Syllabus

NOTICE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case at the time the opinion is issued. The syllabus constitutes no part of the Opinion of the Court but has been prepared for the convenience of the reader.

SUPREME COURT OF THE STUDENT BODY

Syllabus

USG SENATE *v.* LOGAN GRODSKY, UNDERGRADUATE STUDENT GOVERNMENT TREASURER

ON MOTION FOR SUMMARY JUDGEMENT

No. 22–007 Orig. Decided September 30, 2022

During their September 20, 2022 meeting, the Undergraduate Senate ("the Senate") voted to approve a special order to open a lawsuit against the Undergraduate Student Government Treasurer (the "Treasurer"). The Senate filed suit shortly thereafter. They alleged that the Treasurer's encumbrance of $46,666 for the Student Government share of the Carolina Union Student Organizations Management (CUSO) operation cost, as required under V U. C. S. G. § 101(8) (rev. 2022), was unconstitutional under Chapter 1, Article VII, Section 1 of the Student Constitution which requires the appropriation of the student fee by the Undergraduate Student Government comply with University Policy. According to the Senate, because the Board of Trustees ("BOT") passed a resolution requiring viewpoint-neutral distribution of the Student Fee, First Amendment viewpoint neutrality standards are therefore also a "University Policy" in their own right. The Senate also claimed that, because Article VII incorporates University Policy by reference, and because the relevant University Policy incorporates viewpoint neutrality, that this Court is possessed of subject-matter jurisdiction to evaluate the constitutionality of § 101(8) as a matter of viewpoint neutrality. The Senate requested declaratory and injunctive relief stating that mandatory appropriations to statute-mandates recipients is unconstitutional, and enjoining the Treasurer's encumbrance of the funds. In their Answer, and subsequent Motion for Summary Judgement, the Defendant conceded nearly every relevant claim, but argued that injunctive relief should only be granted for statute-mandated appropriations to statute-mandated recipients.

Held: The Court possesses subject matter jurisdiction; the Senate possesses organizational standing; statute-mandated appropriations of

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the Student Fee to statute-mandated recipients are unconstitutional as a violation of the University's viewpoint neutrality policy; and injunctive relief is entered for the plaintiff.

(a) Because of the unusually expedited timeline, the lack of contest over relief requesting that a statute of the Undergraduate Code be struck down, and the agreement on large swathes of analysis, the Court reviews the relevant legal claims *de novo*. Pp. 1–4.

(b) This Court has jurisdiction to apply the Viewpoint Neutrality Doctrine under Article VII, Section 1's plain language which states that "[t]he use of USG Funds must not violate any larger University Policies." Because the BOT resolved that the Student Fee must be distributed in a viewpoint neutral fashion—incorporating Viewpoint Neutrality as a matter of Federal and Student Law (*e.g.*, V U. C. S. G. § 205(A))—their standards are incorporated as constitutional principles. While plaintiff has standing under the organizational standing doctrine established by this Court in *Project Dinah* v. *Student Congress*, 1 S. S. C. 239 (2009), the Court holds that an officer need not be the named plaintiff in a case where the injury is to the organization itself. Pp. 4–10.

(c) The Court incorporates the viewpoint neutrality doctrine as a student legal matter since the BOT has required that Student Government comply with it. The analysis is governed by the standards of viewpoint neutrality established in *Bd. of Regents of the Univ. of Wisc. Sys.* v. *Southworth*, 529 U. S. 217 (2000); and *Southworth* v. *Bd. of Regents of the Univ. of Wisc. Sys.*, 307 F.3d 566 (7th Cir. 2002), and under already existing student law. See V U. C. S. G. § 205(A) (cited in BOT resolution). Pp. 10–16.

(1) Because the creation and repeal of statutes is contingent on "majoritarian consent," a statute-mandated appropriation of the student fee violates viewpoint neutrality. See *Southworth*, 529 U. S., at 235; see also V U. C. S. G. § 205(A). Pp. 10–14.

(2) Because Title V of the Undergraduate Code establishes objective procedures and criteria for the appropriation of the Student Fee, § 101(8) grants special treatment. Therefore, Section 101(8) cannot reasonably be maintained as a viewpoint-neutral statute and violates Article VII, Section 1 of the Student Constitution under the majoritarian consent and special exception standards. Pp. 14–16.

(d) The enforcement of § 101(8) is permanently enjoined since statute-mandated appropriations of the Student Fee by the USG Senate (or the GPS Senate) are unconstitutional under this decision's Article VII Viewpoint Neutrality Standard. Pp. 17.

Motion for summary judgement granted.

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EWINGTON, J. delivered the opinion of the Court in which HOOVER, SULLIVAN, and SHUE, JJ. joined. SHUE, J. filed a concurring opinion.

SUPREME COURT OF THE STUDENT BODY

No. 22–006

USG SENATE *v.* LOGAN GRODSKY, UNDERGRADUATE STUDENT GOVERNMENT TREASURER

ON MOTION FOR SUMMARY JUDGEMENT

[September 30, 2022]

JUSTICE EWINGTON delivered the opinion of the Court.

In an unusually expedited proceeding, we are asked to determine whether or not the mandatory appropriation of $46,666 to cover the Student Government share of CUSO operation cost—required by the Undergraduate Code—violates the Student Constitution's requirement that Undergraduate Student Fee appropriations "must not violate any larger University policies." Student Const. ch. 1, art. VIII, § 1. We grant the motion for summary judgement and find that the relevant statute constitutes a violation of the Board of Trustees' Viewpoint Neutrality Resolution adopted this past July. The statute runs afoul of the incorporation of both Federal viewpoint neutrality standards and the Undergraduate Code.

The mandatory appropriation is unconstitutional under Article VII, Section 1 of the Student Constitution which requires that the distribution of the Undergraduate Student Fee comport with all University Policies. We therefore grant the majority of Plaintiff's requested relief—permanently enjoining the enforcement of the mandatory appropriation of $46,666 to CUSO under the statute.

I

The parties agree on the factual background of this case. Cf. Ans., ¶ 1. On September 19, 2022, the Undergraduate Student Government Treasurer (UGST) Logan Grodsky notified the Speaker and Finance Committee Chair (FCC) of the Undergraduate Senate that he had encumbered $46,666 for the Student Government share of the Carolina Union Organizations Management Fee (CUSO Fee). See Compl., ¶ 6. As plaintiffs note, this action is required under V U. C. S. G. § 101(8) (rev. 2022) (hereinafter § 101(8)), which states that the "CUSO fee shall be defined as . . . $46,666." See Def.'s Mot. for Summ. J., §§ 3 and 6; see also Def.'s Ans., ¶ 1.

Plaintiff contends, however, that § 101(8) is unconstitutional under Chapter 1, Article VII, Section 1 of the Student Constitution which demands that "[t]he use of USG funds must not violate any larger University policies regarding the use or expenditure of student fees." Pl.'s Compl., ¶ 7. On plaintiff's reading, the recent resolution passed by the Board of Trustees (BOT) regarding viewpoint neutrality triggers §1's protection since the BOT is authorized with the power to set University Policy. The natural consequence, they argue, is that the incorporation of Federal viewpoint neutrality protections under the umbrella of "University Policy" (for the purposes of § 1) authorizes this Court to review and nullifies § 101(8)'s mandatory appropriation under the standards set forth in *Bd. of Regents of Univ. of Wisc. Sys.* v. *Southworth*, 529 U. S. 217 (2000). See Pl.'s Compl., ¶ 8; see also *ibid.* (citing *Rosenberger* v. *Rector and Visitors of the Univ. of Va.*, 515 U. S. 819 (1995)).

In their Answer and Motion for Summary Judgement, defendant admits every relevant argument made in the complaint (an unsurprising development since plaintiff and defendant repeatedly confuse themselves for the opposing party throughout their filings). *Id.*; see also *post*, at 1–2 (SHUE, J., concurring). The major point of difference,

however, concerns the scope of an injunction blocking the encumbrance of funds for the CUSO Fee and mandatory appropriations throughout the wider body of Student Law. *Id.*, at ¶ 5; see also Def.'s Ans., ¶ 4. In plaintiff's subsequent Motion for Summary Judgement, they request only the relief to which defendants concede in their Answer and Motion for Summary Judgement. See Pl.'s Mot. for Summ. J.; Pl.'s Mot' to Dismiss., ¶ 5; and Def.'s Mot. for Summ. J., ¶ 3.

The substantial agreement in issues of fact and legal interpretation between the parties and the breakneck pace of the filings—all within the span of six-hours—was not lost on this Court.

II

The unusually expedited timeline of the case, the continuous mistakes indicating the parties' confusion as to why (and whether) they actually disagree, see *post*, at 1–2 (SHUE, J., concurring), and the defendant's immediate acquiescence to the plaintiff's requested relief nullifying a statute of the Undergraduate Code (and indeed, all statutorily mandatory appropriations, *id.*, at ¶ 5) counsels both scrutiny and suspicion. Mere concurrence of purportedly-adverse parties to injunctive relief cannot, on its own, be sufficient to grant such relief. This Court will, of course, offer broad discretion in granting certain motions before it. See, *e.g.*, *Tweden* v. *BOE*, 2 S. S. C. ____ (2021) (dismissed), and *Erdal* v. *Vann*, 2 S. S. C. ____ (2022) (*per curiam*) ("this Court has always complied with a plaintiff's voluntary request to dismiss." (slip op., at 2) (cleaned up)). Yet voluntary requests to dismiss, for example, present obviously different implications than do motions for summary judgement and requests for injunctive relief.

We agree that there is transparently no issue of material fact at play, and grant summary judgement. However, because the parties concur on nearly every materially relevant issue of legal interpretation, we treat our analysis here as a

reviewing Court, and analyze the legal conclusions *de novo*. First, we seek to ensure that a genuine "controversy" exists, and second, that the agreed-upon relief is justified under the law. See Student Const. ch. 1, art. IV, § 1. The failure to exercise such due diligence would not only jeopardize trust in this Court's legitimacy, but would also set a disastrous precedent allowing parties to nullify democratic will by abusing this Court's low standing bar. See, *e.g.*, R. 17.

A

Under Article IV of the Student Constitution, this Court possesses original jurisdiction in "controversies concerning executive and legislative action raising questions of law under [the] Constitution and laws enacted under its authority." ch. 1, § 5. The parties contend this Court has jurisdiction since the purportedly injurious actions are those of the Undergraduate Treasurer (USGT), a member of the Executive Branch. See III J. C. S. G. § 610(a) (rev. 2022); Student Const. ch. 2, art. II, § 4; see also Pl.'s Compl., ¶¶ 2–3. It is obvious that this Court has jurisdiction over "executive" acts, Student Const. ch. 1, art. IV, § 5, and the actions of the USGT at question here are obviously the execution of the law (namely § 101(8)).

What the parties leave unexplained, however, is this Court's subject-matter jurisdiction over viewpoint neutrality litigation. We are immediately suspicious of the contention that this Court has blanket jurisdiction over viewpoint neutrality claims against Student Government. Viewpoint neutrality is, after all, a creature of federal First Amendment jurisprudence, and the parties make no attempt to draw a connection between the "Student Constitution and laws enacted under its authority" and First Amendment claims. art. VII, *supra*. If we are to understand the parties' claims as a direct statement of Federal Law—absent any further analysis or authority—the claim would immediately fail. See *Carolina Review* v. *Cunningham*, 1 S. S. C. 155,

156 (1995) (holding that this Court is the "wrong forum" for enforcing claims under 42 U. S. C. § 1983).

Unlike the *Carolina Review* Court, we are not analyzing an issue of ill-conceived (and largely frivolous) § 1983 litigation. As the Court in *Carolina Review* properly noted, "the Court's jurisdictional boundary is clearly established in the Student Constitution." 1 S. S. C. 155, 156 (1995) (cleaned up). Because there was no plausible reading of a § 1983 claim as a "question of law arising under *this* constitution," *i.e.*, the Student Constitution, there was no colourable claim at all. *Id.* (internal quotation marks omitted).

We affirm *Carolina Review* insofar as it held that this Court has no jurisdiction over plain First Amendment litigation. The parties' pleadings demonstrate, however, that the relevant issue here is only tangentially one of federal law. As plaintiff noted in their complaint, "the use of USG funds must not violate any larger University policies regarding the use or expenditure of student fees." *Id.*, at ¶ 7 (citing ch. 1, art. VII, § 1) (cleaned up).

As of July, viewpoint neutrality is the official policy of the University of North Carolina at Chapel Hill. See *Resolution on Viewpoint-Neutral Access to Mandatory Student Fees* (July 27, 2022) (hereinafter "the Resolution"), ¶ 6 ("the Undergraduate Student Government and the Graduate and Professional Students Government must appropriate all fees in a viewpoint-neutral manner") and ¶ 5 ("Whereas, the University's Undergraduate Student Code . . . provides that allocation decisions 'may not have any relationship of the group or activity' requesting the funding. . .") (citing V U. C. S. G. § 205(A)).

The Resolution inimically tied viewpoint neutrality into the body of student law in two discrete respects. First, it noted that "the law" requires viewpoint neutrality in the "allocation of student fees to student organizations," *id.*, at ¶ 4, before enacting the policy of viewpoint neutrality as "consistent with the above-referenced law." *Id.*, at ¶ 6. In this

respect, the federal viewpoint neutrality doctrine was folded into the University's Policy.

Second, the Resolution contends that viewpoint neutrality standards were *already* required under the Undergraduate Code, see *id.*, at ¶ 5, and it was certainly correct. See V U. C. S. G. § 205 (2022) ("Section 205. Viewpoint Neutrality . . . [r]equests for funding [sic] must be made in a manner that is neutral to the views of the organization."). But § 205 could never have been enough, under the present statutory scheme, to annul any part of the Student Code, since this Court must "construe" contradictory statutes "to give effect to both if such a construction can be reasonably adopted and applied." III J. C. S. G. § 912(B) (cleaned up). Such a construction would have been unwise. To fashion a ruling from § 912(B), this Court would form, from whole cloth, viewpoint neutrality standards deliberately divorced from the federal context. The process of divorcing the standard demands an arbitrary rationale, but also violates the expressly stated purpose of the BOT Resolution. See Resolution, ¶ 6.

Because the Resolution takes up § 205 as a basis for University Policy, the statute's dictates attain a higher-authority. Section 205 has become University via the Resolution, and therefore, a constitutional authority. Cf. Student Const. ch. 1, art. VII, § 1; see also Resolution, ¶ 6 ("the [BOT of UNC-CH] . . . resolves that consistent with the above-referenced law and policy, the Chancellor shall direct appropriate personnel to develop and issue policy requiring that the [USG Senate] . . . appropriate all fees in a viewpoint neutral manner.").

So too do we dispense with the dictates of the Joint Code's "limitations on authorities used for decision," III J. C. S. G. § 910 (2022), that might be invoked in our foregoing analysis on the viewpoint neutrality doctrine. This Court annulled § 910's language fifty-years ago, when it was first incarnated as § 91 of the Student Supreme Court Act of 1968,

reading that, "[t]he statutes of the United States or any state, the decisions of the courts of the United States or any state, and treatises on the law of the United States or any state shall not be used as authority for decision of any action in the Supreme Court of the Student Body." (precisely the same language as § 910). Of § 91, the Court noted that interpreting those regulations as "a flat prohibition on the use of anything which might be found in the library of the Law School," ignored "the plain language" of the statute, and would render litigation in this Court inoperable. *Welfare* v. *UNC Student Body*, 1 S. S. C. 30 (1972), n. 6 ("many of the doctrines of the opinions of this Court are duplicated by the common law authority of the United States, the several states, and of England. That this Court has invented or discovered these principles is something of a gross fiction.").[1] The Court notes the same argument again today.

To give meaning to the University Policy, the Student Constitution, and the viewpoint neutrality requirement of the Undergraduate Code, it shall be necessary for this Court to delve into the "common law authority of the United States," to establish, for ourselves, a stand-alone viewpoint neutrality doctrine for Student Government. *Ibid*. This analysis is necessitated by the doctrine we are presented with, a creature of that very authority. Our decision, however, can freely flow as a matter of student law under § 205, even if an objector wished to apply § 910 of the Joint Code. *Supra*, at 6.

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[1] JUSTICE SHUE's concurring opinion claims that the analysis of *Southworth* is largely unnecessary. *Post*, at 2. We agree that federal precedent cannot serve as the sole basis for a holding, but as our analysis demonstrates, this Court should be no means take such a principle to the extreme opposite, and our precedents rebuke such a notion. See, *e.g.*, *Welfare*, 1 S. S. C. 30, at n. 6. *Southworth* is not "non-essential" but quintessential to the viewpoint neutrality doctrine and establishes the operable principles that are not found in § 205(A), *e.g.*, the explicit rebuke of funding schemes contingent on "majoritarian consent." *Southworth*, 529 U. S., at 235.

*

Consequently, this Court exercises subject matter jurisdiction over the question of whether the USGT's encumbrance violates University Policy, the Student Constitution, and § 205, disregarding whether that principle makes (or requires) reference to an authority which—taken on its own—would be outside of the subject matter jurisdiction of this Court.

B

The question of standing is complicated by the substantial agreement between the parties. Plaintiff claims standing under III J. C. S. G. § 630, which states that "standing to bring an action before the Supreme Court based on the invalidity or illegality of an act by a student body officer . . . shall extend to *any member of the student body*." (emphasis added). Notably, neither party makes a claim as to why the Undergraduate Senate should be considered a "member of the student body." *Ibid.* The argument that the Undergraduate Senate is a member of the student body does not, taken on its own, present itself as an obvious truth.

In the matter of standing arising from claims against legislative actions, our Bylaws and the Joint Code state that standing may also extend to an "*officially recognized student organization* whose powers, rights, privileges, benefits, or immunities are adversely affected, restricted, impaired, or diminished by the legislative act in question." R. 18 (emphasis added); see also III J. C. S. G. §621. This standard, however, appeals to an entirely different allegation of harm than the one put forth in the complaint, *i.e.*, one "based on the invalidity or illegality of an act *by a student body officer*." III J. C. S. G. §630 (emphasis added).

In the past, the Court has been "reluctant to impose harsh rules that serve to practically limit organizations' access to this Court." *Project Dinah* v. *Student Congress*, 1 S. S. C. 239, 241 (2009). The doctrine established in *Project Dinah*

permitted a sweeping grant of "organizational standing" in actions where the individual members were not injured despite an injury to the organization itself. *Ibid*. While the Court in *Project Dinah* fell short of concluding that the organization was capable of suing outright (instead holding that the case would be re-captioned under the name of the organization) it would still be the individuals suing "on behalf of a student organization." *Ibid*. Here, the refusal to extend that grant of standing to the Undergraduate Senate would be an arbitrary application of the "reluctan[ce]" expressed by the *Project Dinah* Court. *Id*.

Furthermore, the line between allowing the organization itself to sue, represented through its counsel, versus requiring a member or officer to sue on behalf of the organization is notably thin. Justice Douglas once wisely advised that the "critical question of 'standing' would be simplified and also put neatly into focus if [the Supreme Court of the United States] fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts *in the name of the inanimate object* about to be despoiled, defaced, or invaded by roads and bulldozers and where the injury is the subject of public outrage." *Sierra Club* v. *Morton*, 405 U. S. 727, 741 (1972) (Douglas, J., dissenting) (emphasis added). The Undergraduate Senate's capacity to sue as an 'inanimate object' is even less tenuous. For example, the "corporation sole—a creature of ecclesiastical law—is an acceptable adversary and large fortunes ride on its cases." *Sierra Club*, 405 U. S., at 742 (Douglas, J., dissenting). And because "the ordinary corporation is a 'person' for purposes of the adjudicatory processes," *ibid*., it would not make much sense why an organization should not be. We therefore extend the logic of the *Dinah* Court to its natural conclusion. The registered student organization itself may be entitled to sue in cases where it sustains an injury to its core mission and purpose and where previously,

one officer or member was required to sue on behalf of the organization. See *Project Dinah*, 1 S. S. C. 239, 241 (2009).

Since the parties have adequately demonstrated that the UGST's encumbrance presents an injury to the Undergraduate Senate's primary duty: the authority to distribute the Student Fee, see Student Const. ch. 1, art. VII, §1, the Undergraduate Senate possesses standing to bring this action. See also Pl.'s Compl., ¶ 4.

III

The relevant statute, V U. C. S. G. § 101(8) (2022), states that "CUSO Fee shall be defined as the Student Government share of CUSO operation cost as approved by the Student Fee Audit Committee, $46,666." The parties agree that "mandatory appropriations of fee money to any one entity for any one specific purpose necessarily abrogates a responsibility to use objective criteria evenly applied among all organizations with the potential to be funded." Pl.'s Compl., ¶ 8. Those responsibilities, on plaintiff's reading, are enumerated under the standards set forth in *Rosenberger* v. *Rector and Visitors of the Univ. of Va.*, 515 U. S. 819 (1995) (holding that financial burdens on speech in the funding process constitute viewpoint discrimination); and *Bd. of Regents of the Univ. of Wisc. Sys.* v. *Southworth*, 529 U. S. 217 (2000) (holding that a university may not permit viewpoint preference in the disbursal of the student fee). See Pl.'s Compl., ¶ 8.

As we have already noted, our precedents foreclose this Court's authority to grant relief under the colour of federal law. See *Carolina Review* v. *Cunningham*, 1 S. S. C. 155 (1995), *supra*, at 4. But this relief is not what the plaintiff may properly be understood to request. Moreover, unlike the parties, we do not see the ruling in *Rosenberger* as relevant to the present-issue.

The Board of Trustees' recent actions to promote viewpoint neutrality ground this Court's authority to review

viewpoint neutrality claims under our constitutional duty to require that fee appropriations comport with University Policy. See Student Const. ch. 1, art. VII, § 1. In July, the BOT resolved that "the Undergraduate Student Government and the Graduate and Professional Students Government must appropriate all fees in a viewpoint neutral manner." *Resolution on Viewpoint-Neutral Access to Mandatory Student Fees* (July 27, 2022). Moreover, because the Resolution incorporates by reference V U. C. S. G. § 205 ("Viewpoint Neutrality"), the Court further cements its capacity to establish viewpoint neutrality standards for the Student Government of this University.

In the foregoing analysis, we establish the standard of viewpoint neutrality that shall govern this Court's review to fulfill the constitutional dictate of Article VII. In doing so, we note that we must partially overturn *Carolina Review*'s holding that "political partisanship" may serve as a legitimate standard by which an organization is denied funding. 1 S. S. C. 155, at 158 (1995).

A

The parties present a relatively narrow viewpoint neutrality question: are "mandatory appropriations to statutorily mandated recipients unconstitutional?" Def.'s Ans., ¶ 4. Section 101(8) mandates the allocation of $46,666 to the "Student Government share of CUSO operation cost." The statute is facially neutral. No explicit consideration of viewpoint is invoked. However, if we were to examine the process for the allocation of the Student Fee under § 101(8), we would arrive at a different conclusion (that there is none). Despite the text requiring that the definition of the CUSO Fee shall be, "approved by the Student Fee Audit Committee [SFAC]," Section 101(8) nonetheless sets that amount at $46,666. *Id*. While we might conclude that § 101(8) affords some basic process through the SFAC Clause, two facts point against this conclusion.

First, the statute's direct appropriation of funds is in and of itself a contradiction of the SFAC Clause's 'process.' Second, § 101(8) fails to offer any timeframe regarding when SFAC must approve of the designated amount beyond the direct statutory approval. Instead, § 101(8)—even if it had once afforded process (a dubious conclusion itself)—has relegated that issue to the past and forces each successive appropriations cycle to adhere to a mandatory allocation of § 101(8) absent a consideration of amendment or repeal. Consequently, we accept the parties' conclusion that § 101(8) constitutes a "mandatory appropriation of statutorily mandatory recipien[t]." Def.'s Ans., ¶ 4.

The core viewpoint neutrality issue in the eyes of the parties, centers around the aforementioned issue of "process" in mandatory appropriations and in particular, the question of whether a mandatory appropriation "use[s] objective criteria." Pl.'s Compl., ¶ 8. As Plaintiff notes, § 101(8) directly implicates the question before the United States Supreme Court in *Southworth*. 529 U. S., at 226 (2000). There, the Court held that a public university could appropriate a mandatory student fee to Registered Student Organizations (RSOs) if it did so in a viewpoint-neutral fashion. *Id*., at 229–234. The Court, however, remanded the case, to analyze whether or not the portion of the University's scheme allowing funds to be disbursed by referendum comported with a viewpoint neutrality requirement. *Id*., at 235–236. Justice Kennedy, writing for the majority, explained that "[t]o the extent the referendum *substitutes majority determinations for viewpoint neutrality* it would undermine the constitutional protection the program requires." *Id*., at 235 (emphasis added).

Two relevant concerns motivated that decision. First, it was "unclear to [the Court] what protection, if any, there is for viewpoint neutrality in this part of the process." *Id*. Second, the Court noted that the referendum, on its own, was inherently contrary to the "whole theory of viewpoint

neutrality . . . that access to a public forum, for instance, does not depend on majoritarian consent." *Id.* (cleaned up). Indeed, after *Southworth*, viewpoint neutrality analysis rests upon the precondition that process be implicated.

In the instant case, plaintiff's contention that mandatory fee appropriation violates viewpoint neutrality certainly presents a similar due process concern (namely that there is none). But we need not solely rely solely on *Southworth*'s flowery appeals to responsible governance. Nor do we. We need only consider it since the case so thoroughly defines the dawn of the viewpoint neutrality doctrine that ignoring its language would be irresponsible.

As we previously noted, the BOT Viewpoint Neutrality Resolution incorporates V U. C. S. G. § 205(A):

> Funding decisions may not have any relationship to the particular view of the group or activity. Requests for funding must be made in a manner that is neutral to the views of the organization. Funding may not be contingent on a particular level of support or popularity of an organization, although the amount allocated to an organization may take into account student involvement in the organization and the expected benefits to other students. Criteria used to evaluate funding proposals must be consistently applied. A guide containing funding criteria will be updated by the FC each fiscal year.

Some particular attributes of the text stand out for present purposes. The use of terms such as "criteria" or "tak[ing] into account" obviously imply that funding decisions require some consideration of a funding "[r]equest." *Id.* This feature is notably supported by the entire body of Chapter 3 of the same title, "Criteria for Funding." (V U. C. S. G. §§ 300, *et seq.*). Those standards signify strict criteria to achieve § 250's "consisten[t] appli[cation]" requirement.

Section 250 also notes that the funding criteria "will be updated by the [Finance Committee] each fiscal year." The Undergraduate Code mandates that the direct disbursal of Student Government Funds flows in yearly funding cycles. See V U. C. S. G. §§ 202(A)(1–4). RSOs requesting funding must also meet certain documentation requirements, see V U. C. S. G. § 206(A), and even Student Government itself must *apply* for funding through the normal processes. See V. U. C. S. G. § 207(B). If anything is clear from the dizzying array of finance laws in the Undergraduate Code, it is the requirement of process.

Section 101(8) bypasses all of the aforementioned processes, and simply appropriates $46,666 without any of the checks or balances provided by the funding criteria, the documentation requirements, or necessary yearly re-application.

B

Yet, the plaintiff in this case is the Undergraduate Senate itself. Could it not vote to grant the relief it requests? A statute of the Student Government may be "repealed," "voided," or otherwise removed from the Code in at least three ways. First, it may nullified (or its enforcement enjoined) by this Court. See, *e.g.*, III J. C. S. G. § 920. Second, it may be removed or otherwise hamstrung by action of the Board of Trustees or Board of Governors. See, *e.g.*, Student Const. ch. 1, art. VII, § 1. Third, and most importantly, it may be repealed by a vote of the relevant governing body (in this case, the Undergraduate Senate).

The third option is relevant here since it represents the only practical method by which the mandatory allocation of $46,666 to CUSO could be changed outside of relief granted by this Court. The necessity of a simple vote, with no objective standards to ensure viewpoint neutrality, compels the conclusion that § 101(8) appropriates the student fee in a manner contingent on "majoritarian consent," *Southworth*,

529 U. S., at 235, and inconsistent with the general funding criteria. See V U. C. S. G §§ 205, 300, *et seq*. Similarly, the mandatory statutory appropriation of the Student Fee grants a special treatment, allowing the $46,666 lump sum to bypass the normal funding standards and procedures set out in Title V of the Undergraduate Code.

At this stage in the analysis, there is one, inescapable conclusion: mandatory, statutory appropriations of the Student Fee are both an explicit exception to process and require majoritarian consent to change. Statutory requirements are inexorable from "majoritarian consent." *Id*. Consequently, to codify or repeal a mandatory appropriation does not rectify the original sin: the appropriation is still placed at the whim of the legislature and outside of the normal process. As this Court has previously noted, absent rigorous process and enforceable standards, the appropriations process is one of "legislative discretion." *Dinah*, 1 S. S. C., at 243. We have no choice, then, but to conclude that § 101(8) is a facial violation of the viewpoint neutrality doctrine under Article VII of the Student Constitution since the BOT resolution incorporates, by reference, the viewpoint neutrality and process requirements of V U. C. S. G. § 205.

Were § 108 to be repealed, Title V mandates a process for the appropriation. As we have tirelessly noted, appropriations of the Student Fee must be subject to a uniform process that specifically eliminates the "legislative discretion" the Court protected in *Dinah*, supra, at 8; see also V U. C. S. G. § 205(A). On remand, the Seventh Circuit in *Southworth* concluded that "the prohibition against unbridled discretion is a component of the viewpoint neutrality requirement." 307 F. 3d 566, at 579. To dismiss this case on the hypothetical possibility that the Senate would repeal § 101(8), is an unacceptable conclusion.

Because the Board of Trustees has required that the disbursal of the Student Fee comply with viewpoint neutrality standards, and because Article VII requires that "[t]he use

of USG funds must not violate any larger University policies regarding the use or expenditure of student fees," we hold that § 101(8) is unconstitutional by the extra-textual incorporation of the *Southworth* standards invoked by the BOT Resolution.

*

Student Government must observe two viewpoint neutrality authorities under the Constitution. The BOT Resolution requires both that the Undergraduate Student Government comply with the Federal Viewpoint Neutrality dictates, but also with the already existent viewpoint neutrality requirements of the Undergraduate Code. In so doing, § 205(A) must be treated also as a constitutional text under Article VII. Section 101(8)'s mandatory appropriation is a flagrant violation of all relevant standards: the requirement of uniform process, the abolition of "unbridled discretion," 307 F.3d, at 579, and the freedom from majoritarian consent.

IV

We then turn to the appropriate remedy. This Court has the statutory authority to enforce its judgements through injunctions. See III J. C. S. G. § 920. We have, thus far, declared that a statutorily mandatory appropriation of the Student Fee to mandatory recipients unconstitutional under Article VII of the Student Constitution.

Our conclusion that § 101(8) is unconstitutional demands relief rendering § 101(8) is unenforceable. In light of our preceding analysis, it follows that statute-mandated appropriations of the student fee by the GPSG Senate and the USG Senate are violations of Article VII Viewpoint Neutrality.

* * *

All officers of Undergraduate Student Government are permanently enjoined from enforcing V U. C. S. G. § 101(8). The defendant is enjoined from further continuing their present encumbrance of funds under § 101(8). All Undergraduate appropriations must go through the standard procedures, subject to the standard criteria, required under Title V of the Undergraduate Code.

It is so ordered.

SUPREME COURT OF THE STUDENT BODY

No. 22–006

USG SENATE *v.* LOGAN GRODSKY, UNDERGRADUATE STUDENT GOVERNMENT TREASURER

ON MOTION FOR SUMMARY JUDGEMENT

[September 30, 2022]

JUSTICE SHUE, concurring.

I join the Court's opinion. However, I write individually to emphasize several points. First, while the Court does acknowledge the speed and expeditiousness of the various filings of the Plaintiff and Defendant, it is essential to examine their relationships in full. Following a unanimous vote of the Undergraduate Senate on the 20th of September to file suit against the Undergraduate Treasurer, the Notice of Intent to File was submitted by members of that body serving as counsel at 8:10 p.m. of that day, while the Complaint was submitted at 12:05 a.m. on the 21st. The Defendant was issued a summons at 12:33 a.m. and filed both the Answer and a Motion for Summary of Judgement at 12:55 a.m., in which they conceded nearly all Plaintiff's claims, with the only difference being their asking the Court to find mandatory appropriations in general unconstitutional. Just five minutes later, the Plaintiff submitted a Motion for Dismissal and Summary of Judgement, which agreed with the Defendant's Answer in its entirety and asked the Court to provide the relief requested. See, *e.g.*, ¶ 6.

Both parties reiterate their lack of disagreement throughout their filings. See Def.'s Mot. For Summ. J., ¶ 3. In addition, the Defendant referred to themselves as "Plaintiff" in three separate locations across two of the aforementioned filings. See Def.'s Mot. for Summ. J., and Ans. (caption and

signature referring to Defendant Grodsky as 'Plaintiff'). When taken together with the circumstances under which filings took place, it seems overwhelmingly likely that there has been a nontrivial degree of coordination between the Plaintiff and Defendant in most aspects of this case. It bears repeating that this Court exists to address "controversies" and should not be used by political actors as an easy alternative to legislative action. Student Const. ch. 1, art. I, § 3. As the Court notes above, there exists in this case reasonable justification as to why a legislative repeal of § 101(8) would not be entirely sufficient, as "the appropriation is still placed at the whim of the legislature and outside of the normal process." Nevertheless, such an essential consideration is not mentioned by either the Plaintiff or Defendant in any of their filings. Taken together with the apparent cooperation between the parties, this is a considerable oversight on their parts and should not be viewed as a favorable precedent for future cases.

Further, I write to underscore the relevance of *Bd. of Regents of the Univ. of Wisc. Sys.* v. *Southworth*, 529 U. S. 217 (2000), and other matters of Federal Law as purely contextual and nonessential to a complete and binding analysis by this Court. Our subject-matter jurisdiction, as the Majority acknowledges, does not extend to Federal Law. See *ante*, at 4–5. Holdings of this Court should not be influenced by such external factors, invaluable as they can be in understanding the broader circumstances that shaped those matters over which we do have jurisdiction. With these considerations in mind, I join the Court's opinion.