

This issue has inspired ample discussion about the enumerated individual rights granted by the First Amendment to the United States Constitution that Congress (and now the states) shall make no law abridging a citizen's freedom of speech and press. Those questions, while seemingly relevant to this issue upon a cursory analysis, are in fact not before us today. At no point has the government in the form of the university or the ASUO moved to censor, prevent or prohibit the publication of the Student Insurgent, and we do propose that here.

The sole question at hand, to the exclusion of all others, is whether we who are responsible for the equitable and reasonable distribution of the student incidental fee, are compelled even beyond our own will to pay for the publication in question.

The most relevant source of precedent appears to be the United States Supreme Court decision of *Board of Regents of the University of Wisconsin v. Southworth*. In *Southworth* the Court held, *inter alia*, that the university could order students to pay incidental fees even when those fees fund speech that the students find offensive. That holding dealt with the relationship between the university and its students, versus the relationship between a student governing body and a student organization. In other words, if a student filed a grievance against the ASUO or the university requesting a refund of their incidental dollars because the Student Insurgent offended them, *Southworth* rules succinctly against the student. But because the Court did not there address the extent to which a student governing body has control over the distribution of its own funds, that holding is inapplicable to this case.

In the second major holding of *Southworth* the Court struck down a provision which permitted the direct de-funding of a student group through a student-wide referendum process because it provided no protections under the standard of "viewpoint neutrality." The Court did not define "viewpoint neutrality" but instead pointed toward its prior decision in *Rosenburger v. Rector and Visitors of the University of Virginia* for guidance. In that decision the Court provided an ambiguous description of "viewpoint neutrality" which is most succinctly described by the Center for Campus Free Speech which says, "Viewpoint neutral criteria for evaluating funding proposals would only consider factors that are NOT tied to viewpoint such as...relevance to mission."

Because the second *Southworth* holding deals more closely with the relationship between students (here through their governing body at the ASUO) and an offensive student group which they wish to de-fund, it is the relevant holding here. Thus the central question of whether the ASUO is capable of de-funding the Insurgent turns on whether the process has been undertaken in a "viewpoint neutral" fashion.

At no point has the Court indicated that to remain "viewpoint neutral" the ASUO is compelled to fund any and all funding requests that come before it. Therefore the Court has permitted the ASUO to exercise some kind of standard to reject requests for funding or to reconsider its prior awards. The *Rosenburger* Court provides guidance that the requesting program must contribute to the mission and goals of the university. The inference therefore is that the body which governs the incidental fee (the ASUO) has the discretion to decide whether the level of a group's contribution is sufficient to warrant the award of incidental dollars.

Southworth also states, "it is not for the Court to say what is or is not germane to the ideas being pursued in an institution of higher learning." *Southworth*, at 232. The Court has therefore left the question of what is germane to the university's mission and

goals to be decided by the school itself. By extension the ASUO therefore retains that discretion through its mandate to govern the incidental fee.

To summarize our position, the Supreme Court's requirement of "viewpoint neutrality" permits the ASUO to de-fund the Insurgent if it judges that the group does not contribute to the mission and goals of the university.

The Insurgent's March issue was inflammatory, divisive, and designed to provoke people on an emotional rather than an intellectual level. As such, it detracted from – rather than contributed to – the university's goal of promoting discourse about important issues. The content of the issue was offensive not only toward certain specific religious and spiritual values, but more broadly toward any basic sense of decency or taste. Moreover, the images prominently displayed in the March issue dispensed with all civility in their consideration of the opposing side's position. Finally, the images provided no basis for any kind of alternate interpretation and were ultimately erroneous to whatever debate the Insurgent claims it was originally trying to advance.

Based on the above reasons we conclude that the March issue of the Student Insurgent detracted from the mission and goals of the university and its publisher is therefore legally eligible for de-funding under the standard of "viewpoint neutrality."

We resolve:

1. The Student Insurgent should issue a formal, written, and sincere mass apology to all citizens who were offended by the images contained in its March edition.
2. If the Student Insurgent fails to render such an apology, the controller will estimate the amount of incidental dollars which were spent on the March issue and then freeze that amount from the Insurgent's 05-06 budget, or if that budget contains insufficient funds the controller will freeze that amount on July 1, 2006 from the Insurgent's 06-07 budget.

Resolved in full session this 24th day of May, 2006.

ASUO Student Senate