

Case 1

The University of Wisconsin, like many other public universities, charges students an activities fee of several hundred dollars, about \$12 of which goes directly to various student organizations. In 1997 three law students at the University, who describe themselves as conservative Christians, sued the University, charging that the activities fee violates their constitutional First Amendment right of free expression. According to the law students, the activity fee forces them to pay for the support of organizations on campus they oppose on political, ideological, and religious grounds, such as the Lesbian Gay Bisexual Center, the Campus Women's Center, and Amnesty International. In September of 1998 a three judge panel of the U.S. Court of Appeals for the Seventh Circuit ruled in favor of the three law students.

Referring to the decision of the court, Scott H. Southworth, one of the three students, said: "It's a real victory for students around the country regardless of their political beliefs. No one should be forced to pay for speech and activities they oppose." Along the same line, Jesse H. Choper, Professor of Constitutional Law at the University of California, Berkeley, said: "A student at a state university cannot be compelled by a condition of being a student to pay student fees that go to support political or ideological beliefs that the student disagrees with."

Supporters of the University's position regard the idea behind the preceding statements as overly broad. If one takes this idea to its logical conclusion, they contend, it applies not only to student organizations but also to the classroom as well. Such, in turn, according to the supporter's of the University's position, leads to a patently unacceptable conclusion -- that a student who disagrees on political, ideological, or religious grounds with positions expressed in class by a professor has a right to receive assurances from the university that none of the student's tuition payments will be used to pay the professor's salary. Such assurances, the supporters of the University's position contend, would irreparably undermine the University as an institution of higher learning and diminish the educational experience of students. The same point, they say, applies to student organizations. In this connection, Donald A Downs, Professor of Political Science and Law, at the University of Wisconsin, says that while student fees should not be used for political purposes, student organizations are a key part of the university's educational function. Just as a publicly funded university offers courses taught by faculty with differing viewpoints, says Professor Downs, so also the university environment should support student groups with diverse political and ideological viewpoints.

The three judge panel of the Seventh Circuit Court of Appeals did not say that the University is barred absolutely, under the First Amendment, from funding private groups that engage in political or ideological advocacy. The court held, however, that the University should devise a system that appropriately accommodates the rights of

students who oppose various groups on political or ideological grounds. In this regard, the three law students who sued the University proposed that it put in place a procedure that would make it possible for individual students to indicate the specific organizations they do not want their activity fees to support. Supporters of the University's position object that this procedure would be an expensive nightmare to administer for the University of Wisconsin System, with its more than 150,000 students.

The Board of Regents of the University of Wisconsin has voted unanimously to request a rehearing by all of the judges on the Seventh Circuit Court of Appeals of the decision of the three judge panel.