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IN THE
Supreme Court of the United States

THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN, *et al.*,
Petitioners,

v.

SCOTT HAROLD SOUTHWORTH, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 75 national and international unions with a total membership of approximately 13,000,000 working men and women, files this brief *amicus curiae* with the consent of the parties as provided for in the Rules of this Court.[1]

[1] No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

1. This Court's mandatory fee cases through *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), define, in a wide variety of contexts, the First Amendment interests at stake when the government requires individuals to financially support certain kinds of group activities. While the settings vary from one mandatory fee case to the next, all the cases follow an essentially similar factual pattern. First, individuals who share some common (non-geographical) interest are required by the government to pay a fee used to further a common interest of the fee-paying group. Second, nothing more is required of the individuals than the payment of a fee, although, in order to participate in decisions on how the fee is spent, it may be necessary for an individual to join an organization receiving the fees. Third, at least some portion of the fee eventually goes for expressive activity, as determined by some organization other than the government. And, finally, some fee payers object to paying either the entire fee or that portion of the fee going for expressive activity.

In delineating the right of objecting fee payers to refrain from financially supporting certain activities, the mandatory fee cases through *Glickman, supra,* establish three basic propositions:

> *First*, mandatory financial support of expressive activity is *not* the same as "compelled speech" in that the fee payer is *not* required to personally repeat an objectionable message, to use his or her own property to convey an antagonistic ideological message, or to be otherwise publicly identified with another's message.
>
> *Second,* there is no broad First Amendment right to refrain from financially supporting an organization on the ground that the organization engages in expressive activity.

> *Third,* there is a First Amendment interest in refraining from financially supporting those expressive activities that conflict with one's freedom of belief, and this interest is protected by a right to refrain from financially supporting ideological activities that are not germane to furthering the common interest that justifies the mandatory fee.

2. The approach of this Court's mandatory fee cases through *Glickman, supra,* applies to the particular setting presented by the mandatory student fee at the University of Wisconsin used to finance a limited public forum for expressive activity by a variety of student organizations.

There is no dispositive legal difference between mandatory fees that finance a forum for expressive activities and mandatory fees that otherwise further expressive activities. In both cases, the connection between the fee payer and the expressive activities is purely financial, rather than personal. In both cases, even the financial connection between the fee payers and the expressive activities may be more or less remote depending on the number of organizational levels the fee passes through before ultimately being used for expressive activity. And, in both cases, the content of the expressive activity is not determined by the government.

3. At the same time, the public forum aspect of this case is highly relevant to a correct application of the mandatory fee cases' "germaneness" standard. The government in general, and a public university in particular, has a legitimate interest in providing a forum for the expression of views by individuals and organizations. And, once the government has provided such a forum it is required to make the forum available on a content-neutral basis. Here opening the forum on a content-neutral basis requires that student organizations be allowed to draw upon the fund created by the mandatory student fees with-

out regard to the political or ideological nature of the organizations' expressive activity. That being so the governmental interest in providing a forum for student organization speech and doing so on terms that meet constitutional standards justifies financing the forum through a mandatory student fee.

The court below thus misapplied the "germaneness" standard of this Court's mandatory fee cases in determining that mandatory student fees may not be used to finance groups that engage in political or ideological expressive activity. Such activity is germane to the purpose of creating a forum for the expression of a wide variety of views by student organizations.

ARGUMENT

This case, like the line of mandatory fee cases in this Court through *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), concerns "compelled financial support of group activities," *Lathrop v. Donohue*, 367 U.S. 820 (1961), and objections by one or more of the fee payors to providing such financial support.[2]

In this instance, University of Wisconsin students are required to pay both tuition and a student fee. A portion of the latter is set aside to fund a wide variety of student groups and their activities. This student fee fund provides grants only to registered student organizations. To be registered, a student organization must be a not-

[2] *See Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956); *Lathrop, supra*; *Machinists v. Street*, 367 U.S. 740 (1961); *Brotherhood of Railway Clerks v. Allen*, 373 U.S. 113 (1963); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986); *Communications Workers v. Beck*, 487 U.S. 735 (1988); *Keller v. State Bar of California*, 496 U.S. 1 (1990); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991).

tor-profit, formal group, controlled by students and composed mainly of students. Pet. App. 106a-107a. As one would expect at a university, many of the funded organizations, it appears, engage in expressive activities such as sponsoring speeches and movies and publishing news letters on a wide variety of subjects.

Respondents—university student feepayers—have stated an objection to funding some particular organizations that "engage in political and ideological speech." Pet. App. 20a. Those organizations include some that lobby off-campus on legislative issues of interest to their members, and others that engage in advocacy speech and keep their members informed on specfiic political/legislative issues. Pet. App. 19a-20a (specifying that certain of the named organizations lobby, that others publish a voters guide, that others advise their members how to work against certain legislation, and that others publish documents giving their views concerning the capitalist system, the death penalty, welfare reform, *etc*).[3]

A. This Court's mandatory fee cases through *Glickman, supra*, and this case have the following characteristics in common:

(1) Individuals who share some (non-geographical) common interest by virtue of their occupation, affiliation, or other objective circumstances are required by the government to pay certain fees;[4]

[3] We do not understand there to be anything in this case, however, touching on direct student organization involvement in partisan political elections.

[4] Where the common interest is geographical and the mandatory fee is collected for and spent by a governmental subdivision—even, it appears, one with limited authority, such as a water district or school board—this Court has indicated that the compelled fee is to be considered a tax. *Keller*, 496 U.S. at 13 (where the "members and officers [of a 'traditional state agenc[y]'] are . . . such

(2) the fees go into a fund later expended in whole or part for expressive activity;

(3) usually, the individuals required to pay the fees also have some role, if they choose to exercise it, in determining how the fees are expended or choosing the officials who make that determination, although doing so may require active involvement in a membership or membership-like organization;

(4) at the same time, the only required connection between the individual and any later expressive activity is the connection between the fee, the fund into which it is initially paid, and the ultimate expenditure; depending on the precise governmental scheme, this money trail may trace a more or a less circuitous route from the fee payment to the organizational expenditure in question, with the result that the financial connection may be more or less attenuated; and

(5) one or more individuals objects to group expenditures on expressive activities traceable to the mandatory fees, and on that basis seeks to avoid payment of the fee in whole or in part.[5]

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because they are citizens and voters," any fees collected are "public funds".) And, as *Keller* makes clear, objecting taxpayers do *not* have any right to object to the use of their taxes for activities with which they disagree. *Id.*

As we explain later, the taxpayer/feepayer distinction regarding the rights of individuals with a conscientious objection to group uses of their funds turns on the nature and the strength of the governmental interest in the one instance and in the other, and not on any difference in the nature of the objecting feepayers' or objecting taxpayers' interest. *See* pp. 15-19, *infra*.

[5] It is worth noting that in this case, the objecting students are objecting *only* to the speech of particular student organizations. They have no objection to "associating" with the University as an institution but instead have voluntarily chosen to do so. And while the students would presumably rather obtain their education free than pay for it, they do not contend, nor could they, any constitutional right to attend the University for free.

The question posed by the prior mandatory fee cases—and by this case as well—is whether the First Amendment protects the objecting feepayers' right to avoid paying for certain ultimate group expenditures, and, if so, for which ones. And, the central propositions of law relevant to answering that question were summarized most recently in *Glickman, supra*, as follows:

First, the Court's "compelled speech case law"—*e.g.*, *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 632 (1943); *Pacific Gas & Elec. Co. v. Public Utilities Comm'n of Cal.*, 475 U.S. 1 (1986)—is "clearly inapplicable" to the mandatory fee cases as long as:

> The use of assessments . . . does not require respondents to repeat an objectional message out of their own mouths, require them to use their own property to convey an antagonistic ideological message, force them to respond to a hostile message when they would prefer to remain silent, or require them to be publicly identified with another's message. [*Glickman*, 521 U.S. at 470-471 (citations and internal quotation marks omitted).]

It is thus to the point here that the objecting university students are not required to repeat any message out of their own mouths, or to post any message on their homes or property, or to respond to any hostile message. The advocacy to which respondents object is in no way associated with the objectors; rather, the student fees are first collected by the University, then deposited in state accounts, and then distributed to myriad student organizations, which then speak and advocate strictly in their own names. Pet. App. 15a-17a, 101a, 102a, 105a.

Second, there is *no* "broad First Amendment right not to be compelled to provide financial support for any organization that conducts expressive activities." *Glickman*, 521 U.S. at 471.

Third, and finally, there *is* a "First Amendment *interest* in not being compelled to contribute to an organization whose expressive activities conflict with one's 'freedom of belief.'" "*Glickman*, 521 U.S. at 471 (emphasis added). But that interest does *not* generate an absolute First Amendment protection against making the contribution even where the nature of the expressive activity and the connection between that activity and the objector's compelled fees can be said realistically "to engender [such a] crisis of conscience." As the *Glickman* Court stressed, "our cases provide affirmative support for the proposition that assessments to fund a lawful collective program may sometimes be used to pay for speech over the objection of some members of the group." *Id.* at 472. The point of limitation is not at group expressive activity but, as *Glickman* states—drawing on *Keller, supra*, and *Abood, supra*—at the "expend[iture of] a dissenting individual's dues for ideological activities not 'germane' to the purpose for which compelled association was justified." 521 U.S. at 473.

Thus, where there is a group of individuals so situated that they necessarily have common interests, and there is a legitimate governmental interest in bringing the group together in that regard, requiring group funding of activities "germane to the purpose for which compelled association was justified," *Glickman*, 521 U.S. at 473, does *not* violate the First Amendment.[6] And this is so even

[6] "[I]n an industrial society . . . an association with others is compelled by the facts of life." *Street*, 367 U.S. at 775-76 (Douglas, J., concurring). Thus, lawyers in a state, producers of certain products, employees of the same employer in the same industry, and student in the same university will, in the nature of things, be affected in their common role by common circumstances, whether they commonly fund activities affecting those circumstances or not. Economists call "a number of individuals with a common interest" a "latent group." M. Olson, *The Logic of Collective Action* (1964),

where the funded group activities can be characterized as expressive, political or ideological. *Id.*

B. In this case, the dispute between the parties—and between the Seventh Circuit panel and the dissenters in that court from the denial of rehearing *en banc*—centers in doctrinal terms upon whether the foregoing set of legal principles applies where the compelled fee takes the form of a student fee that is devoted to funding on a viewpoint-neutral basis student-controlled organizations that then use the moneys received for a myriad of purposes, including political and ideological advocacy. The panel viewed this case as analogous to the other mandatory fee cases, and applied a standard derived from *Lehnert, supra*. The University and the dissenting judges, in contrast, maintain that because the University is required under a separate line of cases culminating in *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995), to provide access for student groups to a fund derived from mandatory student fees that is distributed to student-run organizations—including religious and political advocacy organizations—on a viewpoint-neutral basis ,the analysis developed in the mandatory fee cases through *Glickman, supra*, is entirely irrelevant. On this approach, students can be required to fund through student fees the organizations that have an affirmative First Amendment right of access to use of those government-generated fees under this Court's tripartite forum analysis. *See* Petition for a Writ of Certiorari at 14-15; Pet. App. 3a-4a (Rovner, J., dissenting); 7a-12a (Wood, J., dissenting).

at 8, and note that public good considerations may necessitate some degree of compulsion to assure that the affected individuals fairly finance the costs of meeting their collective circumstances. *Id.*, at 76.

In our view, the Court need not move to a new paradigm to decide this case. Rather, applying the established mandatory fee analysis outlined above—with the flexibility and sensitivity to the particular purposes and structural details of various mandatory fee schemes we believe the Court's jurisprudence contemplates—yields the same result as the *Rosenberger*/tripartite forum analysis put forward by the University and the *en banc* dissenters.

As the above summary indicates, the First Amendment right to opt out of paying mandatory fees for political and ideological activities is a narrow one, triggered only when those activities are not "germane" to the "purpose for which compelled association was justified." *Glickman*, 521 U.S. at 473. Where—as here—that purpose necessarily includes—by constitutional fiat—providing various subgroups of the large "latent group" equal access rights to speech-enhancing facilities, political and ideological advocacy by such self-defined subgroups through use of those facilities is necessarily "germane" to the collective endeavor. In that circumstance, the line of cases culminating in *Glickman, supra*, permit such expenditures from funds created through the collection of mandatory fees.[7]

In other words, the "forum" aspect of this case is fairly seen as a factor relevant in applying the mode of analysis already developed by this Court in the line of mandatory fee cases culminating in *Glickman* rather than a consideration calling for a new mode of analysis. And, applying that analysis here yields the conclusion that mandatory fees may be used to provide a "forum" for speech, equally accessible by members of the group paying the fee, without creating in any realistic sense any "conflict with [any fe payor's] 'freedom of belief,'" *Glickman*, 521 U.S. at 473, as we now show.

B. Petitioners' departure point in arging for a separate approach to mandatory fee cases in which the fees support speech activity on a viewpoint-neutral basis is the contention that such subsidization cannot be distinguished from the provision of physical facilities for speech activities often required by the public forum doctrine. Petitioners draw upon this Court's precedents holding that those facilities must also be made available on a viewpoint-neutral basis if broadly available for expressive purposes at all. *See generally, e.g., Healy v. James*, 408 U.S. 169 (1972); *Lamb's Chapel v. Center Moriches School District*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981) (all facilities-access cases). And, petitioners' ultimate point is that applying a mandatory fee analysis to forum-creation cases would yield absurd results, for each student paying tuition could equally well

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[7] We note that the panel below applied an analysis derived from *Lehnert, supra*, rather than from *Glickman*. But *Glickman* is both later and more compresensive. The *Lehnert* analysis is particularly adapted to the scheme of our labor relations statutes, and does not easily translate to other circumstances. And, while the portion of the *Lehnert* opinion stating the standard relied upon by the panel decision below was for five members of the Court, one member of that majority, Justice Marshall, went on in a separate opinion to indicate that his concurrence in that portion of *Lehnert* was partial. 500 U.S. at 534 (Opinion of Marshall, J.) (dissenting from the portion of the plurality opinion most relevant here regarding whether lobbying expenses are broadly chargeable to objecting feepayers, and joining in Part II of the plurality opinion only "otherwise"—*viz.*, only to the extent that it is consistent with Justice Marshall's own analysis of the lobbying expenditures.); *id.* (describing the *Lehnert* plurality's three-part standard in the negative rather than affirmative, indicating an understanding that all three mentioned conditions need *not* obtain before lobbying expenditures are chargeable.) Given both considerations we believe that it is *Glickman* that provides the most authoritative statement of the applicable principles, albeit in general terms, and we proceed accordingly in briefing the instant case.

claim a crisis of conscience in being required to support, in part, the university's physical facilities.

It is quite true that a university program for distributing funds to student-run organizations on a viewpoint-neutral basis because required to do so by the First Amendment's affirmative protection of speech in a limited public forum is no more nor less a subsidy of private speech than a program providing free access to buildings or outdoor spaces for the same reason. In both instances, student tuition or student fees are aiding in some limited way the communication of messages from organizations of students to other students and, on occasion, to legislators and to the general public.[8] And, in both instances,

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[8] We can conceive of no basis for distinguishing between tuition payments and mandatory student fees (such as the instant "segregated fee," Pet. App. 101a), for the purpose of determining the opt-out rights of students who object to expenditures made with those payments of fees. The segregated fee is required as a condition of attending the University and, once collected, is deposited in state accounts. Pet. App. 100a. And while a committee of the Associated Students of Madison, the University of Wisconsin student government, has a role in allocating those portions of the aggregated segregated fees that are distributed to student organizations, the Chancellor and the Board of Regents must approve all such grants. Pet. App. 109a-110a.

This symmetry between ordinary tuition payments and the segregated fee suggests that if objecting students must be permitted to refuse to pay a portion of the segregated fee because grants are made for political and ideological advocacy to which the students object, then a similar right to opt out of a portion of tuition payments where those payments support political and ideological speech to which a student objects on conscientious grounds must be provided as well. Expenditures made from ordinary tuition payments could, for example, include expenditures for lecture series by political figures advocating on political issues, as well as funds for experiential education, including work-study participation in advocacy organizations. Just as the "International Socialist Organization . . . advocated the overthrow of the government" by arguing for "Revolution Not Reform [; r]eforms within

neither the university nor any general organization of students is communicating any political or ideological message; all the speech that occurs is in the name of, and is easily identified by listeners with, an organization made up only of voluntary members. In sum, given the neutrality of the fund distribution process here, Pet. App. 106a, and the parallel neutrality required by the First Amendment where facility usage is at issue, *see Widmar, supra* and *Healy, supra,* in both instances the connection between the objecting feepayers and the speech to which they object is so attenuated as to raise no realistic "crisis of conscience." *Glickman,* 521 U.S. at 472.

At the same time, it can also be said that in three different respects—each highly relevant to analyzing objecting feepayer First Amendment claims—such forum-creating mandatory fees, whether the forum created is physical or financial, are very much of a piece with other mandatory fees:

First, it is generally true that the connection between the feepayers and the objected-to expression in the mandatory fee cases (as opposed to the compelled speech cases) is *only* one of money. In the union fee cases, for example, that connection is quite attenuated, albeit perhaps one step less attenuated than here. The feepayers are not required to be members of any organization, and the members of the organization whose political and ideological speech is at issue do not purport to speak for the objecting fee payer but only for the membership. *See generally Labor Board v. General Motors,* 373 U.S. 734, 742-43 (1963).

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the capitalist system cannot put an end to oppression and exploitation," Pet. App. 19a, so a professor in the classroom or a speaker in the university auditorium might similarly argue, or might argue instead for imprisoning those who advocate revolution.

Where the *only* connection between an individual and organizational speech is financial, there is no basis for third parties to attribute the organization's views to the objecting feepayer. *Cf. PruneYard Shopping Center v. Robins*, 447 U.S. 87 (1980)) (no realistic fear that the views of protesters in a private shopping mall would be attributed to the mall owner); *Rosenberger*, 515 U.S. at 841-42 (no realistic fear that the religious views of a student publication would be attributed to the University where the publication speaks in its own name, albeit with the use of University-provided services).

Such a purely financial connection, indeed, is little different from the one created where a consumer buys a service or product at a fixed price from a company which then uses a portion of its profit to lobby or make political contributions.

Second, the money-trail connection between the objecting feepayer and the speaker in the mandatory fee cases can vary in length and complexity depending on particular circumstances and *not* on whether the case involves a mandatory student fee. In the union context, once again, the mandatory fee may go to a local union which itself engages in no political or ideological activity but which is required, as a condition of affiliation with a national organization which does engage in such activity, to pay over a portion of the mandatory fee to the national as "per capita tax." *Cf. Lehnert*, 500 U.S. at 523-34. On the other hand, a university could well deposit student fees, or some portion thereof, directly in a student government account rather than, as here, in a state account. We doubt that the appropriate mode of analysis —as opposed to the result obtained in applying that analysis—should turn on the number of layers of decision-makers or fee depositories between the objecting feepayer and the speech to which he or she objects.

Third, while it is true that a union or a bar association ordinarily spends its moneys to forward its own views rather than, as here, distributing funds on a viewpoint-neutral basis, it is also true that the *government* is not prescribing the union's or the association's message or allocating money to the organization on any viewpoint basis. Given that the First Amendment's proscriptions run against the government, *not* against private entities—and that the original "freedom of belief" cases on which *Abood, supra*, and its progeny are based were concerned with *government*-prescribed orthodoxy—the compelled fee cases through *Glickman, supra*, and this mandatory student fee case cannot easily be said to be different in kind.

The sum of the foregoing is this: In the mandatory fee cases through *Glickman, supra*—as well as in this forum case and its physical forum analog—the individual feepayers' claim of a governmental-imposed "crisis of conscience" or infringement of "freedom of belief" is in its essence the same claim of the same character and the same strength. And, in the mandatory fee cases through *Glickman*, this Court, while recognizing that such objecting feepayers claims may sometimes have constitutional validity, has found such claims wanting where the group political or ideological expenditures are germane to the purpose for which the government has mandated that similarly-situated persons finance projects that necessarily affect the group. *Glickman*, 521 U.S. at 473. We submit that this "germaneness" analysis leads to the conclusion that the objecting student feepayers' claim here is wanting as well.

C. In considering how the "germaneness" standard operates in the present forum-creation situation, we begin with an analogy to the most basic forum-creation situation—the creation of a traditional public forum by a state or local government.

Under this Court's tripartite forum analysis, streets and parks generally open to the public must be available for expressive use, including political and ideological advocacy, by organizations and individuals. *See, e.g., Hague v. CIO*, 307 U.S. 496 (1939) (public parks must be available for advocacy speech by labor organization); *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992) (public streets must be available for parade by racist organization, despite the substantial costs incurred by the taxpayers as a result.) While in some instances there may be no added cost to the public fisc from such usage, in many instances there is an added cost, for police protection, clean-up, maintenance, and for other event-specific expenditures. *Forsyth County*, 505 U.S. at 134-35. And, that cost may not be recoupable from the speaker or advocacy group. *Id.* at 136. The net result is that a portion of the taxes paid by taxpayers may be used to subsidize speech by private groups they abhor.[9]

This Court, as we have noted, has made it clear that as a general matter taxpayers have *no* constitutional right to a refund of that portion of their taxes used to finance speech (or other activities) with which they disagree:

> Government officials are expected as a part of the democratic process to represent and to espouse the views of a majority of their constituents. With countless advocates outside of the government seeking to influence its policy, it would be ironic if those charged with making governmental decisions were not free to speak for themselves in the process. If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it would be radically transformed. Cf. *United States v. Lee*, 455 U.S. 252, 260 (1982). [*Keller*, 496 U.S. at 12-13.]

[9] This same result comes about too where the government affirmatively subsidizes the speech of private groups not to enhance the government's own voice but to promote a multiplicity of voices. *See, e.g., National Endowment for the Arts v. Finley*, 118 S. Ct. 2168 (1998).

While this analysis assumes that the government is using the taxes to speak on its own behalf, the Court's cases take the same approach where the government collects taxes and then distributes a portion of the taxes to promote a multiplicity of voices or facilitate the speech of private individuals. *See FCC v. League of Women Voters of California*, 468 U.S. 364, 385 n.16 (1984); *Buckley v. Valeo*, 424 U.S. 1, 91-92 (1976).[10]

The reason why taxpayers may not reduce their tax payments if they object to the use of their tax moneys to advance views with which they disagree is *not*, it bears emphasis, that there is any distinction from the *objecting individual's point of view* between being required to pay through a tax system for political and ideological activities with which he or she disagrees and being required to pay for such activities through a mandatory fee system not applicable to the citizenry at large.

Whether the individual is paying taxes to a small city or tuition and student fees to the University of Wisconsin (which is larger than many small cities and charges tui-

[10] For example, we assume that when the Court held last term that the National Endowment for the Arts has broad authority to make content-based decisions in using government funds to finance private art projects, *National Endowment for the Arts v. Finley*, *supra*, it was not reserving *sub silentio* the possibility that individual taxpayers could obtain a refund if they found one or more of the projects funded was inconsistent in its viewpoint with their own political beliefs.

tion and fees higher than many individuals' tax bill), he or she may have precisely the same objection to the use of the money to finance political or ideological speech with which he or she disagrees. And, the connection between the money and the speech is basically the same as well: The individual pays money under compulsion into a general fund and some of that money that finds its way into the hands of a person or organization that makes expenditures on political or ideological expression.

The basis for the conclusion that individuals cannot opt out of paying taxes for "freedom of belief" reasons must inhere, instead, in the other side of the "germaneness" equation: Given the relatively weak nature of any First Amendment interest in withholding otherwise valid financial exactions on the basis of conscientious objection to the eventual use of the money, the interest in providing democratic and effective governance for the individuals who live in the area covered by the particular governmental unit overrides any individual's right to abstain.[11]

[11] We note that the "germaneness" standard may, however, still state a valid limitation in the tax situation, at least in theory: A taxpayer may have reason to object if a governmental subdivision spends funds on political and ideological issues that are beyond that subdivision's area of substantive and geographical concern.

We realize that this Court has never recognized a right in individual taxpayers to a rebate of a portion of their taxes on "freedom of belief" grounds. We realize too that there may never be any occasion to address the question, because the scope of expenditures by governmental bodies is ordinarily controlled by statute so that expenditures on matters not germane to the body's substan tive and gographical authority are likely to be *ultra vires*. And we realize, as well, that private political and ideological organizations, in contrast, are usually free to spend their funds as they see fit, and indeed governmental interference could constitute an affirmative interference with freedom of speech.

But we believe that our basic point holds—under the governing law as we understand it, individuals can be compelled to contribute toward political or ideological expression with which they may disagree only to the extent that the entity receiving and distributing the funds does not go beyond "the cause that justified bringing the group together." *Abood*, 431 U.S. at 222-22, *quoting Street*, 367 U.S. at 778 (Douglas, J., concurring).)

All of the foregoing is true here as well. A student fee fund to finance grants to student organizations—and student organization expressive activity—on the basis of neutral eligibility criteria—and viewpoint neutrality—furthers an important governmental purpose derived from the First Amendment as interpreted in *Healy, supra, Widmar, supra* and *Rosenberger, supra*—a purpose that is parallel, as noted above, to the maintenance through taxation of traditional public fora.

"The quality and creative power of student intellectual life . . . [is] a vital measure of a school's influence and attainment." *Rosenberger*, 515 U.S. at 836. It is thus, sound and proper for a public university to foster "thought and experiment," *id.* at 835, among its students by "expend[ing] funds to encourage a diversity of views from private speakers," *id.* at 834. At the same time, the public university "may not discriminate based on the viewpoint of private speakers whose speech it facilitates." *Id.* at 834.

This nondiscrimination rule addresses a "danger . . . to speech from the chilling of individual thought and expression," which the *Rosenberger* Court perceived to be "especially real in the University setting." *Id.* at 835. Sensitive to that "danger," the University of Wisconsin set neutral criteria for determining which student organizations would be eligible to draw upon its mandatory student fees fund. In this regard, the University wisely chose not to navigate the "distinction between, on the one hand, content discrimination, which may be permissible, if it preserves the purposes of that limited forum, and, on the other hand, view point discrimination, which

is presume impermissible when directed against speech otherwise within the forum's limitations," *id.* at 829-830, and to eschew any exclusion of a student organization from funding based on its political or ideological activity —an exclusion that inevitably would be taken as "cast[ing] disapproval on particular viewpoints of [those] students," thereby "risk[ing] the suppression of free speech and creative inquiry," *id.* at 836.

There can be no doubt, then, that it is proper for a public university to provide for a student organization expressive activities program as a whole. And, where such a program is open to student organizations generally and provides a benefit to the student community as a whole, it is equally plain that it is proper to finance the program through a mandatory student fee. The mandatory fee cases through *Glickman* stand for the proposition that, where those conditions of universality are met, requiring each member of the benefitted group to pay his/her share of the cost is justified by the "cause that . . . bring[s] the group together." *Abood*, 431 U.S. at 222-223. And, as *Rosenberger* makes clear, the financing of student organization political and ideological speech is germane to such a program as a whole in the most basic sense—providing financing on an equal basis is essential to the program's constitutional validity.

For these reasons, treating political and ideological speech as generating an opt-out right for students who disagree with this or that student organization's viewpoint is radically inconsistent with the proper effectuation of the student organization activities program as a whole—and with its constitutional validity. A public university may not limit a student organization's use of a physical public forum, such as an auditorium or lecture hall, in proportion to the student objections to providing indirect financial support to the propagation of the organization's political or ideological views. By the same token, a public university may not limit in such a proportion a student organization's access to student organization activities funds that would be available on the fund's neutral criteria on the basis of student objections to the organization's political or ideological expression. Yet that is precisely what the objecting students here demand.

CONCLUSION

For the reasons stated above, the judgment of the United States Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

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