, not as "fair share dues" collected by government on behalf of private entities.

A. University of Wisconsin Students Have Been Delegated Plenary Authority Over Segregated Fees By sec. 36.09(5), Wis. Stats.

In 1973, the Wisconsin Legislature merged the former Wisconsin State University system with the former University of Wisconsin. The resulting University of Wisconsin System, created by Chapter 335, laws of 1973, serves a large student population at four-year campuses and a system of two-year centers. University Extension service provides University outreach services as part of the merger process, the Legislature adopted statutory language which balanced the need for accountability of the University as a public institution with the tradition of internal governance that had distinguished the University of Wisconsin system. The result was Section 36.09, Wis. Stats., which allocates responsibilities for various

aspects of the governance of the University system to the various players in the process. Notably for the purposes of this case, subparagraph (5) of that statute conferred unique powers upon students as active partners in institutional governance. The statute 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 immediate 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 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.

The significance of sec. 36.09(5) for the operations for the University of Wisconsin Systems soon became evident. In 1976, the Wisconsin Supreme Court decided *Student Assoc. of the University of Wisconsin-Milwaukee v. Baum*, 74 Wis. 2d 283, 246 N.W.2d 622 (1976). In *Baum*, the Wisconsin Supreme Court held that the adoption of sec. 36.09(5) transferred substantial authority to appoint student committee members to allocate University fees, from the chancellor to the students. The Wisconsin Supreme Court rejected Chancellor Baum's contention that he was not required to recognize the appointees of the Student

Government as the student representatives to the Student Fee Allocation Committee. The Supreme Court held that the Student Government was the lawfully constituted representative of the students, and therefore, the party with sole right to exercise the authority of the students under sec. 36.09(5), Wis. Stats. *Baum*, 74 Wis. 2d at 293-294.

The *Baum* opinion includes legislative history of the merger law. *Baum*, 74 Wis. 2d at 298. While the legislative history was cited in the dissent, there is no reason to doubt that the cited report, prepared by the committee which drafted the statute, should be given controlling weight in construing the statute. Most pertinently, that report stated "Students in consultation with the chancellor shall also have responsibility for the disposition of student fees where such fees constitute substantial support for campus student activities such as intra-mural sports, theater, student government, and the like." The study committee characterized students' responsibility for fees as "primary but not exclusive responsibility." *Baum*, 74 Wis. 2d at 298-299 n. 1.

Baum, therefore, held that the statute conferred the exclusive power of selecting student representatives in the allocation process on the student government, and commented that it was a right " . . . which must be free of administrative interference if it is, in reality, to be a right." *Baum*, 74 Wis. 2d at 296.

Thus, as construed by the Wisconsin Supreme Court, sec. 36.09(5), Wis. Stats., delegates to students the primary responsibility for imposing and allocating funds, and evaluating the effectiveness of programs funded by

student fees which principally concern and affect student life. United Council acknowledges that the Board of Regents ultimately impose student segregated fees. However, the Regents also act as the final arbiter of all institutional governance at the University. For example, the Regents confer diplomas upon the University's graduates; these are awarded, however, upon the "nomination of the faculty." Similarly, while the Regents have final authority to adopt student fees and adopt an allocation thereof, the student's role in determination of those fees is preeminent and amounts to effective control.

B. The Defendant Regents Impose Fees At The Behest Of Students Acting As One Element Of Shared Institutional Governance.

When the University of Wisconsin system was created in the merger process, the Legislature recognized that student needs would not be constant. The best persons to determine how to meet the needs of the current generation of students would be the students themselves. Accordingly, the Legislature gave primary authority to determine the funding of services to address contemporary concerns of students to those students themselves. As a result, the democratic process has allowed student segregated fees to be imposed by the student governments, allocated to organizations, and expended to meet needs identified by the students. Delegation to the students of the primary role in the allocation of segregated fees is a practical recognition of the fact that students are best aware of what students' interests and needs require.

Therefore, the imposition of allocable segregated fees by the University, done at the behest of student governments and their segregated fee committees, is really one element of the shared governance system which operates the University of Wisconsin system. In that system, the Regents are the final arbiter, but the faculty, the chancellors, system administration, and the students all play significant roles. Each of these actors have certain responsibilities in which their authority is primary. Each must exercise their primary authority with attention to the secondary interests of the others. The amalgamation of these interests, and roles, governs the University of Wisconsin. It is a dynamic, creative process which has allowed the University of Wisconsin to continue to offer excellent education, while meeting the needs of the constantly changing student body.

C. The University of Wisconsin-Madison, and its Board of Regents Act as a State Agency.

Under Wisconsin law the University of Wisconsin-Madison, and its Board of Regents, is an arm or agency of the state. *See*, Ch. 36, Wis. Stats., *State ex rel. Thomson v. Giessel*, 271 Wis. 15, 19, 72 N.W.2d 577 (Wis. 1955); *Board of Regents of University of Wisconsin System v. Mussallem*, 94 Wis.2d 657, 669, 289 N.W.2d 801 (1980) ("The University of Wisconsin Madison, an arm of the state, is a member of the University of Wisconsin System . . . "). Moreover, courts in multiple jurisdictions have held that a university and its officers, including its Board of Regents, is an arm of the state, much akin to a state agency. *Boyett v. Troy State University*, 971 F.Supp. 1403, 1410 (M.D. Ala.

1997), *aff.*, 142 F.3d 1284 (11th Cir. 1998), *reh. en banc denied*, 152 F.3d 937 (11th Cir. 1998), *cert. denied*, 142 L.Ed. 661, 119 S.Ct. 799 (1999); *Armstrong v. Meyers*, 964 F.2d 948 (9th Cir. 1992), *Stevens v. Thames*, 204 Ala. 487, 488, 86 So. 77 (Ala. 1920); *Cox v. Board of Trustees of the University of Alabama*, 161 Ala. 639, 648, 49 So. 814 (Ala. 1909); *Ingraham v. Wright*, 525 F.2d 909, 912 (5th Cir. 1976), *cert. denied*, 421 U.S. 952 (1976); *Blanton v. State University of New York*, 489 F.2d 377, 382 (2nd Cir. 1973).

D. The Student Activity Fee Scheme Should Be Analyzed as a Tax for First Amendment Purposes.

The Seventh Circuit Court of Appeals, relying on *Rosenberger v. University of Virginia*, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995), held that the activity fee scheme utilized by the Board of Regents at the University of Wisconsin could not be viewed as the appropriation of public funds through taxation. *Southworth v. Grebe*, 157 F.3d, 732 (7th Cir. 1998) (Rovner, J. dissenting), *petition for cert. granted*, (U.S. March 29, 1999) United Council respectfully suggests that the Court of Appeals' interpretation of *Rosenberger* with respect to whether the student activity fee equaled a tax is misplaced.

In *Rosenberger*, this Court emphasized that the student activity fee, with its goal of opening a forum for speech and recognizing the diversity and creativity of students was quite different from an impermissible tax in aid of sectarian religion. *Rosenberger*, 515 U.S. at 841. Thus, the majority opinion focused upon whether the activity fee scheme served as an appropriation that

directly and specifically aided religion, not whether the fee, in general, could be equated with a tax.

The fee scheme in the instant case is very much like a tax, in that the university, acting as an arm of the state, compels all University of Wisconsin-Madison students to pay the fee. *Id.* at 873 (Souter, J., dissenting). Admittedly, the Rosenberger court analyzed the student fee exaction under the Establishment/Free Exercise Clause of the First Amendment. However, the holding is relevant to the instant case, which arises under the Free Speech and Association clause. The analysis should be no different here, since the funding methods used by the University of Virginia in *Rosenberger* and the University of Wisconsin in the instant case are essentially the same. In neither instance do the objecting plaintiffs have the right to opt out of funding governmental services with which they disagree.

In *Erzinger v. The Regents of the University of California*, 137 Cal.App.3d 389, 187 Cal.Rptr. 164 (Cal. Ct. App. 1982), *cert. denied*, 463 U.S. 1133, 77 L.Ed.2d 1368, 103 S.Ct. 3114 (1983), the court upheld a policy at the University of California which funded health services including abortion services and pregnancy related counseling through mandatory student fees. The plaintiffs contended that the policy violated their First Amendment rights in that it forced the students to subsidize a practice they found repulsive and a violation of their religious beliefs. *See id.* at 391.

The court disagreed, likening the collection of the mandatory student fees to a tax and holding that the University, as an extension of state government had the

authority to spend the money as it saw fit: "The right to free exercise of religion does not justify refusal to pay taxes." *Id.* at 393. The court continued: "the superior court properly found 'as a matter of law the Regents have the legal authority to assess mandatory student fees and utilize those fees for the benefit of its student population. . . . " *Id.* at 393-94. *Erzinger* was followed in federal court by *Goerhing v. Brophy*, 94 F.3d 1294, 1302 (9th Cir. 1996), *cert. denied*, *Goehring v. Del Junco*, 520 U.S. 1156, 137 L.Ed 495, 117 S.Ct. 1335 (1997).

The Supreme Court of New Hampshire reached a similar conclusion in *Wuelper v. University of New Hampshire*, 112 N.H. 471, 298 A.2d 747 (N.H. 1972). In *Wuelper*, students objected to the University of New Hampshire's decision to use funds obtained from its mandatory student activity fee to pay the costs of speeches to be given at the university by the "Chicago Three." *See id.* at 472. The students claimed that funding the speeches through the activity fee violated their rights of free political association. *See id.* Although the court dismissed the case because it did not present a claim which would justify a declaratory judgment, the New Hampshire court considered the student activity fee a tax. *See id.* at 478.

3. THE INSTANT CASE SHOULD BE ANALYZED UNDER THE DOCTRINE OF "GOVERNMENT SPEECH."

The government does not violate the First Amendment in all situations where it compels an individual to subsidize speech. In fact, this Court has emphasized that there is considerable latitude for government speech. *See*

Kamenshine, *Reflections on Coerced Expression*, 34 Land & Water L. Rev. 101, 103 (1999); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. at 833. According to *Rosenberger*, "when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes." *Id.* The "government speech" doctrine tells us that "a governmental agency may use unrestricted revenue, whether derived from taxes, dues, fees, tolls, tuition, donations, or other sources for any purposes within its authority. *Keller v. State Bar of California*, 496 U.S. 1, 17, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). This is especially true within the context of the state university system. Indeed, within that context, "government (in this case the Board of Regents authorizing the collection of the activity fee and the student government that distributes the proceeds to student organizations) may abridge incidentally individual rights of free speech and association when engaged in furthering the constitutional goal of 'uninhibited robust and wide-open expression.' " *Kania v. Fordham*, 702 F.2d 475, 480 (4th Cir. 1983), *quoting New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 720, 11 L.Ed.2d 686 (1964), *see generally Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (certain incidental infringements of rights of association constitutional in context of federal campaign finance statute tailored ultimately to enhance openness of political discussion and activity).

A. The Test for Government Speech is Rational Relationship to a Legitimate Governmental End.

Since the government must speak in order to govern, it may use tax revenues such as student fees and tuition for speech activities "rationally related to a legitimate governmental objective." *See generally Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547-48, 76 L.Ed.2d 129, 103 S.Ct. 1997 (1983). Labeling the legitimate governmental objective "political or ideological" does not alter the way in which a court must analyze such a case. *See generally, American Party of Texas v. White*, 415 U.S. 767, 39 L.Ed.2d 744, 94 S.Ct. 1296 (1974); *Common Cause v. Bolger*, 574 F.Supp. 672 (D.C. 1982), *aff.*, 461 U.S. 911, 77 L.Ed.2d 744, 94 S.Ct. 1296 (1974). Simply put, so long as the government bases its actions on legitimate goals, "government may speak despite citizen disagreement with the content of its message." *Muir v. Alabama Educational Television Commission*, 688 F.2d 1033, 1050 (5th Cir. 1982) (Rubin, J., concurring); *cert. denied*, 460 U.S. 1023, 75 L.Ed.2d 495, 103 S.Ct. 1274 (1983).

In *FCC v. League of Women Voters of California*, 468 U.S. 385, 82 L.Ed.2d 278, 104 S.Ct. 3106 (1984), this court conceded that almost every legislative appropriation would, to some extent, involve a use to which some taxpayers may object. "Nevertheless," this Court noted, "this does not mean that those taxpayers have a constitutionally protected right to enjoin such expenditures." 468 U.S. at 385 n. 16; *see also Pacific Gas and Electric Co. v. California P.U.C.*, 475 U.S. 1, 24 n. 3, 89 L.Ed.2d 1, 106 S.Ct. 903 (1986) (Marshall, J. concurring).

B. The Fee Scheme Utilized by the University of Wisconsin-Madison is Rationally Related to A Legitimate Governmental End.

The premise that the purpose of a university, especially a state-funded, public university is to foster and increase the overall exchange of information, ideas, and opinions on the campus is not a strange concept in jurisprudence involving the efficacy of mandatory student fees and the organizations and publications they support. *See Healy v. James*, 408 U.S. 169, 180, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972) ("the college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.' "); *Windmar v. Vincent*, 454 U.S. 263, 267 n. 5, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603, 87 S.Ct. 269, 70 L.Ed.2d 629 (1967); *Southworth v. Grebe*, 157 F.3d, 1124, 1125 (Rovner, J. dissenting) (Numerous courts have recognized that the free expression of a wide range of ideas is central to the educational mission of a university, teaching students to think for themselves and to separate the 'wheat from the chaff' ").

Because the instant case clearly implicates the "government speech" doctrine, and because the fee scheme utilized by the University of Wisconsin-Madison is rationally related to further a legitimate governmental end, United Counsel respectfully suggests that this court should reverse the judgment of the Seventh Circuit Court of Appeals.

4. ANALYSIS UNDER *ABOOD-KELLER* IS IMPROPER.

The students contend, and the Seventh Circuit Court of Appeals found, that the student fees collected by the University of Wisconsin-Madison, were analogous to the union and state bar dues analyzed by the Court in *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) (Stewart, J., plurality opinion), and *Keller v. State Bar*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). United Council respectfully suggests that while there may exist a "substantial analogy" between the relationship of a state bar government and its members and the relationship between unions and their members, the student governments and University system have nothing in common with unions and state bars imposing "fair share dues," collected under the mandate of the government. In the case of "fair share dues," a citizen is forced by law to transfer income from the party who earns it to a union or organization. In essence, the government compels a private individual to transfer money to another non-governmental organization.

In this case, the student governments are acting as a part of the government, not as a private voluntary association outside of the government which has been able to induce the government to use its coercive power to impose and collect fees on its behalf. Because the student share part of the institutional governance of the University of Wisconsin, the students' decisions, made in the student political process, to adopt and impose student fees, and allocate them to the services deemed appropriate, are part of a *governmental* process, *not an associational* one.

Moreover, the fact that the University of Wisconsin-Madison, endeavors to foster a "marketplace of ideas" through its collection and distribution of student fees further separates the instant case from "fair share" fee cases such as *Abood* and *Keller*. In *Abood*, the plaintiffs contended that they had no control over the union's communications, and that the communications the union engaged in were one-sided presentations of the 'Union viewpoint.' "The mandatory fees in *Abood*, therefore, enhanced the power of one, and only one, ideological group to further its political goals." *Rounds v. Oregon State Board of Higher Education*, 166 F.3d 1032, 1038 (9th Cir. 1999). In contrast, the student activity fee and funding process at the University of Wisconsin-Madison "increases the overall exchange of information, ideas and opinions on the campus." *Id.* In addition, university students, unlike union or integrated bar members, did not specifically pay their fees to the groups in question. Instead, students paid the fee to the student government, which, in turn used the money for its own activities and for the support of well over 100 student organizations. *Southworth*, 157 F.3d at 1125. Thus, contrary to union and state bar activities, "the speech of the offending groups can hardly be attributed to the student government, which funds groups of radically different views." *Id.* That being the case, the First Amendment burden that demanded protection for objecting dues shop or state bar members in *Abood* and *Keller*, "simply has no precise counterpart in the very different student fee context." O'Neil, *Student Fees and Student Rights: Evolving Constitutional Principles*, Journal of College and University Law, Winter, 1999. Because the fee scheme in the instant case

has nothing in common with the "fair share" dues found in *Abood* and *Keller*, United Council suggests that in analyzing the student fees at issue, the fees should be analyzed as governmental appropriations, not as fees exacted by government by the behest of a non-governmental association. Under that analysis, the "governmental speech," not the *Abood-Keller* standards, apply.

To allow students to opt out of financing the government on the grounds that they disagree with the object of the government's action is not a vindication of their First Amendment rights. Rather, it is a destruction of the rule of the majority. It is unacceptable to allow taxpayers, in this case, fee payers, to decide which services they wish to support and which they do not. That would erode majority ruling and leave an atomistic, ungovernable situation.

Finally, we point out that construing student fees as the government appropriations they were intended by the Legislature to be, fulfills the Legislature's purpose of allowing students to assure that their needs, as today's generation of students, are met. The world, though it may stay the same in some ways, is always changing. Students today confront issues unheard of by their predecessors just 20 years ago. Section 36.09(5), Wis. Stats., empowers students to identify needs that are immediate to them, but of which the administration may be totally unaware. It provides an element of responsiveness, while involving an authority which encourages responsibility.

For the reasons stated in this argument, United Council respectfully urges this Court to find that the student fee allocation program constitutes "government

speech," and that as such, the University Board of Regents have great discretion in collecting fees and distributing them.

CONCLUSION

The United Council of University of Wisconsin Student Governments, Inc., respectfully requests that the United States Supreme Court reverse the decision of the Seventh Circuit Court of Appeals and remand the case with directions that judgment be entered dismissing the complaint.

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Respectfully submitted,

BELL, GIERHART & MOORE, S.C.

MARK B. HAZELBAKER
State Bar No. 1010302
Attorney for United
Council of University of
Wisconsin Students, Inc.
With Johnathan McCaskill,
Law Clerk

Address:

P.O. Box 1807
Madison, WI 53701-1807
(608) 257-3764