Case Facts

-Hastings Law School required that recognized student organizations allow students

to participate regardless of the students status or beliefs.

-The organization Christian Legal Society (CLS) had a policy requiring members to

subscribe to a “statement of beliefs” and refrain from certain behavior.

-The issue was that the CLS barred non-Christians, LGBT, and LGBT advocates from

joining. As a Result, Hastings declined to recognize the organization.

Procedural History

Upon denial of recognition, the CLS sued the university in the US District Court for

the Northern District of California. In April 2006, the District Court ruled for the

university, upon which the CLS appealed to the 9th Circuit Court of Appeals. In March

2009, the Circuit Court affirms the District Court ruling. After the two lower court

cases, the Supreme Court agrees to hear the case.

Issues in the case

-Whether the Constitution permits a public university law school to exclude a

religious organization from a forum for speech solely because the group requires

its officers and voting members to share its core religious commitments.

(Petitioner)

-Whether a public university violates the 1st amendment by creating a program

through which public funds and other modest benefits are made available to

student groups that agree to open their membership to “any student…regardless

of their status or beliefs”. (Respondent)

-Is the “all-comers policy” reasonable and just?

-Is Hastings’ policy viewpoint neutral?

Holding

-Hastings’ policy, which requires student groups to accept all students,

regardless of their status or beliefs in order to obtain official recognition, is a

reasonable, viewpoint neutral condition on access to the forum; therefore, it does

not transgress 1st amendment limitations.

Judgment

-Court of Appeals for the Ninth Circuit affirmed and remanded. University rule is

upheld.

Legal reasons for majority, concurrence, and dissent

Majority: written by Justice Ginsburg

-In writing for the majority, J. Ginsburg argues by dissecting each of the

claims by the CLS as to how the policy infringes on their 1st amendment

rights. Then she goes on to explain why Hastings’ policy does not violate the

Constitution.

-CLS: Hastings’ policy is unreasonable.

-She argues, just as Hastings doesn’t allow professors to choose its students

based on having a certain status or belief, the law school may decide that the

educational experience is best promoted when all participants in the forum

provide equal access to all students.

-Furthermore, the all comers requirement helps the school police the

nondiscrimination policy without inquiring into an RSO’s motive for

membership restriction.

-CLS: Hastings’ policy is not viewpoint neutral.

-Ginsburg argues that there is not much more to ask in viewpoint neutrality

than an “all comers policy”.

-CLS insists that the policy systematically and predictably burdens most

heavily those groups outside the mainstream.

-To which Ginsburg adds, a regulation that serves purposes unrelated

to the context of expression is deemed neutral regardless of

unintended consequences.

Concurrence: written by Justice Stevens

-Writing in response to J. Alito’s dissent, J. Stevens attempts to address the

dissenters concerns.

-In the dissent’s view, by refusing to grant CLS an exemption, Hastings

violated the CLS’s rights by discriminating on the basis of religion. To which

J. Stevens argues that although the 1st amendment may protect the CLS off

Campus, it does not require a public university to validate or support them.

Concurrence: written by Justice Kennedy

-J. Kennedy writes his concurrence to support the analysis set in forth in the

opinion of the court.

-Rosenburger is distinguishable from the instant case in various respects. Not least

that here the school policy in question is not content based either in formulation or

evident purpose; and were it shown to be otherwise, the case should likely have a

different outcome.

-The petitioner would have a substantial case on the merits if it were shown that the

all-comers policy was either designed or used to infiltrate the group or challenge

its leadership in order to stifle its views. But that has not been shown to be so likely

or self evident as a matter of group dynamics.

Dissent: written by Justice Alito

-In writing the dissent, J. Alito rebuts the opinion of the majority, then assesses the

claims of both Hastings and the CLS, and finally explains how the policy did in fact

violate the CLS’s constitutional rights.

-Today’s decision rests on a very different principle: no freedom for expression that

offends prevailing standards of political correctness in our country’s institutions of

higher learning.

-The Court does not address the constitutionality of the very different policy

Hastings invoked when it denied CLS’s application for registration, nor does the

Court address the constitutionality of the policy that Hastings now purports to

follow.

-The all comers policy is not reasonable, nor is it viewpoint neutral.

-Though the all comers policy is facially neutral, its selected application

implies that the neutral policy was adopted for discriminatory purposes;

an action that is unconstitutional.

-Hostile takeovers are not impossible.

-A true all comers policy permits small unpopular groups to be taken over by

students wanting to change the groups views.

-The CLS has only 7 members, if 10 Christians from more accepting

denominations join and then break from the national organization and

subsequently change the group, an action that in the eyes of old CLS

members would have brought its demise.

Relation to other cases and precedent.

Germaine cases:

-Boy Scouts of America v. Dale

-Widmar v. Vincent

-Schneider v. New Jersey

Van Geel chart: Healy v. James / Christian Legal Society v. Martinez

Precedent Case-struck down

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| --- | --- | --- |
|  | Precedent Struck Down | Precedent Upheld |
| Narrowing interpretation of precedent | Healy v. James ->  CLS v. Martinez  (SD/Upheld) (A) |  |
| Broadening interpretation of precedent |  |  |

Main Case- Upheld

Source of Law

-Interpretation of the 1st amendment’s free

speech, expression, and association

clauses

Interpretation style

-Majority: Living Constitution

-Dissent: Textualist