

VIEWPOINT NEUTRALITY: The Crucial Legal Concept in Assessing Mandatory Fees at Public Colleges and Universities

In two major cases, the U.S. Supreme Court has ruled that “viewpoint neutrality” governs both the distribution of student fees and the question of whether students may opt out of paying a mandatory fee. In the first case, *Rosenberger v. Rectors of the University of Virginia* (1995), the Court ruled that the University of Virginia violated the free speech rights of the student journalists producing a Christian campus newspaper when it denied that paper funding because of its “religious” views. In the second case, *Board of Regents of the University of Wisconsin System v. Southworth* (2000), the Court ruled that individual students have the right not to pay fees that fund groups they find objectionable if the university distributed money in a “viewpoint discriminatory” manner. In these cases taken together—*Rosenberger* and *Southworth*—the Court identified a vital constitutional

principle that always must decide student fee disputes at public colleges and universities: a viewpoint neutrality that stands opposed to its opposite, “viewpoint discrimination.”

Viewpoint neutrality is a well-known concept in First Amendment law. It stands for the idea that when government actions implicate the speech rights of groups and individuals, those actions must be done in an even-handed way. They may not discriminate **based on the message advocated**. Thus, a city has the power to prohibit all speakers from using bullhorns to amplify their speeches on public streets at three o'clock in the morning. If the city allows Republicans to make such speeches at that hour, however, it may not forbid Democrats from doing so too. Such viewpoint discrimination would be a deviation from the constitutional requirement of viewpoint neutrality. Viewpoint discrimination occurs when the government uses its power to advance one person's opinion over another's in such matters as religion, politics, and belief.

Rosenberger and *Southworth* establish the principle that a state university or college must distribute funds collected by mandatory student fees in a viewpoint neutral manner. State universities and colleges violate the right of free expression guaranteed by the First Amendment if they deny funding to a group because of the viewpoint it advocates, or if they require students to pay into a system whose official policies prohibit religious or political

Viewpoint Neutrality

groups from receiving school funding. If a state university or college forbids its officials or agents from considering a group's viewpoint when deciding whether to fund it, then the school may require all students to pay fees. Together, the rulings show clearly that (1) any student organization at a state school that is denied funding because of its views can sue claiming viewpoint discrimination; and (2) students may opt out of funding an objectionable group only if the state university does not distribute its money in a viewpoint neutral manner.