



---

## Student Judiciary

511 Memorial Union, 800 Langdon Street, Madison, WI 53706

phone: 608.265.4ASM ♦ fax: 608.265.5637

www.asm.wisc.edu/student\_judiciary/index.html

### Multi-Cultural Student Coalition, Complainant

v.

**Nathaniel Greenbaum, in his official capacity as Representative on the Student Services Finance Committee, Defendant.**

---

### JUDGMENT

Cite As: 2004 ASM SJ 9

---

♦  
**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 Romano, C.J., Collins and Shumann, S.JJ.*

*CHIEF JUSTICE ROMANO announced the Judgment of the Court and delivered the unanimous Opinion of the Court.*

**NATHANIEL V. ROMANO, Chief Justice.** Complainant Multi-Cultural Student Coalition (MCSC) is a Registered Student Organization (RSO) and alleges defendant Representative Nathaniel Greenbaum to have violated the principles of Viewpoint Neutrality during MCSC's budget hearings in late September before the Student Services Finance Committee (SSFC).

In analyzing any case before us, the Court must always begin with first principles. In the question of RSO funding and viewpoint neutrality, that means acknowledging first and foremost that SSFC's funding decisions are state action, and, as such, are guided by the dictates of the First Amendment. U.S. Const. Amend I. Further, to respect the dictates of the Constitution, SSFC decisions must be made in a viewpoint neutral manner, to provide "certain safeguards with respect to the expressive activities [students] are required to support." *Bd. Of Regents of the University of Wisconsin v. Southworth*, 529 U.S. 217, 229 (2000). In the final judgment, "the whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views." *Southworth*, Id. At 235.

Viewpoint Neutrality is protected inherently in the rules and policies of the Associated Students of Madison (ASM). Our By-laws specifically delineate what viewpoint neutrality is: "A decision is made in a viewpoint neutral fashion where the decision is made: (1) in accordance with any procedural requirements for making the decision; and (2) without considering the viewpoint being expressed by the recipient of the funds." ASM By-laws 2.01(B)(II) (2004). Viewpoint neutrality is enforced in the first instance by "safe harbor" provisions of the By-laws encouraging both the Chairs and members of committees to police their committees, By-laws 2.01(D), and after that point by appeal to the Student Judiciary, By-laws 2.01(C)(IV).

We look first to the statements made by Rep. Greenbaum at the hearing. Rep. Greenbaum made statements to the effect that, in his mind, the question was not if cuts would harm services provided by MCSC, but to what degree those services would be harmed. MCSC challenges just statements in this vein, and no others. There is no statement in the record before us that Rep. Greenbaum made any explicit reference to the views expressed by the complainant. MCSC would have us believe that these statements are, in and of themselves, not viewpoint neutral.

However, we cannot accept that these statements are, on their face, viewpoint neutrality violations. These are simply statements as to the effect of cuts; in no evidence presented to the Court did Rep. Greenbaum say anything about the viewpoint, ideology, mission, or purpose of the complainant. Indeed, evidence was submitted that such statements never made by Rep.

Greenbaum during the hearings. Affidavit of SSFC Chair Janelle Wise at ¶3. A point of order was raised about Rep. Greenbaum's comments, but that point, we believe, was simply a caution, a warning to avoid a potentially dangerous area of discussion and to keep comments germane. This is the Chair's duty, but a caution sign is hardly evidence of a violation.

What is further, Rep. Greenbaum provided a reasonable explanation of his actions. Vice-Chair Otten had already submitted an analysis of proposed cuts to the MCSC budget; this analysis was cited by Rep. Greenbaum both at the SSFC hearing and before this panel. This justification removes any doubt in our mind that the clear thrust of Rep. Greenbaum's decision adhered to the strictures of viewpoint neutrality. There is no evidence from either his statement or from his written explanations that suggests his vote was motivated from improper considerations of MCSC's viewpoint.

Complainant, however, suggests that we look to the context of Rep. Greenbaum's comments to find a viewpoint neutrality violation. They suggest first, that his decisions were not cost-effective and so were violations of viewpoint neutrality. In the alternative, they raise the specter that any reduction in funds is a *per se* violation of viewpoint neutrality.

To suggest that cost-effectiveness is an aspect of viewpoint neutrality is to misread what viewpoint neutrality means. Under the By-laws, as stated above, viewpoint neutrality is assured when the normal processes for funding decisions are followed and when decisions do not take into account the viewpoint or political ideology of the group to be funded. By-laws 2.01(B)(II); ASM Const. Art. IV, §2 (2004). Further, there is to be channeling of unbridled discretion in the funding process. *Southworth v. Bd of Regents of the University of Wisconsin*, 307 F.3d 566, 574; 2002 U.S. App. LEXIS 20738, 20 (7<sup>th</sup> Cir. 2002) (*Southworth II*).<sup>1</sup> Discretion is channeled in the actual determination of funds by the funding criteria set up by the By-laws. By-laws 2.03(C)(VI)(3)(b) *et. seq.*

Discretion within those criteria is fully justified. Indeed, that is the only place where discretion is justified. There is no cost-effective answer and non-cost-effective answer; cost-effectiveness is an analysis. Rep. Greenbaum analyzed the budget proposal from MCSC and came to the conclusion that they did not need as much money as they requested. Such a conclusion was, we believe, reasonable given the information he had available to him. MCSC may believe that such is not cost-effective, but reasonable minds can and do differ on whether some level of funding is cost-effective or not. The students at this university have entrusted to Rep. Greenbaum, and the other SSFC representatives, the authority and freedom to judge what is and what is not cost-effective.

Finally, the idea that merely cutting funds is enough to violate viewpoint neutrality is, we believe, wholly preposterous. In support of this contention, complainant points to a memorandum from the Dean of Students and to the concurring opinion of retired JUSTICE GREEN in the *Infoshop* case.

The Dean of Students sent a memorandum to SSFC stating, in pertinent part, that people tend to believe that groups whose viewpoint that they support are more fiscally responsible and that groups whose viewpoint that they disagree with are less fiscally responsible; this could result in cutting of funds, or failing to cut funds, because of non-viewpoint neutral reasons.

---

<sup>1</sup> The second *Southworth* decision, was a remand from the Supreme Court and was tying up "loose ends" after the District Court had re-tried the case in light of the 2000 *Southworth* decision. See, *Fry v. Bd of Regents*, 132 F.Supp. 2d 744 (W.D. Wis. 2000).

While we give deference to the advice of university officials when interpreting and applying the viewpoint neutrality violations, *See, Southworth II*, 307 F.3d at 592; *Multi-Cultural Student Coalition v. Werner*, 2003 ASM SJ 20, here we do not find this memorandum in any way affecting our analysis. Clearly, the Dean of Students is relaying a cautionary truism. SSFC representatives must be aware of the possibility that groups that they have an affinity for might get lighter treatment and that groups they dislike might get harsher treatment than normal. However, this does not stand for the proposition that any cut is proof of viewpoint neutrality violations. It is just a restatement of the evils that the requirement of viewpoint neutrality is designed to avoid. Simply stating the test does not mean you have failed the test.

MCSC relies on the statement of retired JUSTICE GREEN that “[i]t is ridiculous to think that the SSFC, an organization whose purpose is to distribute segregated student fees, would think that their purpose was instead to deny organizations those funds,” *UW Infoshop v. Patzner, et. al.*, 2002 ASM SJ 10, at 4 (Green, VCJ, concurring in the judgment), to prove that Rep. Greenbaum’s statement that the program would be harmed as a reason to find that he acted in a manner that was not viewpoint neutral. However, MCSC misunderstands the nature of JUSTICE GREEN’s opinion, as well as the theory that was being expressed. First, JUSTICE GREEN was concurring, not writing for the Court, and, as such, his view is not controlling, but only illuminatory. Ultimately, though, the theory is that SSFC can not accept as its **primary** purpose the purpose of cutting funds. Clearly, SSFC exists to distribute funds; but it cannot simply give anyone who qualifies whatever they ask for. They must have the authority to cut funding that they find is unreasonable. So long as they haven’t cut just for the sake of cutting, then they are acting within their rights.

Indeed, if we were to adopt the theory put forth by the complainant, we would essentially castrate SSFC, and that we do not want to do. Nor could we. SSFC exists within the constitutional structure of ASM, and we must give to each part of the constitution a viable construction; we cannot deem a word, a phrase, or an entire article to be superfluous. *Richards v. Student Council*, 1997 ASM SJ 1 As such, we construe SSFC to have the power it must have to do its job. Its job is to distribute segregated fee funds to student groups that meet neutral eligibility guidelines and demonstrate the ability to utilize those funds in a manner consistent with section 2.03 of the By-laws.

In sum, we find that Rep. Greenbaum’s statements, neither on their face, nor in context, constitute a violation of viewpoint neutrality. Accordingly, for the aforementioned reasons

IT IS ORDERED that Judgment be entered for the defendant, Rep. Nathaniel Greenbaum and;

IT IS FURTHER ORDERED that the complaint be DISMISSED.

***It is So Ordered.***

---

Nathaniel V. Romano, CJ

---

Grant Collins, SJ

---

Jack Shumann, SJ