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STUDENT BIBLE CLUBS AND RELIGIOUS USE OF SCHOOL FACILITIES

Introduction

Despite numerous Supreme Court decisions forbidding it, public school administrators regularly prohibit Christian student groups on college, university, and secondary school campuses from using school facilities. When other student groups are allowed access to such facilities, these policies constitute content or viewpoint discrimination and thus infringe on the First Amendment rights of religious students. The Court has further rejected the argument that these discriminatory policies are justified by the Establishment Clause. Accordingly, Christian student groups must be given the same recognition and access to publicly owned facilities as nonreligious groups.

I. Public School Facilities Which Are Available For Use By Non-Religious Student Groups Must Be Made Available To Religious Student Groups.

A. The First Amendment prohibitions against content and viewpoint discrimination forbid University and college policies which bar religious organizations from using public school facilities that are open to other groups.

Religious groups have always enjoyed a right to equal access to traditional public forums such as public parks. *See Niemotko v. Maryland*, 340 U.S. 268, 272–73 (1951). And it has been clear for thirty years that the principle of equal access for religious groups extends to nontraditional public forums created by state-run universities. *Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981). Accordingly, public universities may not discriminate against Christian student groups by denying them equal access to public facilities. Such policies violate the First Amendment and are only justified by a "compelling state interest that it is narrowly drawn to achieve that end." *Widmar*, 454 U.S. at 269–70 (citing *Carey v. Brown*, 447 U.S. 455, 461, 464-65 (1980)).

In *Widmar v. Vincent*, 454 U.S. 263, 276 (1981), the Supreme Court struck down a university policy which prohibited use of facilities for religious purposes. In that case, the University of

Missouri at Kansas City (UMKC) encouraged an active campus life by opening its facilities to over 100 registered student groups. *Id.* at 265. One of those student groups, an evangelical Christian group known as Cornerstone, initially received the same access to facilities accorded to all students. *Id.* However, UMKC later denied Cornerstone access to campus facilities, citing a university ban on the use of facilities "for purposes of religious worship or religious teaching." *Id*.

The Supreme Court held that Cornerstone's proposed use of the forum—for religious worship and discussion—constituted "forms of speech and association protected by the First Amendment." *Id.* at 269. Accordingly, the Court struck down UKMC's policy because it amounted to unconstitutional "content-based exclusion of religious speech." *Id.* at 277.

Widmar was a landmark decision and its core principle was reinforced in subsequent Supreme Court decisions. *See Bd. of Educ. v. Mergens*, 496 U.S. 226, 232-33 (1990); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 827, 843–44 (1995). For example, in *Rosenberger*, the University of Virginia refused to fund a Christian student group's publication, even though it funded the publication of other student organizations. *Rosenberger v. Rector & Visitors of the Univ. of Va.* The Court struck down the school's policy against funding "any activity that primarily promotes or manifests a particular belief in or about a deity or an ultimate reality," *id.* at 825 (internal quotation mark omitted), ruling that the university's actions amounted to "a denial of [the Christian student group's] right of free speech guaranteed by the First Amendment." *Id.* at 837.

B. Preventing establishment clause violations is not a compelling government interest justifying policies which restrict the use of school facilities by religious student groups.

The Court stated in *Widmar* that "discriminatory exclusion from a public forum based on the religious content of a group's intended speech," could be justified by showing that it is "necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Widmar*, 454 U.S. at 269–70 (citing *Carey v. Brown*, 447 U.S. 455, 461, 464-65 (1980). The Court acknowledged as well that "the interest of the University in complying with its constitutional obligations may be characterized as compelling." *Id.* at 271. Accordingly, government officials often invoke the Establishment Clause as justification for closing the doors of public facilities to religious organizations. *See, e.g.*, *Rosenberger*, 515 U.S. at 837 ("[T]he University . . . argued at all stages of the litigation that inclusion of [a religious student group's] contractors in [student activities] funding authorization would violate the Establishment Clause."); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) ("The District, as a respondent, would save its judgment below on the ground that to permit its property to be used for religious purposes would be an establishment of religion forbidden by the First Amendment."); *Bd. of Educ. v. Mergens*, 496 U.S. 226, 232-33 (1990) ("The school officials explained that . . . a religious club at the school would violate the Establishment Clause."); *Widmar*, 454 U.S. at 270-271 ("The University first argues that it cannot offer its facilities to religious groups and speakers on the terms available to other groups without violating the Establishment Clause of the Constitution of the United States.").

However, the Supreme Court has consistently held that the Establishment Clause does not justify the exclusion of religious organizations from use of public facilities generally open to the public. *Rosenberger*, 515 U.S. at 842 ("It does not violate the Establishment Clause for a public university to grant access to its facilities on a religion-neutral basis to a wide spectrum of student groups, including groups that use meeting rooms for sectarian activities, accompanied by some devotional exercises."); *Mergens*, 549 U.S. at 248 ("[I]f a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.") (internal quotations omitted) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)); *Lamb's Chapel*, 508 U.S. at 395 (holding that allowing a religious organization to use school property poses no "realistic danger that the community would think that the District was endorsing religion or any particular creed…."); *Widmar*, 454 U.S. at 271 (U.S. 1981) ("We agree that the interest of the University in complying with its constitutional obligations may be characterized as compelling. It does not follow, however, that an 'equal access' policy would be incompatible with this Court's Establishment Clause cases.").

C. The equal access act requires federally-funded secondary schools to allow religious organizations equal access to public facilities if the school allows access to other noncurriculum-related groups.

The *Widmar* Court did not extend its holding to high schools, implying that high school students might not be able to differentiate between private speech and government endorsement of religion. According to the Court, "University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion." *Widmar*, 454 U.S. at 274 n.14. In response, Congress passed the Equal Access Act in 1984, prohibiting federally-funded secondary schools from foreclosing access to a "limited open forum" on the basis of a student group's religious or other speech. 20 U.S.C. § 4071(a) (2006).

Pursuant to the Act, federally-funded secondary schools must allow religious student groups to meet on campus if the school recognizes any other "noncurriculum related student group." 20 U.S.C. § 4071(b). Most religious clubs will fit into the category of "noncurriculum related." The courts look "to a school's practice rather than its stated policy," *id.* at 246, despite the fact that the Act's language specifies that it applies when a school "grants an offering to *or opportunity for*" noncurriculum student groups to use school facilities. 20 U.S.C. § 4071(b) (emphasis added). Thus, if a federally-funded secondary school has recognized any noncurriculum student group, the school must allow religious groups equal access and recognition.

In *Bd. of Educ. v. Mergens*, 496 U.S. 226, 232-33 (1990), the Supreme Court upheld the constitutionality of the Equal Access Act and held that it protected a high school student's right to form a Christian club at her school. *Mergens*, 496 U.S. at 248–53. In that case, the principal, superintendant, and school board of Westside High School denied Bridget Mergens' request to establish a Christian club. *Id.* at 232–33. They based their decision on a school policy requiring all clubs to be sponsored by a faculty member and that "clubs and organizations shall not be

sponsored by any political or religious organization, or by any organization which denies membership on the basis of race, color, creed, sex or political belief." *Id.* at 231–32.

The Court found that several clubs allowed by the school were noncurriculum related and therefore the school must allow equal access to the Christian club. *Id*. at 245–46. For example, scuba diving was not taught in any regularly offered course at the school, so the school's scuba diving club was a noncurriculum related group. *Id.* at 245. Also, "participation in the chess club is not required for any class and does not result in extra credit for any class," *id.*, and the school's "service group that works with special education classes . . . does not directly relate to any courses offered by the school and is not required by any courses offered by the school." *Id.* at 246. Therefore, the Court held that the school had violated the Act by allowing other noncurriculum related groups to meet on campus and rejecting Mergens' Christian club. *Id.* at 246–47.

The Court's holding in *Mergens* was followed by the Court of Appeals for the Ninth Circuit in *Prince v. Jacoby*, 303 F.3d 1074, 1094 (9th Cir. 2002). There, a school district implemented a policy which allowed religious student groups to be recognized, but restricted such groups' access to certain benefits. *Id*. at 1077, 1084–90. The Ninth Circuit unanimously held that the policy unlawfully violated the Equal Access Act.[1] *Id*. at 1090.

In summary, the Supreme Court has upheld the constitutionality of the Equal Access Act and sustained its requirement that secondary schools allow religious student groups' use of school facilities. The Act's extension of *Widmar* guarantees that younger students, like university students, can enjoy the First Amendment rights at school free of discriminatory school policies.

II. School Nondiscrimination Policies, Even Those That Require Religious Groups To Admit Members And Leaders Hostile To The Group's Mission, Are Constitutional.

Student groups should be advised that school nondiscrimination policies may hinder the goals, values, and missions of Christian student organizations. In 2010, the Supreme Court ruled that a law school's "accept-all-comers" policy was constitutional, despite the fact that the policy excluded a Christian group from recognition as an official student organization. *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of Law v. Martinez*, 130 S. Ct. 2971, 2978 (2010).

In *Martinez*, the University of California, Hastings College of Law (Hastings) refused to register the Christian Legal Society (CLS) as a student organization. The school claimed that the CLS bylaws violated the school's nondiscrimination policy (interpreted by the school as an "all-comers" policy) by requiring members to, *inter alia*, believe in Jesus Christ and renounce sexual activity between anyone other than a married man and woman. *Id.* a 2980. CLS sued Hastings, claiming that the all-comers policy violated their First Amendment right of expressive association. *Id.* at 2981.

[1] The court went on to find that the school's distinct policy not only violated the Equal Access Act, but also the First Amendment. *Id.* at 1091–95.

The Court ruled in favor of Hastings, finding that the university's interest in ensuring that "leadership, educational, and social opportunities . . . are available to all students" outweighed CLS's freedom of expressive association. *Id.* at 2986. The Court also dismissed CLS's fear of outside infiltration as "more hypothetical than real," reasoning that "if students begin to exploit an all-comers policy by hijacking organizations to distort or destroy their missions, Hastings presumably would revisit and revise its policy." *Id.* at 2992, 2993. In short, the Court in *Hastings* held that universities are justified in using nondiscrimination policies to force registered Christian student organizations to accept members who disagree with the organization's values. Thus, the First Amendment does not extend so far as to prohibit schools from enforcing nondiscrimination policies which may hinder the goals, values, or missions of such groups.

Conclusion

The Supreme Court has clearly established that public colleges and universities which allow access to their facilities to non-religious groups must allow equal access to religious groups, even for worship activities. The Equal Access Act extends this right to students at secondary schools as well. However, The Supreme Court held that nondiscrimination policies which force Christian student groups to admit members hostile to the groups' mission do not violate the Constitution. Thus, although Christian student groups are guaranteed equal access to school facilities, the First Amendment does not protect Christian student groups from nondiscrimination policies which may hinder the goals, values, or missions of such groups.