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MAY 23 2000

Student Advisory
Memorandum No 2000-2

**Associate General Counsel*

May 19, 2000

M E M O R A N D U M

To: College Presidents
From: Acting Vice Chancellor Roy P. Moskowitz 
Re: Permissible uses of Student Activity Fees - "Update"

This memorandum supplements Student Advisory Memorandum No. 2000-1, issued January 19, 2000, regarding the permissible uses of student activity fees.

On March 22, 2000 the United States Supreme Court ruled that students may be required to pay student activity fees that support student organizations which engage in political and ideological activities, provided the method for allocation of fees is viewpoint neutral. This approach is consistent with CUNY policies on this matter and, as such, no changes are necessary in light of this decision.

In issuing its decision in Board of Regents of the University of Wisconsin System v. Southworth, 120 S. Ct. 1346 (2000), the Court determined that the First Amendment to the U.S. Constitution permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech. The Supreme Court ruled that a public University:

...may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.

The University must provide some protection to its students' First Amendment interests, however. The proper measure, and the principal standard of protection for objecting students, we conclude, is the requirement of viewpoint neutrality in the allocation of funding support.

While the record in this case did not provide sufficient facts for a full consideration of the question, the Court did express concern about the funding or defunding of student organizations through the use of specific referenda. The Court stated:

In is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process. To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views.

CUNY Bylaws permit the use of referenda to earmark certain student activity fees. My office is reviewing the advisability of continuing this practice in light of the Southworth decision and will issue an opinion on this question shortly. In the interim, if your campus is considering the use of a referendum to allocate student activity fees, please contact my office in advance so that we may be of assistance.

Should you have any questions regarding this advisory, please do not hesitate to contact this office.

c: Cabinet
Chief Student Affairs Officers
Legal Affairs Designees