

A public university requires students to pay a student-activity fee that funds the activities of various student organizations. The university allocates these funds to student organizations without regard to their views.

A student organization received student-activity fee funds to hold a float parade. The organization rejected a student's float submission because the views espoused by the float were contrary to the organization's and parade's message. The student appealed the organization's decision to the university, but the university upheld the rejection of his submission.

The student has filed an action against the university, arguing that the university's decision to uphold the organization's rejection of the student's submission and the university's mandatory student-activity fee violate the First Amendment.

Are the university's actions constitutional?

- A. The decision to uphold the organization's rejection of the student's submission and the mandatory student-activity fee are constitutional.
- B. The decision to uphold the organization's rejection of the student's submission and the mandatory student-activity fee are unconstitutional.
- C. The decision to uphold the organization's rejection of the student's submission is constitutional but the mandatory student-activity fee is unconstitutional.
- D. The decision to uphold the organization's rejection of the student's submission is unconstitutional but the mandatory student-activity fee is constitutional.

Explanation:

First Amendment freedom not to speak

Type	Examples
Impermissible compulsion	<ul style="list-style-type: none">• Forcing students to salute flag or recite Pledge of Allegiance• Punishing motorists for covering state motto on license plates• Requiring private groups to include opposing viewpoints in their events• Requiring nonunion employees to pay public-sector union dues
Permissible compulsion	<ul style="list-style-type: none">• Forcing public university students to pay activity fee if funds allocated in viewpoint-neutral manner• Requiring public shopping center to permit speech on property if speech not dictated by state & not identified with center's owner• Requiring lawyers to join bar association & pay dues to practice law

The **First Amendment** protects individuals' freedom to speak and their **freedom not to speak**. This means that the government and its subsidiaries (eg, public universities) **cannot compel individuals to endorse or include viewpoints** with which they disagree. Here, the student organization had the right to reject the student's float submission, and the university could not force the organization to accept that submission. Therefore, the university's decision to uphold the organization's rejection of the submission is constitutional (**Choices B & D**).

Additionally, the First Amendment **generally prohibits** the government and its subsidiaries from **compelling** individuals to **financially support private speech** with which they disagree.* However, there are limited **exceptions** to this rule, including that a public university can force its students to pay a student-activity fee if the funds are allocated in a **viewpoint-neutral manner**. Since the public university here allocates funds to student organizations without regard to their views, the mandatory student-activity fee is constitutional (**Choices B & C**).

*Individuals can be compelled to subsidize government speech through taxes because the First Amendment does not prohibit the government from using taxpayer funds to advocate for or defend its own policies or viewpoints.

Educational objective:

The First Amendment protects the right to speak and not to speak. This means that the government cannot compel individuals to endorse, include, or financially support private speech with which they disagree. However, a public university can compel its students to pay an activity fee if the funds are allocated in a viewpoint-neutral manner.

References

- Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., 515 U.S. 557, 581 (1995) (holding that a state may not require private parade organizers to include messages they oppose in the parade).
- Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth, 529 U.S. 217, 234 (2000) (holding that a public university's mandatory student-activity fee is constitutional if the fee is allocated in a viewpoint-neutral manner).
- 16A Am. Jur. 2d Constitutional Law §§ 471–73 (2020) (explaining when the First Amendment prohibits government-compelled speech).