Fee Fighters

Should students be forced to subsidize campus activism?

By RiShawn Biddle

As a law student at the University of Wisconsin, Scott Southworth had to pay $165.75 per semester to support campus groups selected by the student government. Among the beneficiaries were several political groups, including the Green Party and WISPIRG, the local arm of Ralph Nader's national network of "public interest research groups" (PIRGs). Southworth, a former chairman of the College Republicans and member of the Christian Legal Society, was not pleased.

He was even less pleased when he learned he had no right to choose which groups would receive his contribution. So when the university refused to refund his money, Southworth and two classmates took the school and 18 campus groups to court. "I didn't think it was right that the university forced us to pay for student activities with which we disagreed," recalls Southworth, now a researcher for the Wisconsin state legislature. "It wouldn't matter if it was 5 or 10 cents. It's the principle."

The suit, *Southworth v. Grebe*, was filed in April 1996 by an affiliate of the Alliance Defense Fund, a Christian legal group. In August 1997, U.S. District Court Judge John Shabaz found in Southworth's favor, and the Court of Appeals for the 7th Circuit upheld the decision in August 1998. The judges not only supported Southworth's contention that the fees violated his First Amendment rights but struck down the university's argument that subsidizing political activities was "germane" to its educational mission.

The next stop is the U.S. Supreme Court, which will consider Southworth's case before the end of next year. If the Supremes side with him, scores of public universities will be forced either to stop such subsidies or to create check-off systems that allow students to direct where their fees will go.

The Wisconsin case is only one skirmish in a long feud over the constitutionality of using public universities' student activity fees to fund political groups.

In the late '70s, for instance, a group of students at the University of California at Berkeley challenged the use of student fees; their case, *Smith v. California*, resulted in a 1993 ruling by the California Supreme Court that the state university system could not fund political groups. A year after Southworth filed his suit, four students at the University of Minnesota sued to kill all funding for political groups, except a voluntary fee for that state's PIRG.

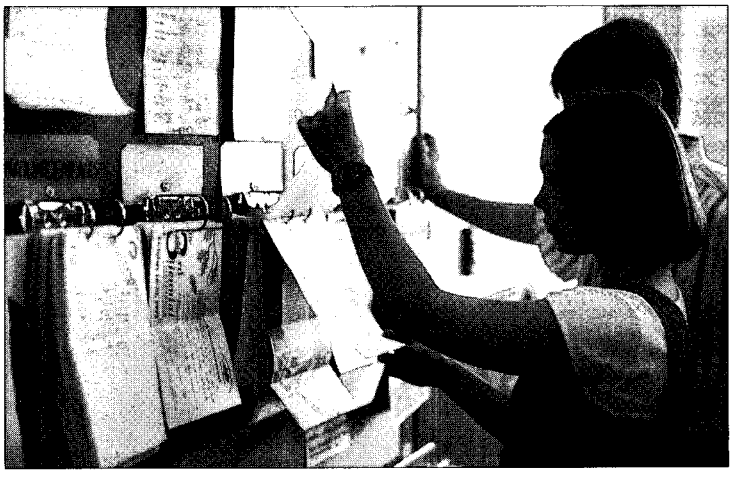
In 1998, a group of students sued Miami University of Ohio for the right to opt out of their fee system, which they say violates the equal access guidelines set by *Rosenberger v. University of Virginia*, the case that allowed religious groups to receive activity fees. And at the University of Oregon, Fritz Von Carp and 11 other former students have waged a four-year court battle to stop the flow of funds to OSPIRG, their local chapter of PIRG.

The Oregon case awaits the outcome of *Southworth*, the first such challenge to reach the Supreme Court. While most lower courts have ruled in the universities' favor, the anti-fee forces have enjoyed some victories, especially regarding PIRGs. (Many colleges have established special subsidies just for PIRGs, and these have been a popular target.)

Indeed, there's every reason to believe Southworth will win his case. Traditionally, the Supreme Court has taken a dim view of arrangements similar to student activity fees. For instance, in *Abood v. Detroit Board of Education* (1977), the Court told the Detroit teachers union it couldn't divert dues paid by nonunion employees to political activities unrelated to collective bargaining. "The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights," the Court declared. "For at the heart of the First Amendment is the notion that an individual should be free to believe as he will...be shaped by his mind and his conscience rather than coerced by the State." Thirteen years later, in *Keller v. State Bar of California*, the Court made a similar ruling regarding bar association dues.

Anthony Caso, general counsel for the Pacific Legal Foundation, the public interest law firm that handled *Smith*, believes *Keller* is a very strong precedent. All that's different, he says, "is that it's happening on college campuses. Technically, it should not be."

Administrators and sub-



Dues Blues: Fee supporters claim funding political groups with student fees is a necessary part of college life.

sidized activists beg to differ. They claim mandatory fees help foster the free exchange of ideas. Giving them money, they say, is no different from letting political clubs meet in classrooms or rally on campus greens. Indeed, for Ivan Frishberg, spokesman for the PIRG-allied Center for Campus Free Speech, the fees are an "essential" element of the "marketplace of ideas on campus." Eric Krauss of Associated Students, the student government for Wisconsin's Madison campus, pushes the position even further. "You can't choose to opt out," he declares, striking a communitarian note. "You come here, you accept the responsibility to be a citizen." Because "such a wide variety of ideas are subsidized by fees," he adds, Southworth's suit "really threatens the vibrancy of our student life here."

While no doubt heartfelt, such a claim is a wild exaggeration. Students have engaged in all sorts of political activity since the dawn of the republic, their efforts surviving mostly on their wits and ingenuity. They have gotten by without compulsory support before, and they can get by without it now.

But if student life will remain "vibrant" regardless of whether fees are yanked from political groups, the fears of the pro-fee forces are well-grounded on another level. While *Southworth* might not threaten the breadth and depth of campus speech, it could hit some specific campus groups in the pocketbook. In 1996, the University of Wisconsin gave more than $109,000 to groups at its Madison campus, including $49,500 for WISPIRG. At the University of Oregon, OSPIRG received nearly $400,000 in a three-year period. It seems highly unlikely that those groups will be able to convince students to pony up that much voluntarily.

The Oregon case, incidentally, doesn't turn on ideology, and it undercuts activists' claims that the anti-fee movement is a right-wing plot to defund the campus left. The mover behind the case, student Fritz Von Carp, is no conservative. Indeed, he defines himself as a "moderate" and is a former editor of OSPIRG's newsletter. Von Carp resigned after he decided the organization was dedicating too much student money to off-campus activities, such as its annual report on toy safety. In another campus newspaper, Von Carp and fellow student Owen Rounds wrote a series of exposés detailing irregularities in OSPIRG's financial reports, complaining that the group rarely spent money on campus issues, and alleging that it and another PIRG had formed a virtual slush fund.

When they couldn't convince the University of Oregon's administration and student government to end OSPIRG's subsidies, Von Carp, Rounds, and 10 other students sued the university and the two PIRGs. The case, filed in 1995, now lingers in the 9th Circuit, awaiting the Supreme Court's *Southworth* decision. Von Carp says he's not as interested in eliminating the fees as he is in letting students make donations based on their own interests.

Students engaged in political activity have gotten by without compulsory support before, and they can get by without it now.

"I'm offended," he explains, "by the fact that I don't get to choose."

But supporters of activity fees insist that choice should not be an issue. After all, they argue, every activity—from the campus women's rights center to the chess club—might entail an ideology to which one may raise objections. Says Krauss, the student government member at the University of Wisconsin, "People can be opposed to the chess club because it advocates a strategy of war."

Things have reached a strange impasse indeed when a chess game is compared to lobbying for specific legislation such as a clean water bill. Until the Supreme Court makes its ruling, all the various participants in this debate can do is wait. For his part, Scott Southworth maintains that there's nothing wrong with supporting political groups. But which groups will receive an individual's money, he adds, should be "something that each student decides for him or herself." ◆

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Dial 'O' for Outrage: The Sequel

Tales from an overlawyered America

By Walter Olson

When the news came this spring that famed non-murderer O.J. Simpson had struck a deal to cut broadcast ads for a lawyers' referral service, I figured that there went my last chance to make a living as a professional satirist of our legal system. Simpson as a 1-800-number TV pitchman was a better rebuke to the state of American law than any farce or skit I could have dreamed up, and it had the extra edge of being true.

That development reinforced my resolve to stick in the future to simple chronicle. Satire, after all, achieves its ludicrous effects by way of exaggeration, and I'm not sure how one would go about exaggerating the activities of a group such as the American Bar Association, whose annual convention this summer invited Simpson defense lawyer Johnnie Cochran to speak on the subject of truth in the legal profession, presumably on the same logic by which you might ask the local Terminix man to come talk about bugs.

All summer long I assembled news clips of this sort as fodder for my new Web site Overlawyered.com, and now that I'm officially giving up on satire I think there's room for the occasional column in this space just cataloging the harvest of clips in a straightforward manner. I see no reason, for example, to add any overlay of commentary to the story that came out of Lancaster County, Nebraska, in late August, reporting that a judge had declined to order the Taco Bell restaurant chain to pay for trips to India for Siva Rama Krishna Valluru and his wife, Sailaja. The couple had been eating a rice side dish which they were assured was vegetarian and were aghast to discover partway through that it contained meat. They argued that their devout Hinduism required as expiation for this swallowing of flesh a purification ritual that involved their bathing in the Ganges River, but Judge Jean Lovell said the expenses of such a trip did not count as reasonably foreseeable to the fast-food chain.

Nor will I ask anyone to crack a smile at the interesting hypocrisies that came to light last winter when Boston's top federal law enforcement official launched a splashily publicized crackdown on the shopkeepers and bed-and-breakfast proprietors of quaint Nantucket Island, many of whom, given the high cost of local renovations and a native reluctance to tamper with historic structures, have lagged behind in constructing the ramps and wider corridors required by the Americans with Disabilities Act (ADA). Ironically, as *The Boston Globe* reported, if the ADA enforcement actions go to trial it will be in a newly built federal courthouse that itself has been accused of massively violating standards for handicapped accessibility.

The jury boxes and witness stands in the building's 27 courtrooms, for example, can be reached only by way of steps. "We looked at the possibility of building in permanent ramps that were retractable, but it was such a burden on the budget we just couldn't do it," said General Services Administration project manager Paul Curley. The courthouse does, however, sport English oak paneling, a 45,000-square-foot glass wall overlooking the harbor, "spacious waterfront chambers for judges, and a five-story Great Hall."

MIKE LUCKOVICH

Likewise, I intend to keep a sober mien when telling the story of how 27-year-old Theodore Nobbe of Clearwater, Florida, recently won acquittal from felony animal abuse charges that could have landed him in prison for five years. A fellow patron at the local Bombay Bicycle Club had reported Nobbe to the cops for allegedly dunking the head of a friend's parrot in his tequila-based drink several times, to see if it would get tipsy. Nobbe denied the Polly-in-Margaritaville charges of psittacine abuse, but an officer said the creature's upper portions seemed damp when he was called to the scene, and a Humane Society employee said when the bird was brought to the shelter it ate voraciously, a pattern consistent, she averred,