

## A BRIEF HISTORY OF MANDATORY STUDENT FEES

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Student fees arose on America's campuses over a century ago. Students on many campuses decided collectively to assess a fee on themselves in order to fund extracurricular activities and niceties that were not covered by tuition. The belief was that certain activities and facilities—from athletic fields to student centers to caps and gowns—clearly would enhance student life on campus. For example, in 1875, the student fee at the University of Wisconsin paid for “heating and lighting the university hall and public rooms, music, each diploma, and a matriculation fee in the law department.” Similarly, in 1949, the fee paid for “admission to athletic contests, concerts, class dues, cap and gown fees, [and] science laboratory fees.”

Mandatory student fees first became controversial during the 1960s and early 1970s. During those turbu-

lent Vietnam War years, student activists began to see these fees as a potential source of funding for their various political and ideological causes. Some activists ran for office in student government and, once elected, they dramatically changed how student fees were given out to campus groups. Where student fees traditionally had been used only to pay for noncontroversial services that most or all students could use, they now became a means of backing the ideological advocacy of what critics saw as special interest groups. To those favoring such new uses of student fees, the argument remained that they added to the quality of student life. To opponents of such uses, the argument was that one group of students was forcing another group of students to pay for causes in which they might not believe, or, indeed, to which they strongly objected.

In the late 1960s and early 1970s, Ralph Nader helped to bring about this change when he and his supporters started Public Interest Research Groups (PIRGs, as they have come to be known), based in individual states. PIRGs generally advocated controversial views on various environmental and consumer issues, and their activities included (and still include) aggressive lobbying of state legislatures and Congress to support their agendas. Nader's PIRG activists successfully convinced many colleges and universities to use referenda as a means to decide the PIRG's claims upon student fees, arguing that a majority of students could vote to impose an assess-

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ment that each student was then required to pay. This led many students to object. Some objected to being required to pay for political or moral activity they opposed. Others objected to the way groups were funded—by the choices of those few who controlled the student government or the disbursement of student fees. Defenders of the new funding justified it on the traditional grounds of enhancing student life.

Because mandatory student fees funded PIRGs and their controversial activism, such fees often became the focus of campus controversy about whether or not students could be compelled to fund politically partisan or activist groups. As early as 1974, the Wisconsin Attorney General questioned the constitutionality of the University of Wisconsin's recent decision to require students to pay a mandatory fee supporting a PIRG, but this did not lead to any ban on such a requirement.

At most campuses, during the Vietnam War era, the decision to fund the local PIRG soon spread to include the funding by mandatory fees of other ideological and political groups on campus, especially those that advocated liberal views on feminism, the environment, gay rights, and abortion. In these politically turbulent times, activists found mandatory student fees a welcome source of funds.

In the 1970s and 1980s, students who disapproved of mandatory contributions to activist campus organizations—especially to those with which they disagreed—

began filing lawsuits to opt out of funding PIRGs and other groups whose views and agendas they found objectionable. In a major case, *Galda v. Rutgers* (1985), students sued Rutgers (the State University of New Jersey) in federal court for the right not to pay a mandatory fee to NJPIRG, even though that fee was refundable to students who filled out forms expressing their ideological disagreement. The court dismissed Rutgers's argument that there were educational benefits associated with NJPIRG and found in favor of the students.

Similar suits have since been brought in New York and California. In *Carroll v. Blinken* (1992), students at The State University of New York at Albany sued in federal court for the right not to pay a mandatory fee to NYPIRG. The court found for the University, but it insisted in the ruling that the student fees paid to NYPIRG be spent on SUNY Albany students—something NYPIRG had not been doing. In *Smith v. Regents of the University of California* (1993), students at the University of California at Berkeley filed a lawsuit in state court opposing both the fee itself and how the fees were used by CALPIRG. The California Supreme Court upheld the University's right to assess a mandatory student fee, but it also found that using those fees to fund ideological groups violated the rights of students who opposed those groups' views. The ruling required the University of California Regents to offer refunds to stu-

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dents who did not want to pay for political and ideological activities.

Arguments became just as heated over issues of who received funding as they had become over the issue of who had to pay fees. Student officers and university administrators sometimes denied funding to groups they found “controversial.” In 1988, the University of Arkansas did not fund a campus gay organization, on the grounds that it was “promoting” homosexuality. In *Gay and Lesbian Students Association v. Gohn*, however, the U.S. Court of Appeals for the Eighth Circuit required the University of Arkansas to fund the group, holding that the University had violated the First Amendment by denying funding to the group based on the specific viewpoint it espoused. In 1995, the United States Supreme Court, in *Rosenberger v. Rectors of the University of Virginia*, ruled that the University had violated the First Amendment by refusing to fund a campus evangelical newspaper because of its Christian views. The Supreme Court ruled that to deny a group funding because of the ideas that it advocates is an unconstitutional “viewpoint discrimination.”

Mandatory student fees may have begun with the uncontroversial motive of funding extra amenities to enhance student life, such as student centers or athletic fields, but by the end of the twentieth century they had evolved into something extremely divisive, given their

funding of ideological activism. Two recent Supreme Court decisions provide significant insight and direction both for students compelled to pay a mandatory fee and for campus organizations that seek funding from such student fee systems.