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## Student Judiciary

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**TENANT RESOURCE CENTER, Petitioner**

v.

**STUDENT SERVICE FINANCE COMMITTEE, Respondent.**

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### JUDGMENT

Cite As: 2004 ASM SJ 7

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♦  
**Nathaniel Romano**  
Chief Justice

♦  
**Jordan Green**  
Vice-Chief Justice

♦  
**Shelton Roulhac**  
Chair, Student Elections  
Commission

♦  
**Yin-Chin Wang**  
Associate Justice

♦  
**Chrissy Wild**  
Associate Justice

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*Before Romano, CJ, Green, VCJ, and Roulhac, J.*

*Ms. Cynthia Campos for Petitioner.*

*Chair Janell Wise for Respondent.*

*The VICE-CHIEF JUSTICE announced the Judgment and delivered the unanimous Opinion of the Court.*

GREEN, VCJ. Petitioner Tenant Resource Center (TRC) filed this suit as an appeal of Student Services Finance Committee's (SSFC) determination that they were not eligible for funding. ASM By-Laws §2.03(C)(VII)(1) (2004). Several facts were presented during the TRC's hearing that raised serious questions about the validity of the SSFC's decision. Although the Judiciary agrees that the SSFC's decisions should not merely be appealed to the Judiciary when groups are unhappy, it is important for the SJ to examine each claim of viewpoint neutrality with a careful eye.

The Judiciary feels compelled to address the topic of viewpoint neutrality to clarify for future instances. The SSFC questioned whether or not TRC had appropriately appealed their case by claiming a violation of viewpoint neutrality. Viewpoint Neutrality is a difficult concept that has many facets. Several Judiciary cases have occurred that have attempted to articulate the scope of viewpoint neutrality and what it means to apply it successfully. In essence, viewpoint neutrality boils down to the simple concept that the whole purpose of the ASM By-laws on viewpoint neutrality is to remove as much human discretion as possible. State-Langdon Neighborhood Ass'n v. Smith Appeal, 2001 ASM SJ 14 (en banc).

It is important that criteria, bylaws, the ASM constitution, committee standing rules, and all other relevant texts be followed to the letter. This means a 'plain reading' of the words. Additions, subtractions, and improvisations of the phrasing are violations of viewpoint neutrality. To put it mathematically, x must always mean x. It would be impossible to interpret x to mean  $x+y+1$ . To do so would create a seemingly invisible "phantom criteria" that appear for some organizations and disappear for others, clearly violating viewpoint neutrality. Organizations must be treated equally and part of treating groups equally involves granting them an equal footing for the applications process. The organization must be aware what criteria they will be evaluated upon. Only the criteria that is plainly written on the page is legally applicable. Anything beyond this point would violate viewpoint neutrality.

Additionally, it is important to remember those criteria, bylaws, the ASM constitution, committee standing rules, etc., must be applied equally for all organizations. A variation of interpretation or a failure to equally the same standards of criteria between organizations

(including the same interpretation across successive sessions of SSFC) would violate the essence of viewpoint neutrality as understood by the United States Supreme Court. See, Bd. Of Regents of the University of Wisconsin v. Southworth, 529 U.S. 217 (2000).

Another important distinction that must be made regarding viewpoint neutrality is the distinction between malicious and non-malicious. There appears to be some misunderstanding in the phrasing. These two terms refer to the degree of the viewpoint neutrality violation in question – malicious violations show a deliberate attempt to harm the organization that would be premeditated at the time of the action, non-malicious violations lack any harmful actions towards the organization and are mistakes made on the part of the SSFC or SSFC members. ILSA v. Clarke and Baumgardner, 2000 ASM SJ 9. The judiciary has asked for ‘clear and convincing evidence’ to show the distinction between these two. If it can be demonstrated that an SSFC member was set to deny an organization funding based upon their desire to do so, they would be considered to have maliciously violated viewpoint neutrality. If there was a simply misunderstanding in interpretation and the SSFC had a good faith effort in attempting to apply the criteria then it would fall under non-malicious. Id.

Although this is not a complete list of the various infractions that could occur under the umbrella of viewpoint neutrality, it should demonstrate that this is a very dynamic and broad concept that demands the full attention of the Judiciary. It has evolved with Federal court cases as well as the evolution of the ASM itself. The Judiciary has attempted to use the viewpoint neutrality cases in the past to create a skeletal outline of this concept with the intention of simplifying the results in order to make them easily understandable and applicable. However, it has become apparent after three years of viewpoint neutrality that this task is impossible. No viewpoint neutrality case is ever alike; every infraction has its own characteristics and the Judiciary must weigh how best to apply this concept given the high standards that exist.

The Judiciary also wishes to express interest in what constitutes a procedural violation. Procedural violations are faults of technical-mechanical workings of the committee. See, LIC v. Werner Appeal, 2003 ASM SJ 18 (failing to provide actual notification is a due process violation only and is remanded to SSFC); and, ALPS v. Patzner, 2002 ASM SJ 13 (re-voting on a question that has already been called and voted on is due process violation and remanded to SSFC). Anything ‘above and beyond’ the pure mechanics of the committee brings the case a potential viewpoint neutrality violation. It is not enough to simply avoid saying the ‘magic words’ during eligibility or when determining funding levels to stay out of viewpoint neutrality jurisdiction. Once the substance of the criteria is intimated, no matter how isolated from the actions in question, viewpoint neutrality is involved.

The core of this case revolves around the discrepancy between the ASM By-Laws §2.03(C)(V)(i) and criteria 10 as it was applied by the SSFC during the TRC’s eligibility hearing. There was a clear distinction between what the bylaws required and what the criteria required. This distinction creates serious flaws in the eligibility process. It cannot be argued successfully that two different questions with different phrasing and requirement ultimately will arrive at the same answer. This was the case with TRC’s eligibility. Two sets of criteria were being applied at the same time, each requiring different aspects to be fulfilled. Ultimately, however, one requirement must trump another because of the ordering of authority among the ASM governing documents. The bylaw interpretation must be considered valid when evaluating criteria, and not the wording of criteria 10.

The Judiciary recognizes that this distinction is extremely subtle, however, it is also extremely important when fulfilling the strict standards layed down by the Federal Courts. Southworth, 529 U.S. 217; and Fry v. Bd. Of Regents of the University of Wisconsin, 132 F.Supp.2d 744 (W.D. Wis. 2000). It is obvious that the SSFC did not act in any malicious way, nor would ever act to deny the eligibility of deserving organizations. Chair Wise and Vice-Chair Otten both admirably defended their committee's interpetation and a reasonable case could be made for their intereptation. However, the Judiciary feels that it is very important to take a conservative stance on viewpoint neutrality issues and is compelled to act as it sees accordingly. Therefore, the Judiciary finds the following:

- 1) That the differences that exist between criteria 10 of the SSFC's elibigity criteria and the ASM By-Laws §2.03(C)(V)(i) are irreconciable and that this irreconciable nature of the bylaw and criteria have created a viewpoint neutrality conflict in attempting to fulfill both.
- 2) Consequently because of this viewpoint neutrality conflict, the Judiciary strikes criteria 10 due to the ordering principals of the ASM governing documents.
- 3) The eligibility determination of the SSFC is reversed and the question of TRC's eligibility is certified to the Student Council to be decided at its next regular meeting, pursuant to ASM By-Laws §2.03(C)(VII)(1). At this hearing, the Student Council shall use the exact reading of §2.03(C)(V)(i) in place of the invalid criteria 10 language.

By the Student Judiciary, ***It is So Ordered.***

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Nathaniel Romano, CJ

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Jordan J. Green, VCJ

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Shelton Roulhac, SJ