



Student Judiciary

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Multicultural Student Coalition, Complainant

v.

Mr. Kevin Otten, in his official capacity as Representative on the Student Services Finance Committee, Defendant.

JUDGMENT

Cite As: 2004 ASM SJ 8

♦
Nathaniel Romano
Chief Justice

♦
Chrissy Wild
Vice-Chief Justice

♦
Shelton Roulhac
Chair, Student Elections
Commission

♦
Grant Collins
Associate Justice

♦
Nicholas Fox
Associate Justice

♦
Timothy Leonard
Associate Justice

♦
Jack Shumann
Associate Justice

♦
Yin-Chin Wang
Associate Justice

*Before Fox, Leonard, and Shumann, S.JJ.
Mr. Roberto Paredes and Mr. Michael Manuel for Petitioner.
Mr. Kevin Otten for Respondent.
Justice Shumann concurred in the judgment without opinion.
Justice Leonard wrote a concurring Opinion.
Justice Fox presents the Opinion of the Panel.*

NICHOLAS J. FOX, *Student Justice*. This case presents another chapter in the saga of viewpoint neutrality (VPN). Here, the Multicultural Student Coalition (MCSC) charged that Kevin Otten, a representative and vice-chair of the SSFC, violated VPN when making cuts to the organization's budgetary request. In order to assess these claims, we must look at the role of the SSFC and its relation to VPN. According to ASM Bylaws, a decision made in a viewpoint neutral manner is one which is made "[in] accordance with any procedural requirements for making the decision; and without considering the viewpoint being expressed by the recipient of the funds" (ASM Bylaws 2.01(B)(II)).

This Bylaw requirement fulfills the United States Supreme Court mandate in *University of Wisconsin v. Southworth* (529 U.S. 217)(2000), which argues at 235, "The whole theory of viewpoint neutrality is that minority views are treated with the same respect as majority views." Indeed, the SSFC cannot take into account the viewpoint of an organization when making eligibility or funding decisions; to do so would discriminate—positively or negatively—against that organization, and once an organization is on a different level of consideration because of its inherent beliefs, VPN has been violated.

However, *Southworth* was, following the decision by the United States Supreme Court, remanded back to the Seventh Circuit Court of Appeals for further clarification and implementation. It is here, in *Southworth v. Board of Regents* (No. 03-2314), that the Seventh Circuit Court of Appeals clarifies how minority views receive the same treatment and consideration as majority views, "Thus, regardless of viewpoint, each applicant should have equal access to the funds available under the comprehensive procedures set out in the University's revised guidelines." The Seventh Circuit rules that all organizations which have been approved for eligibility must have equal access to segregated fees in order for viewpoint neutrality to be effective. The Seventh Circuit goes on to state, though, that "the demand for a share of the allocable funds generated by the mandatory fees no doubt exceeds the supply. Thus, every request by an RSO [Registered Student Organization] and by others eligible will not be granted. Viewpoint neutrality does not guarantee funding."

The Seventh Circuit explicitly states that the demand for segregated fees will overshadow the supply of those fees; consequently, it is the job of the SSFC to scrutinize budgets so that

organizations are not frivolously spending segregated fees. The SSFC is not designed to rubberstamp budgets: it must determine whether or not the funds requested are sufficient for the organization, whether those funds are utilized effectively, and whether there are enough funds to cover the proposed budgets of all organizations. While the SSFC works with student organizations to help them reach their goals on campus, it is also the job of the SSFC to effectively distribute segregated fees.

In light of these precedents, MCSC did not present “clear and convincing evidence” (*CFACT v. Pifer (FC)*)(2002 ASM SJ 1 at 1) that Representative Otten violated VPN. MCSC presented nine essential claims against Representative Otten, and the panel will address them briefly, and in categorical groups:

1. VPN violation in re \$25,000 for an event for 35 people.
2. VPN violation in re \$25,000 for professional training.
5. VPN violation in re \$3,000 for miscellaneous expenses.
6. VPN violation in re *Madison Times* advertisements.

In these four claims, MCSC argues that Representative Otten violated VPN because he failed to consider the scope of the funds and at times imposed his own belief as to what these funds should be used for. At no point did Representative Otten suggest that the money should not be used for the events listed in MCSC’s budget: he merely stated that the amount requested was excessive or not utilized efficiently. In a paper issued to SSFC members by the Dean of Students Office (“Informational Notes for ASM / Student Services Finance Committee,” dated 30 September 2004; see *Otten Evidentiary Packet*, page 11), SSFC members are urged to exercise “fiscal responsibility,” which entails a “cost-efficient / cost-conservative” approach to budgets. In the above arguments, Representative Otten used a cost-benefit analysis and determined, without prejudice, that the cost of the programs and events did not proportionately correlate to the benefits students would receive. Organizations must use their money in effective ways to reach their goals; Representative Otten did not feel that the cost-benefit scenarios reflected the most effective usage of funds.

3. VPN violation in re summer staffing hours.
4. VPN violation in re cut in staff hours.

For these claims, Representative Otten did not impose his viewpoint as to what the organization should be doing over the summer or how it should be utilizing its staff hours; he is merely looking at how effective those hours are when there is a reduced summer programming schedule. It is illogical for the SSFC to fund potentially idle hours when that money could be used more effectively.

7. VPN violation in re BBQ event.

Here MCSC challenges that Representative Otten was not consistent when funding MCSC in relation to other groups that were funded for a similar request. Other members of the SSFC did comment to Representative Otten that MCSC might be under a higher level of scrutiny than other organizations. Representative Otten’s choice to continue with his proposed amendment to MCSC’s BBQ request is not a violation of VPN because Representative Otten believed, without prejudice, that MCSC’s BBQ was a different event with a different scope than other events which the SSFC funded in other budgets. Just because events appear similar on the surface does not mean that they are similar: their motivations and goals could be different, and the food aspect of the event may be vital to one organization but not vital to another. Representative Otten justified himself by arguing that providing food for an organization’s event is acceptable when no other

food is present; to provide food when the food's purpose is solely to attract more people to an already popular event, then that budgetary item becomes less effective in terms of fund usage.

8. VPN violation in re Representative Otten's viewpoint neutrality paper.

The paper Representative Otten presented to the SSFC was approved by Alison Rice, an advisor to ASM. Her expert opinion deemed the viewpoint neutrality paper acceptable. Moreover, MCSC states that the paper demonstrates Representative Otten's "lack of knowledge about the rule" (see *MCSC Complaint* at 2). Just because MCSC feels that the paper is irrelevant and wrong does not make it so: it is just MCSC's opinion.

9. VPN violation in re phrases such as "I feel" and "it's too much."

Whether stated or not, the "I feel" or "I think" is always implied in any statement. "I think this is too much" is the same as "This is too much." If a member uses such phrases, he or she is not imposing his or her viewpoint. Moreover, these were not the only justifications for budget cuts. Each cut proposed by Representative Otten was justified based on objective criteria.

Orders of the Court:

1. The Court finds that Representative Otten did not violate Viewpoint Neutrality, either maliciously or non-maliciously.
2. The case is DISMISSED.

By the Court, **IT IS SO ORDERED.**

Nicholas J. Fox, SJ

Timothy Leonard, SJ

TIMOTHY LEONARD, Student Justice. (concurring) Issues regarding Viewpoint Neutrality (VPN) demand the most detailed examination of the allegation. Viewpoint Neutrality is a tool that assures fairness and equality in distributing student segregated fees, and must be preserved, defended, and enforced. In filing a complaint against Student Services Finance Committee (SSFC) Vice Chairman Kevin Otten, the Multicultural Student Coalition (MCSC) was charged with the need to prove to the Student Judiciary panel that Mr. Otten, without a reasonable doubt, violated viewpoint neutrality. The importance of detailed evidence and strong arguments to support the violation cannot be stressed enough. MCSC brought up several occasions where they believed Mr. Otten used his own viewpoint in influencing and exercising his duty as a member of the SSFC. For the reasons mentioned in the unanimous opinion, I assert that MCSC failed to make the necessary connections between Mr. Otten's actions, viewpoints, and malicious intent.

When considering its decision, the SJ panel focused in on the two issues where MCSC concentrated its petition: that Mr. Otten was inconsistent in his heightened scrutiny with the MCSC's budget when he had been easy to accept previous proposed budgets by other organizations; and that Mr. Otten defined the viewpoint and goals, which the MCSC asserted as synonymous during the hearing, of MCSC when addressing the budget item concerning newspaper advertisement. While the unanimous opinion above states specifically the panel's reason for dismissing those incidents as VPN violations, I will acknowledge that Dean Loulou Hong, in her capacity as the Chancellor's Appointee to the SSFC, did advise the SSFC to

consider consistency when making decisions, hinting that failing to do so would be a violation of VPN. The SJ panel in *DES v. Patzner* (2002 SJ 7) based its decision in favor of the petitioner, who filed on allegations of VPN violations, in part by the respondent's "blatant disregard of the Dean of Students' statement." In considering this precedent brought up by MCSC in the hearing, the panel felt that it could not hold the SSFC or Mr. Otten accountable to blatantly disregarding a non-binding opinion made by Dean Hong.

Where Mr. Otten's scrutiny of the MCSC's budget brought controversy, the need to assure that constructive criticism isn't mistaken for an individual's viewpoint is important. Section 4.01 (A) (IV) of the ASM Bylaws clearly states that one of the SSFC's purposes is to "provide responsible student control of segregated fees policy...yet maintains...commitment to encouraging the fiscal well being of SSFC funded activities," giving the SSFC the duty to make sure segregated fees are used responsibly. Furthermore, Section 4.02 (B) gives the SSFC the authority to exercise its duties, specifically, giving the SSFC the authority to "amend internal, budgetary and fiscal policies and procedures governing SSFC and GSSF allocations" (ASM Bylaws 4.02 (B) (V)) and "evaluate programmatic and operational functions of segregated fees funded for activities." (ASM Bylaws 4.02 (V)(VI)) To "amend" and "evaluate" budgets, members of the SSFC must be allowed and expected to make suggestions based on the cost-effectiveness of each line item of every budget that passes its table. Mr. Otten did, using sound judgment and remaining viewpoint neutral, responsibly carry out his duty as a member of the SSFC.

Timothy Leonard, SJ

Published by Order of the Court: 11/4/04, 12:30PM
Attest: /s/ NJF