

# *Christian Legal Society v. Martinez*

Argued: April 19, 2010

Decided: June 28, 2010

## **Facts**

Many public universities and law schools maintain policies prohibiting discrimination on the basis of race, color, national origin, gender, religion, disability, or sexual orientation. At the same time, schools generally allow students sharing cultural backgrounds, religious beliefs, or interest in politics, athletics, and social causes to form groups on campus. But, what happens when a student group maintains beliefs that conflict with a school's nondiscrimination policy? Does a nondiscrimination policy infringe the First Amendment rights of members in a religious student group? The Christian Legal Society ("CLS") at The University of California Hastings College of Law brings this question to the U.S. Supreme Court.

Hastings, a state law school, maintains a nondiscrimination policy that prohibits unlawful discrimination on the basis of "race, color, religion, national origin, ancestry, disability, age, sex or sexual orientation." It requires all officially recognized student groups to allow all law students to participate as members or officers. According to Hastings, this means that membership can not be limited by a student's "status or beliefs." Registered student organizations receive some benefits, including the use of the Hastings' name and logo, access to modest travel funds, and the ability to communicate with students on school bulletin boards, in a weekly newsletter, and through a school e-mail address. CLS sought recognition as a registered student organization at Hastings as a chapter of the national CLS.

CLS voting members and officers must sign and pledge to follow the national CLS Statement of Faith. The Statement of Faith is a commitment to recognize "One God" (present in "Father, Son and Holy Spirit") and to not engage in homosexual conduct or sex outside of marriage. When CLS applied to be a registered student organization at Hastings, the school said that the organization's requirement that members sign the Statement of Faith violated the school's nondiscrimination policy. Hastings considered that requirement discriminatory against non-Christian, homosexual, and non-celibate students.

After being denied recognition, CLS was allowed to meet on campus and use a chalkboard for announcements, but it could not become a registered club until it opened its membership to all students. CLS filed suit against the school arguing that the nondiscrimination policy violates their First Amendment rights to free speech, expressive association, and free exercise of religion. A federal district court and the Ninth Circuit both ruled for Hastings. CLS appealed and the U.S. Supreme Court agreed to hear its case.

## **Issue**

Did a university's denial of official recognition to a student group whose membership requirements violated the school's nondiscrimination policy infringe the students' First Amendment rights?

## Constitutional Provisions and Precedents

### *First Amendment*

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

### *Widmar v. Vincent (1981)*

The University of Missouri at Kansas City made its facilities generally available for the activities of student groups on campus. Cornerstone, an evangelical Christian student group previously registered by the University, was informed that it could no longer use the school’s facilities to conduct worship or religious teaching. Members of the student group sued claiming that the school had violated their First Amendment rights.

When the students’ case reached the U.S. Supreme Court, the Court decided in their favor. The Court recognized the University’s authority to *impose reasonable, neutral regulations* on use of campus facilities that were compatible with its mission of providing a secular education. However, the Court said, *having created a policy of generally open use*, the University had to justify excluding the group based on the religious subject matter of its intended speech – a restriction on the content of speech. Because the University was not able to show its regulation was necessary to serve a compelling state interest or was narrowly drawn to achieve that end, denying the students access to school facilities violated their speech and associational rights.

### *Rosenberger v. Rector and Visitors of the University of Virginia (1995)*

Rosenberger and other students from an approved University of Virginia student group created a publication, *Wide Awake: A Christian Perspective at the University of Virginia*, and sought school printing funds. The University refused to authorize payments because, contrary to school policy, the publication “primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality.” The students sued, arguing their First Amendment rights had been violated.

When the case reached the U.S. Supreme Court, the Court decided that the policy violated the students’ right to freedom of speech. The school was entitled to reserve funding for particular groups or discussion of topics to serve a particular purpose – encouraging a diversity of views on campus. However, even if funding decisions are involved, a state cannot unreasonably prohibit a student group’s speech that would contribute to the stated goal of encouraging a diversity of views. It also may not limit a group’s participation on the basis of viewpoint. Thus, the University could not deny the group printing funds on account of the religious content of their publication.

## Arguments for CLS

- Disfavored organizations cannot be prohibited from participating like other student groups just because their views might be unpopular.

- The nondiscrimination policy is not neutral about speech. In effect, it prohibits groups from forming if they hold particular viewpoints on sexual orientation.
- The policy that student group membership can never be limited by “beliefs” specifically disadvantages religious groups. Such groups are always defined by beliefs. Hastings is excluding a religious group from exercising its free speech right just as in *Widmar*.
- A policy that requires all student groups to accept all members sweeps too far to serve any legitimate educational goal. Diversity among groups can’t be fostered by forcing every group to allow all students to join. That’s the opposite of encouraging difference.
- Even if the nondiscrimination policy can be deemed neutral, it is not reasonable. Requiring any interested student to be allowed to become a member or officer opens up CLS (and any other group) to possible take-over by individuals with hostile or conflicting views.
- The policy infringes students’ associational rights. Hastings does not allow the members of CLS to associate with whomever they would like because they are forced to associate with all students instead of only those who share their beliefs.

### **Arguments for Martinez**

- Hastings is not excluding “disfavored” organizations based on their unpopular views. It is adhering to a nondiscrimination policy that covers conduct.
- Hastings may impose reasonable restrictions in its recognition of student organizations. The nondiscrimination policy is reasonable because it ensures that all students may enjoy all student-funded and school-recognized activities. Furthermore, it avoids line-drawing between groups.
- The policy doesn’t discriminate against religious groups or any other group – it applies to everyone equally. The school’s policy is also neutral: all registered student organizations must have an open membership policy allowing all students to join.
- The assertion that groups will be taken over by individuals with hostile or conflicting views is a mere hypothetical situation. Indeed, it has never happened at Hastings.
- The First Amendment does not require the school to sanction discrimination. Moreover, Hastings has a compelling interest in ensuring diversity among student groups and the equal access of students to student organizations.
- The members of CLS may still associate as they see fit – Hastings has only prohibited CLS from using the school’s name and funds. Members of CLS have still met on campus and made their announcements known to students.

Note: This case is somewhat unusual because the parties disagree on the facts before the Court. After agreeing on the facts of the case at the trial level, CLS has contested both the wording and implementation of the law school’s group membership policy. It’s very unusual for a case at the Supreme Court to be mired down in disputes of basic fact. Unsurprisingly, the Justices voiced considerable frustration at oral arguments. Given the disagreement, it is possible that this case will be returned to the lower courts or dismissed as improvidently granted.

## **Decision**

Justice Ginsburg delivered the opinion of the Court, in which Justices Stevens, Kennedy, Breyer, and Sotomayor joined. Justices Stevens and Kennedy each filed concurring opinions, and Justice Alito filed a dissenting opinion in which Chief Justice Roberts and Justices Scalia and Thomas joined.

## **Majority**

The Court ruled 5-4 for The University of California Hastings College of Law. The justices examined Hastings' policy requiring membership in all registered student organizations to be available to all students. The Court decided that this policy did not violate the First Amendment. Writing for the majority, Justice Ginsburg stated that governmental entities may impose *reasonable, viewpoint neutral* restrictions when regulating property in their own charge and determined that Hastings' policy is both reasonable and viewpoint neutral.

It is reasonable because:

- it ensures that opportunities afforded by registered student organizations are available to all students;
- it helps Hastings administer its Nondiscrimination Policy;
- it fosters diversity, tolerance, cooperation, and learning among students; and
- it incorporates the state of California's policy against discrimination.

Justice Ginsburg also noted that there are substantial other ways for CLS to communicate with students and suggested that the threat of unsympathetic students "hijacking" a student organization required to accept them was highly unlikely.

The policy is viewpoint neutral because it does not distinguish between student groups based on their message or perspective.

## **Dissent (Alito)**

Justice Alito determined that Hastings violated the First Amendment rights of the members of CLS. He criticized the majority for evaluating the case under the assumption that Hastings' policy requires all registered student groups to accept all interested students. He argued that Hastings did not actually follow any such policy and wrote that the alleged "all-comers" policy was only a cover by the school to justify viewpoint discrimination. Justice Alito concluded that Hastings' Nondiscrimination Policy discriminated on the basis of viewpoints on religion and sexual morality. In addition, he determined that the alleged "all-comers" policy was neither reasonable nor viewpoint neutral. In closing Justice Alito asserted that "today's decision is a serious setback for freedom of expression in this country."