Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM *v.* SOUTHWORTH ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 98–1189. Argued November 9, 1999– Decided March 22, 2000

Petitioner, Board of Regents of the University of Wisconsin System (hereinafter University), requires students at the University's Madison campus to pay a segregated activity fee. The fee supports various campus services and extracurricular student activities. In the University's view, such fees enhance students' educational experience by promoting extracurricular activities, stimulating advocacy and debate on diverse points of view, enabling participation in campus administrative activity, and providing opportunities to develop social skills, all consistent with the University's broad educational mission. Registered student organizations (RSO's) engaging in a number of diverse expressive activities are eligible to receive a portion of the fees, which are administered by the student government subject to the University's approval. The parties have stipulated that the process for reviewing and approving RSO applications for funding is administered in a viewpoint-neutral fashion. RSO's may also obtain funding through a student referendum. Respondents, present and former Madison campus students, filed suit against the University, alleging, *inter alia*, that the fee violates their First Amendment rights, and that the University must grant them the choice not to fund RSO's that engage in political and ideological expression offensive to their personal beliefs. In granting respondents summary judgment, the Federal District Court declared the fee program invalid under *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209, and *Keller* v. *State Bar of Cal.*, 496 U. S. 1, and enjoined the University from using the fees to fund any RSO engaging in political or ideological speech. Agreeing with the District Court that this Court's compelled speech precedents control, the Seventh Circuit concluded that the program

was not germane to the University's mission, did not further a vital University policy, and imposed too great a burden on respondents' free speech rights. It added that protecting those rights was of heightened concern following *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, because if the University could not discriminate in distributing the funds, students could not be compelled to fund organizations engaging in political and ideological speech. It extended the District Court's order and enjoined the University from requiring students to pay that portion of the fee used to fund RSO's engaged in political or ideological expression.

Held:

1. The First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech, provided that the program is viewpoint neutral. The University exacts the fee at issue for the sole purpose of facilitating the free and open exchange of ideas by, and among, its students. Objecting students, however, may insist upon certain safeguards with respect to the expressive activities they are required to support. The Court's public forum cases are instructive here by close analogy. Because the complaining students must pay fees to subsidize speech they find objectionable, even offensive, the rights acknowledged in *Abood* and *Keller* are implicated. In those cases, this Court held that a required service fee paid by nonunion employees to a union, *Abood, supra,* at 213, and fees paid by lawyers who were required to join a state bar association, *Keller, supra,* at 13–14, could be used to fund speech germane to those organizations' purposes but not to fund the organizations' own political expression. While these precedents identify the protesting students' interests, their germane speech standard is unworkable in the context of student speech at a university and gives insufficient protection both to the objecting students and to the University program itself. Even in the union context, this Court has encountered difficulties in deciding what is germane and what is not. The standard becomes all the more unmanageable in the public university setting, particularly where, as here, the State undertakes to stimulate the whole universe of speech and ideas. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. The vast extent of permitted expression also underscores the high potential for intrusion on the objecting students' First Amendment rights, for it is all but inevitable that the fees will subsidize speech that some students find objectionable or offensive. A university is free to protect those rights by allowing an optional or refund system, but such a system is not a constitutional requirement. If a university determines that its mission is well served if students have the means to engage

in dynamic discussion on a broad range of issues, it may impose a mandatory fee to sustain such dialogue. It must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, is the requirement of viewpoint neutrality in the allocation of funding support. This obligation was given substance in *Rosenberger* v. *Rector and Visitors of Univ. of Va., supra,* which concerned a student's right to use an extracurricular speech program already in place. The instant case considers the antecedent question whether a public university may require students to pay a fee which creates the mechanism for the extracurricular speech in the first instance. The University may sustain the extracurricular dimensions of its programs by using mandatory student fees with viewpoint neutrality as the operational principle. There is symmetry then in the holding here and in *Rosenberger*. Pp. 9–14.

2. Because the parties have stipulated that the University's program respects the principle of viewpoint neutrality, the program in its basic structure must be found consistent with the First Amendment. This decision makes no distinction between campus and off-campus activities; and it ought not be taken to imply that when the University, its agents, employees, or faculty speak, they are subject to the First Amendment analysis which controls in this case. Pp. 15–16.

3. While not well developed on the present record, the referendum aspect of the University's program appears to permit RSO funding or defunding by majority vote of the student body. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. Pp. 16–17.

151 F. 3d 717, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, THOMAS, and GINSBURG, JJ., joined. SOUTER, J., filed an opinion concurring in the judgment, in which STEVENS and BREYER, JJ., joined.