

Club That Discriminates Loses Appeal The New York Times June 29, 2010 Tuesday

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HEADLINE: **Club That Discriminates** Loses Appeal

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BODY:

WASHINGTON -- A public law school did not violate the First Amendment by withdrawing recognition from a Christian student group that excluded gay students, the Supreme Court ruled on Monday in a 5-to-4 decision.

The case, involving a clash between religious freedom and antidiscrimination principles, divided along familiar ideological lines, with the court's four more liberal members and Justice Anthony M. Kennedy in the majority.

Justice Ruth Bader Ginsburg, writing for the majority, said it was constitutionally permissible for public institutions of higher education to require recognized student groups to accept all students who wished to participate in them.

Justice Samuel A. Alito Jr., writing for the four dissenters, said the decision represented a triumph for the principle that there is "no freedom for expression that offends prevailing standards of political correctness in our country's institutions of higher learning."

The two sides disputed not only the legal principles involved but also just what had happened at Hastings College of the Law in San Francisco, the defendant in the case.

As the majority understood it, the school had merely applied a neutral "all comers" policy to every group that sought official recognition. Recognized groups were entitled to modest financial assistance, use of the school's communications channels and meeting space, and use of the school's name and logo, as long as they allowed all students to participate in their activities.

The dissent, by contrast, said the school had enforced a policy forbidding discrimination based on only a few criteria, including sexual orientation, and so had placed a special burden on religious groups.

The student group that brought the suit, Christian Legal Society, or C.L.S., does not allow students to become voting members or to assume leadership positions unless they affirm what the group calls orthodox Christian beliefs and disavow "unrepentant participation in or advocacy of a sexually immoral lifestyle." Such a lifestyle, the group says, includes "sexual conduct outside of marriage between a man and a woman."

The group said that either version of the school's policy would violate the group's First Amendment rights to free association and religious freedom.

Justice Ginsburg said the justifications the school had offered for the all-comers policy were sufficient to overcome any First Amendment concerns. Among those justifications, she said, were making sure that educational opportunities were available to all students and bringing together people with diverse views.

In returning the case, *Christian Legal Society v. Martinez*, No. 08-1371, to the lower courts, the majority left open the possibility that the Christian student group might be able to prove that Hastings's policy was a pretext for antireligious animus.

Justices John Paul Stevens, Stephen G. Breyer and Sonia Sotomayor joined the majority opinion.

In a concurrence, Justice Stevens said groups that "exclude or mistreat Jews, blacks and women" must be tolerated in a free society. But "it need not subsidize them, give them its official imprimatur or grant them equal access to law school facilities."

In a second concurrence, Justice Kennedy wrote that "a vibrant dialogue is not possible if students wall themselves off from opposing points of view."

Justice Alito, writing for himself, Chief Justice John G. Roberts Jr. and Justices Antonin Scalia and Clarence Thomas said the decision marked a dark day.

"I do not think it is an exaggeration to say that today's decision is a serious setback for freedom of expression in this country," Justice Alito wrote.

"There are religious groups that cannot in good conscience agree in their bylaws that they will admit persons who do not share their faith," he wrote. "For these groups, the consequence of an accept-all-comers policy is marginalization."

In other action on Monday, the court agreed to hear a challenge to an Arizona law that imposes penalties on businesses that hire illegal immigrants. The court's decision in the case, *Chamber of Commerce v. Candelaria*, No. 09-115, may provide guidance about the constitutionality of a more recent Arizona law giving the police there greater authority to check the legal status of people they stop.

The court also declined to hear an appeal from a decision allowing a sexual-abuse lawsuit against the Vatican to move forward in federal court in Oregon. The case is *Holy See v. Doe*, No. 09-1.

Health Care Challenge Rejected

SAN FRANCISCO (AP) -- The Supreme Court on Monday rejected a business-led challenge to a universal health care program in San Francisco that has enrolled more than 53,000 people who lacked health insurance.

The justices denied an appeal from the Golden Gate Restaurant Association of a ruling that upheld the program's requirement that employers provide health coverage for their workers or help pay for the public program.

Businesses with at least 20 workers that do not provide health care must give part of each employee's wages to the city to help pay for the \$200 million program.

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