SUPREME COURT OF THE UNITED STATES

No. 08–1371

CHRISTIAN LEGAL SOCIETY CHAPTER OF THE UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW, AKA HASTINGS CHRISTIAN FELLOWSHIP, PETITIONER *v.* LEO P. MARTINEZ ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 28, 2010]

JUSTICE GINSBURG delivered the opinion of the Court.

In a series of decisions, this Court has emphasized that the First Amendment generally precludes public universities from denying student organizations access to school-sponsored forums because of the groups' viewpoints. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995); *Widmar* v. *Vincent*, 454 U. S. 263 (1981); *Healy* v. *James*, 408 U. S. 169 (1972). This case concerns a novel question regarding student activities at public universities: May a public law school condition its official recognition of a student group—and the attendant use of school funds and facilities—on the organization's agreement to open eligibility for membership and leadership to all students?

In the view of petitioner Christian Legal Society (CLS), an accept-all-comers policy impairs its First Amendment rights to free speech, expressive association, and free exercise of religion by prompting it, on pain of relinquishing the advantages of recognition, to accept members who

do not share the organization's core beliefs about religion and sexual orientation. From the perspective of respondent Hastings College of the Law (Hastings or the Law School), CLS seeks special dispensation from an across-the-board open-access requirement designed to further the reasonable educational purposes underpinning the school's student-organization program.

In accord with the District Court and the Court of Appeals, we reject CLS's First Amendment challenge. Compliance with Hastings' all-comers policy, we conclude, is a reasonable, viewpoint-neutral condition on access to the student-organization forum. In requiring CLS—in common with all other student organizations—to choose between welcoming all students and forgoing the benefits of official recognition, we hold, Hastings did not transgress constitutional limitations. CLS, it bears emphasis, seeks not parity with other organizations, but a preferential exemption from Hastings' policy. The First Amendment shields CLS against state prohibition of the organization's expressive activity, however exclusionary that activity may be. But CLS enjoys no constitutional right to state subvention of its selectivity.

I

Founded in 1878, Hastings was the first law school in the University of California public-school system. Like many institutions of higher education, Hastings encourages students to form extracurricular associations that "contribute to the Hastings community and experience." App. 349. These groups offer students "opportunities to pursue academic and social interests outside of the classroom [to] further their education" and to help them "develo[p] leadership skills." *Ibid.*

Through its "Registered Student Organization" (RSO) program, Hastings extends official recognition to student groups. Several benefits attend this school-approved

status. RSOs are eligible to seek financial assistance from the Law School, which subsidizes their events using funds from a mandatory student-activity fee imposed on all students. *Id.,* at 217. RSOs may also use Law-School channels to communicate with students: They may place announcements in a weekly Office-of-Student-Services newsletter, advertise events on designated bulletin boards, send e-mails using a Hastings-organization address, and participate in an annual Student Organizations Fair designed to advance recruitment efforts. *Id.,* at 216–219. In addition, RSOs may apply for permission to use the Law School's facilities for meetings and office space. *Id.,* at 218–219. Finally, Hastings allows officially recognized groups to use its name and logo. *Id.,* at 216.

In exchange for these benefits, RSOs must abide by certain conditions. Only a "non-commercial organization whose membership is limited to Hastings students may become [an RSO]." App. to Pet. for Cert. 83a. A prospective RSO must submit its bylaws to Hastings for approval, *id.,* at 83a–84a; and if it intends to use the Law School's name or logo, it must sign a license agreement, App. 219. Critical here, all RSOs must undertake to comply with Hastings' "Policies and Regulations Applying to College Activities, Organizations and Students." *Ibid.*[1]

The Law School's Policy on Nondiscrimination (Nondiscrimination Policy), which binds RSOs, states:

> "[Hastings] is committed to a policy against legally impermissible, arbitrary or unreasonable discriminatory practices. All groups, including administration, faculty, student governments, [Hastings]-owned student residence facilities and programs sponsored by [Hastings], are governed by this policy of nondis-

[1] These policies and regulations address a wide range of matters, for example, alcoholic beverages at campus events, bake sales, and blood drives. App. 246.

> crimination. [Hasting's] policy on nondiscrimination is to comply fully with applicable law.
>
> "[Hastings] shall not discriminate unlawfully on the basis of race, color, religion, national origin, ancestry, disability, age, sex or sexual orientation. This nondiscrimination policy covers admission, access and treatment in Hastings-sponsored programs and activities." *Id.,* at 220.

Hastings interprets the Nondiscrimination Policy, as it relates to the RSO program, to mandate acceptance of all comers: School-approved groups must "allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [her] status or beliefs." *Id.,* at 221.[2] Other law schools have adopted similar all-comers policies. See, *e.g.,* Georgetown University Law Center, Office of Student Life: Student Organi zations, available at http://www.law.georgetown.edu/StudentLife/StudentOrgs/NewGroup.htm (All Internet

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[2] "Th[is] policy," Hastings clarifies, "does not foreclose neutral and generally applicable membership requirements unrelated to 'status or beliefs.'" Brief for Hastings 5. So long as all students have the *opportunity* to participate on equal terms, RSOs may require them, *inter alia*, to pay dues, maintain good attendance, refrain from gross misconduct, or pass a skill-based test, such as the writing competitions administered by law journals. See *ibid.* The dissent trumpets these neutral, generally applicable membership requirements, arguing that, in truth, Hastings has a "some-comers," not an all-comers, policy. *Post*, at 2, 3, 8–9, 10, 23–24, 32–33 (opinion of ALITO, J.). Hastings' open-access policy, however, requires only that student organizations open eligibility for membership and leadership regardless of a student's status or beliefs; dues, attendance, skill measurements, and comparable uniformly applied standards are fully compatible with the policy. The dissent makes much of Hastings' observation that groups have imposed "even conduct requirements." *Post*, at 9, 23–24. But the very example Hastings cites leaves no doubt that the Law School was referring to boilerplate good-behavior standards, *e.g.,* "[m]embership may cease . . . if the member is found to be involved in gross misconduct," App. 173 (cited in Brief for Hastings 5).

materials as visited June 24, 2010, and included in Clerk of Court's case file) (Membership in registered groups must be "open to all students."); Hofstra Law School Student Handbook 2009–2010, p. 49, available at http://law.hofstra.edu/pdf/StudentLife/StudentAffairs/Handbook/stuhb_handbook.pdf ("[Student] organizations are open to all students."). From Hastings' adoption of its Nondiscrimination Policy in 1990 until the events stirring this litigation, "no student organization at Hastings . . . ever sought an exemption from the Policy." App. 221.

In 2004, CLS became the first student group to do so. At the beginning of the academic year, the leaders of a predecessor Christian organization—which had been an RSO at Hastings for a decade—formed CLS by affiliating with the national Christian Legal Society (CLS-National). *Id.,* at 222–223, 225. CLS-National, an association of Christian lawyers and law students, charters student chapters at law schools throughout the country. *Id.,* at 225. CLS chapters must adopt bylaws that, *inter alia*, require members and officers to sign a "Statement of Faith" and to conduct their lives in accord with prescribed principles. *Id.,* at 225–226; App. to Pet. for Cert. 101a.[3] Among those tenets is the belief that sexual activity should not occur outside of marriage between a man and a woman; CLS thus interprets its bylaws to exclude from affiliation anyone who engages in "unrepentant homosex-

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[3] The Statement of Faith provides:

"Trusting in Jesus Christ as my Savior, I believe in:

- One God, eternally existent in three persons, Father, Son and Holy Spirit.
- God the Father Almighty, Maker of heaven and earth.
- The Deity of our Lord, Jesus Christ, God's only Son conceived of the Holy Spirit, born of the virgin Mary; His vicarious death for our sins through which we receive eternal life; His bodily resurrection and personal return.
- The presence and power of the Holy Spirit in the work of regeneration.
- The Bible as the inspired Word of God." App. 226.

ual conduct." App. 226. CLS also excludes students who hold religious convictions different from those in the Statement of Faith. *Id.,* at 227.

On September 17, 2004, CLS submitted to Hastings an application for RSO status, accompanied by all required documents, including the set of bylaws mandated by CLS-National. *Id.,* at 227–228. Several days later, the Law School rejected the application; CLS's bylaws, Hastings explained, did not comply with the Nondiscrimination Policy because CLS barred students based on religion and sexual orientation. *Id.,* at 228.

CLS formally requested an exemption from the Nondiscrimination Policy, *id.,* at 281, but Hastings declined to grant one. "[T]o be one of our student-recognized organizations," Hastings reiterated, "CLS must open its membership to all students irrespective of their religious beliefs or sexual orientation." *Id.,* at 294. If CLS instead chose to operate outside the RSO program, Hastings stated, the school "would be pleased to provide [CLS] the use of Hastings facilities for its meetings and activities." *Ibid.* CLS would also have access to chalkboards and generally available campus bulletin boards to announce its events. *Id.,* at 219, 233. In other words, Hastings would do nothing to suppress CLS's endeavors, but neither would it lend RSO-level support for them.

Refusing to alter its bylaws, CLS did not obtain RSO status. It did, however, operate independently during the 2004–2005 academic year. CLS held weekly Bible-study meetings and invited Hastings students to Good Friday and Easter Sunday church services. *Id.,* at 229. It also hosted a beach barbeque, Thanksgiving dinner, campus lecture on the Christian faith and the legal practice, several fellowship dinners, an end-of-year banquet, and other informal social activities. *Ibid.*

On October 22, 2004, CLS filed suit against various Hastings officers and administrators under 42 U. S. C.

§1983. Its complaint alleged that Hastings' refusal to grant the organization RSO status violated CLS's First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion. The suit sought injunctive and declaratory relief.[4]

On cross-motions for summary judgment, the U. S. District Court for the Northern District of California ruled in favor of Hastings. The Law School's all-comers condition on access to a limited public forum, the court held, was both reasonable and viewpoint neutral, and therefore did not violate CLS's right to free speech. App. to Pet. for Cert. 27a–38a.

Nor, in the District Court's view, did the Law School impermissibly impair CLS's right to expressive association. "Hastings is not directly ordering CLS to admit [any] studen[t]," the court observed, *id.,* at 42a; "[r]ather, Hastings has merely placed conditions on" the use of its facilities and funds, *ibid.* "Hastings' denial of official recognition," the court added, "was not a substantial impediment to CLS's ability to meet and communicate as a group." *Id.,* at 49a.

The court also rejected CLS's Free Exercise Clause argument. "[T]he Nondiscrimination Policy does not target or single out religious beliefs," the court noted; rather, the policy "is neutral and of general applicability." *Id.,* at 63a. "CLS may be motivated by its religious beliefs to exclude students based on their religion or sexual orientation," the court explained, "but that does not convert the reason for Hastings' [Nondiscrimination Policy] to be one that is religiously-based." *Id.,* at 63a–64a.

On appeal, the Ninth Circuit affirmed in an opinion that stated, in full:

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[4] The District Court allowed respondent Hastings Outlaw, an RSO committed to "combating discrimination based on sexual orientation," *id.*, at 97, to intervene in the suit, *id.,* at 104.

> "The parties stipulate that Hastings imposes an open membership rule on all student groups—all groups must accept all comers as voting members even if those individuals disagree with the mission of the group. The conditions on recognition are therefore viewpoint neutral and reasonable. *Truth v. Kent Sch. Dist.*, 542 F. 3d 634, 649–50 (9th Cir. 2008)." *Christian Legal Soc. Chapter of Univ. of Cal.* v. *Kane*, 319 Fed. Appx. 645, 645–646 (CA9 2009).

We granted certiorari, 558 U. S. ____ (2009), and now affirm the Ninth Circuit's judgment.

II

Before considering the merits of CLS's constitutional arguments, we must resolve a preliminary issue: CLS urges us to review the Nondiscrimination Policy as written—prohibiting discrimination on several enumerated bases, including religion and sexual orientation—and not as a requirement that all RSOs accept all comers. The written terms of the Nondiscrimination Policy, CLS contends, "targe[t] solely those groups whose beliefs are based on religion or that disapprove of a particular kind of sexual behavior," and leave other associations free to limit membership and leadership to individuals committed to the group's ideology. Brief for Petitioner 19 (internal quotation marks omitted). For example, "[a] political . . . group can insist that its leaders support its purposes and beliefs," CLS alleges, but "a religious group cannot." *Id.,* at 20.

CLS's assertion runs headlong into the stipulation of facts it jointly submitted with Hastings at the summary-judgment stage. In that filing, the parties specified:

> "Hastings requires that registered student organizations allow *any* student to participate, become a member, or seek leadership positions in the organization,

> regardless of [her] status or beliefs. Thus, for example, the Hastings Democratic Caucus cannot bar students holding Republican political beliefs from becoming members or seeking leadership positions in the organization." App. 221 (Joint Stipulation ¶18) (emphasis added; citations omitted).[5]

Under the District Court's local rules, stipulated facts are deemed "undisputed." Civil Local Rule 56–2 (ND Cal. 2010). See also Pet. for Cert. 2 ("The material facts of this case are undisputed.").[6]

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[5] In its briefs before the District Court and the Court of Appeals, CLS several times affirmed that Hastings imposes an all-comers rule on RSOs. See, *e.g.,* Plaintiff's Notice of Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment in No. C 04 4484 JSW (ND Cal.), p. 4 ("Hastings interprets the [Nondiscrimination Policy] such that student organizations must allow *any* student, regardless of their status or beliefs, to participate in the group's activities and meetings and to become voting members and leaders of the group."); Brief for Appellant in No. 06–15956 (CA9), pp. 29–30 ("Hastings illustrates the application of the Nondiscrimination Policy by explaining that for the Hastings Democratic Caucus to gain recognition, it must open its leadership and voting membership to Republicans."). In a hearing before the District Court, CLS's counsel reiterated that "it's important to understand what Hastings' policy is. According to . . . the stipulated facts, Hastings requires . . . that registered student organizations allow any student to participate, become a member or seek leadership positions in the organization regardless of their status or beliefs." App. 438 (capitalization and internal quotation marks omitted). And at oral argument in this Court, counsel for CLS acknowledged that "the Court needs to reach the constitutionality *of the all-comers policy* as applied to CLS in this case." Tr. of Oral Arg. 59 (emphasis added). We repeat, in this regard, that Hastings' all-comers policy is hardly novel. Other law schools have adopted similar requirements. See *supra*, at 4–5; Brief for Association of American Law Schools as *Amicus Curiae* 20, n. 5.

[6] The dissent spills considerable ink attempting to create uncertainty about when the all-comers policy was adopted. See *post*, at 2, 3, 5, 6, 7, 8, 10, 11. What counts, however, is the parties' unqualified agreement that the all-comers policy *currently* governs. CLS's suit, after all, seeks only declaratory and injunctive—that is, prospective—relief. See App.

Litigants, we have long recognized, "[a]re entitled to have [their] case tried upon the assumption that . . . facts, stipulated into the record, were established." *H. Hackfeld & Co.* v. *United States*, 197 U. S. 442, 447 (1905).[7] This entitlement is the bookend to a party's undertaking to be bound by the factual stipulations it submits. See *post*, at 10 (ALITO, J., dissenting) (agreeing that "the parties must be held to their Joint Stipulation"). As a leading legal reference summarizes:

> "[Factual stipulations are] binding and conclusive . . . , and the facts stated are not subject to subsequent variation. So, the parties will not be permitted to deny the truth of the facts stated, . . . or to maintain a contention contrary to the agreed statement, . . . or to suggest, on appeal, that the facts were other than as stipulated or that any material fact was omitted. The burden is on the party seeking to recover to show his or her right from the facts actually stated." 83 C. J. S., Stipulations §93 (2000) (footnotes omitted).

This Court has accordingly refused to consider a party's argument that contradicted a joint "stipulation [entered] at the outset of th[e] litigation." *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 226 (2000).

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80 (First Amended Verified Complaint for Declaratory and Injunctive Relief).

[7] Record evidence, moreover, corroborates the joint stipulation concerning Hastings' all-comers policy. The Law School's then-Chancellor and Dean testified, for example, that "in order to be a registered student organization you have to allow all of our students to be members and full participants if they want to." App. 343. Hastings' Director of Student Services confirmed that RSOs must "be open to all students"—"even to students who may disagree with [an RSO's] purposes." *Id.,* at 320 (internal quotation marks omitted). See also *id.,* at 349 ("Hastings interprets the Nondiscrimination Policy as requiring that student organizations wishing to register with Hastings allow any Hastings student to become a member and/or seek a leadership position in the organization.").

Time and again, the dissent races away from the facts to which CLS stipulated. See, *e.g., post*, at 2, 3, 5, 6, 7, 8, 11, 24.[8] But factual stipulations are "formal concessions . . . that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. Thus, a judicial admission . . . is conclusive in the case." 2 K. Broun, McCormick on Evidence §254, p. 181 (6th ed. 2006) (footnote omitted). See also, *e.g.*, *Oscanyan* v. *Arms Co.*, 103 U. S. 261, 263 (1881) ("The power of the court to act in the disposition of a trial upon facts conceded by counsel is as plain as its power to act upon the evidence produced.").[9]

In light of the joint stipulation, both the District Court and the Ninth Circuit trained their attention on the constitutionality of the all-comers requirement, as described in the parties' accord. See 319 Fed. Appx., at 645–646; App. to Pet. for Cert. 32a; *id.,* at 36a. We reject CLS's unseemly attempt to escape from the stipulation and shift

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[8] In an effort to undermine the stipulation, the dissent emphasizes a sentence in Hastings' answer to CLS's first amended complaint which, the dissent contends, casts doubt on Hastings' fidelity to its all-comers policy. See *post*, at 5–6, 11. In context, Hastings' answer—which responded to CLS's allegation that the Law School singles out religious groups for discriminatory treatment—is sensibly read to convey that Hastings' policies and regulations apply to all groups equally. See App. 79 (denying that the Nondiscrimination Policy imposes on religious organizations restraints that are not applied to political, social, and cultural groups). In any event, the parties' joint stipulation supersedes the answer, to the extent of any conflict between the two filings. See *Pepper & Tanner, Inc.* v. *Shamrock Broadcasting, Inc.*, 563 F. 2d 391, 393 (CA9 1977) (Parties' "stipulation of facts . . . superseded all prior pleadings and controlled the subsequent course of the action.").

[9] The dissent indulges in make-believe when it suggests that we are making factual findings about Hastings' all-comers policy. *Post*, at 1, 2. As CLS's petition for certiorari stressed, "*[t]he material facts of this case are undisputed*." Pet. for Cert. 2 (emphasis added). We take the facts as the joint stipulation describes them, see *supra*, at 8–11; our decision respects, while the dissent ignores, the conclusive effect of the parties' accord.

its target to Hastings' policy as written. This opinion, therefore, considers only whether conditioning access to a student-organization forum on compliance with an all-comers policy violates the Constitution.[10]

III

A

In support of the argument that Hastings' all-comers policy treads on its First Amendment rights to free speech and expressive association, CLS draws on two lines of decisions. First, in a progression of cases, this Court has employed forum analysis to determine when a governmental entity, in regulating property in its charge, may place limitations on speech.[11] Recognizing a State's right "to preserve the property under its control for the use to which it is lawfully dedicated," *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 800 (1985) (inter-

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[10] The dissent, in contrast, devotes considerable attention to CLS's arguments about the Nondiscrimination Policy as written. *Post*, at 2, 3, 5, 18–23. We decline to address these arguments, not because we agree with the dissent that the Nondiscrimination Policy is "plainly" unconstitutional, *post*, at 18, but because, as noted, *supra*, at 8–12, that constitutional question is not properly presented.

[11] In conducting forum analysis, our decisions have sorted government property into three categories. First, in traditional public forums, such as public streets and parks, "any restriction based on the content of . . . speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest." *Pleasant Grove City* v. *Summum*, 555 U. S. ___ (2009) (slip op., at 6). Second, governmental entities create designated public forums when "government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose"; speech restrictions in such a forum "are subject to the same strict scrutiny as restrictions in a traditional public forum." *Id.,* at ___ (slip op., at 7). Third, governmental entities establish limited public forums by opening property "limited to use by certain groups or dedicated solely to the discussion of certain subjects." *Ibid.* As noted in text, "[i]n such a forum, a governmental entity may impose restrictions on speech that are reasonable and viewpoint-neutral." *Ibid.*

nal quotation marks omitted), the Court has permitted restrictions on access to a limited public forum, like the RSO program here, with this key caveat: Any access barrier must be reasonable and viewpoint neutral, *e.g., Rosenberger*, 515 U. S., at 829. See also, *e.g., Good News Club* v. *Milford Central School*, 533 U. S. 98, 106–107 (2001); *Lamb's Chapel* v. *Center Moriches Union Free School Dist.*, 508 U. S. 384, 392–393 (1993); *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 46 (1983).[12]

Second, as evidenced by another set of decisions, this Court has rigorously reviewed laws and regulations that constrain associational freedom. In the context of public accommodations, we have subjected restrictions on that freedom to close scrutiny; such restrictions are permitted only if they serve "compelling state interests" that are "unrelated to the suppression of ideas"—interests that cannot be advanced "through . . . significantly less restrictive [means]." *Roberts* v. *United States Jaycees*, 468 U. S. 609, 623 (1984). See also, *e.g., Boy Scouts of America* v. *Dale*, 530 U. S. 640, 648 (2000). "Freedom of association," we have recognized, "plainly presupposes a freedom not to associate." *Roberts*, 468 U. S., at 623. Insisting that an organization embrace unwelcome members, we have therefore concluded, "directly and immediately affects associational rights." *Dale*, 530 U. S., at 659.

CLS would have us engage each line of cases independently, but its expressive-association and free-speech arguments merge: *Who* speaks on its behalf, CLS reasons, colors *what* concept is conveyed. See Brief for Petitioner 35 (expressive association in this case is "the functional

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[12] Our decisions make clear, and the parties agree, that Hastings, through its RSO program, established a limited public forum. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995); Tr. of Oral Arg. 24 (counsel for CLS); Brief for Petitioner 25–26; Brief for Hastings 27–28; Brief for Hastings Outlaw 27.

equivalent of speech itself"). It therefore makes little sense to treat CLS's speech and association claims as discrete. See *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 300 (1981). Instead, three observations lead us to conclude that our limited-public-forum precedents supply the appropriate framework for assessing both CLS's speech and association rights.

First, the same considerations that have led us to apply a less restrictive level of scrutiny to speech in limited public forums as compared to other environments, see *supra*, at 12–13, and n. 11, apply with equal force to expressive association occurring in limited public forums. As just noted, speech and expressive-association rights are closely linked. See *Roberts*, 468 U. S., at 622 (Associational freedom is "implicit in the right to engage in activities protected by the First Amendment."). When these intertwined rights arise in exactly the same context, it would be anomalous for a restriction on speech to survive constitutional review under our limited-public-forum test only to be invalidated as an impermissible infringement of expressive association. Accord Brief for State Universities and State University Systems as *Amici Curiae* 37–38. That result would be all the more anomalous in this case, for CLS suggests that its expressive-association claim plays a part auxiliary to speech's starring role. See Brief for Petitioner 18.

Second, and closely related, the strict scrutiny we have applied in some settings to laws that burden expressive association would, in practical effect, invalidate a defining characteristic of limited public forums—the State may "reserv[e] [them] for certain groups." *Rosenberger*, 515 U. S., at 829. See also *Perry Ed. Assn.*, 460 U. S., at 49 ("Implicit in the concept" of a limited public forum is the State's "right to make distinctions in access on the basis of . . . speaker identity."); *Cornelius*, 473 U. S., at 806 ("[A]

speaker may be excluded from" a limited public forum "if he is not a member of the class of speakers for whose especial benefit the forum was created.").

An example sharpens the tip of this point: Schools, including Hastings, see App. to Pet. for Cert. 83a, ordinarily, and without controversy, limit official student-group recognition to organizations comprising only students—even if those groups wish to associate with nonstudents. See, *e.g.*, Volokh, Freedom of Expressive Association and Government Subsidies, 58 Stan. L. Rev. 1919, 1940 (2006). The same ground rules must govern both speech and association challenges in the limited-public-forum context, lest strict scrutiny trump a public university's ability to "confin[e] a [speech] forum to the limited and legitimate purposes for which it was created." *Rosenberger*, 515 U. S., at 829. See also *Healy*, 408 U. S., at 189 ("Associational activities need not be tolerated where they infringe reasonable campus rules.").

Third, this case fits comfortably within the limited-public-forum category, for CLS, in seeking what is effectively a state subsidy, faces only indirect pressure to modify its membership policies; CLS may exclude any person for any reason if it forgoes the benefits of official recognition.[13] The expressive-association precedents on which CLS relies, in contrast, involved regulations that *compelled* a group to include unwanted members, with no choice to opt out. See, *e.g., Dale*, 530 U. S., at 648 (regulation "forc[ed] [the Boy Scouts] to accept members it [did] not desire" (internal quotation marks omitted)); *Roberts*,

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[13] The fact that a university "expends funds to encourage a diversity of views from private speakers," this Court has held, does not justify it in "discriminat[ing] based on the viewpoint of private persons whose speech it facilitates." *Rosenberger*, 515 U. S., at 834. Applying limited-public-forum analysis (which itself prohibits viewpoint discrimination) to CLS's expressive association claim, we emphasize, does not upset this principle.

468 U. S., at 623 ("There can be no clearer example of an intrusion into the internal structure or affairs of an association than" forced inclusion of unwelcome participants.).[14]

In diverse contexts, our decisions have distinguished between policies that require action and those that withhold benefits. See, *e.g.*, *Grove City College* v. *Bell*, 465 U. S. 555, 575–576 (1984); *Bob Jones Univ.* v. *United States*, 461 U. S. 574, 602–604 (1983). Application of the less-restrictive limited-public-forum analysis better accounts for the fact that Hastings, through its RSO program, is dangling the carrot of subsidy, not wielding the stick of prohibition. Cf. *Norwood* v. *Harrison*, 413 U. S. 455, 463 (1973) ("That the Constitution may compel toleration of private discrimination in some circumstances does not mean that it requires state support for such discrimination.").

In sum, we are persuaded that our limited-public-forum precedents adequately respect both CLS's speech and expressive-association rights, and fairly balance those rights against Hastings' interests as property owner and educational institution. We turn to the merits of the

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[14] CLS also brackets with expressive-association precedents our decision in *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557 (1995). There, a veterans group sponsoring a St. Patrick's Day parade challenged a state law requiring it to allow gay individuals to march in the parade behind a banner celebrating their Irish heritage and sexual orientation. *Id.,* at 572. In evaluating that challenge, the *Hurley* Court focused on the veterans group's interest in controlling the message conveyed by the organization. See *id.,* at 573–581. Whether *Hurley* is best conceptualized as a speech or association case (or both), however, that precedent is of little help to CLS. *Hurley* involved the application of a statewide public-accommodations law to the most traditional of public forums: the street. That context differs markedly from the limited public forum at issue here: a university's application of an all-comers policy to its student-organization program.

instant dispute, therefore, with the limited-public-forum decisions as our guide.

B

As earlier pointed out, *supra*, at 1, 12–13, we do not write on a blank slate; we have three times before considered clashes between public universities and student groups seeking official recognition or its attendant benefits. First, in *Healy*, a state college denied school affiliation to a student group that wished to form a local chapter of Students for a Democratic Society (SDS). 408 U. S., at 170. Characterizing SDS's mission as violent and disruptive, and finding the organization's philosophy repugnant, the college completely banned the SDS chapter from campus; in its effort to sever all channels of communication between students and the group, university officials went so far as to disband a meeting of SDS members in a campus coffee shop. *Id.,* at 174–176. The college, we noted, could require "that a group seeking official recognition affirm in advance its willingness to adhere to reasonable campus law," including "reasonable standards respecting conduct." *Id.,* at 193. But a public educational institution exceeds constitutional bounds, we held, when it "restrict[s] speech or association simply because it finds the views expressed by [a] group to be abhorrent." *Id.,* at 187–188.[15]

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[15] The dissent relies heavily on *Healy*, *post*, at 13–17, but its otherwise exhaustive account of the case elides the very fact the *Healy* Court identified as dispositive: The president of the college explicitly denied the student group official recognition *because of* the group's viewpoint. See 408 U. S, at 187 ("The mere disagreement of the President with the group's philosophy affords no reason to deny it recognition."). In this case, in contrast, Hastings denied CLS recognition not because the school wanted to silence the "viewpoint that CLS sought to express through its membership requirements," *post*, at 17, n. 2, but because CLS, insisting on preferential treatment, declined to comply with the open-access policy applicable to all RSOs, see *R. A. V.* v. *St. Paul*, 505 U. S. 377, 390 (1992) ("Where the [State] does not target conduct on the

We later relied on *Healy* in *Widmar*. In that case, a public university, in an effort to avoid state support for religion, had closed its facilities to a registered student group that sought to use university space for religious worship and discussion. 454 U. S., at 264–265. "A university's mission is education," we observed, "and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities." *Id.,* at 268, n. 5. But because the university singled out religious organizations for disadvantageous treatment, we subjected the university's regulation to strict scrutiny. *Id.,* at 269–270. The school's interest "in maintaining strict separation of church and State," we held, was not "sufficiently compelling to justify . . . [viewpoint] discrimination against . . . religious speech." *Id.,* at 270, 276 (internal quotation marks omitted).

Most recently and comprehensively, in *Rosenberger*, we reiterated that a university generally may not withhold benefits from student groups because of their religious outlook. The officially recognized student group in *Rosenberger* was denied student-activity-fee funding to distrib-

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basis of its expressive content, *acts* are not shielded from regulation *merely because they express a discriminatory . . . philosophy*." (emphasis added)). As discussed *infra*, at 28–31, Hastings' all-comers policy is paradigmatically viewpoint neutral. The dissent's contention that "the identity of the student group" is the only "way of distinguishing *Healy*," *post*, at 16, is thus untenable.

The dissent's description of *Healy* also omits the *Healy* Court's observation that "[a] college administration may . . . requir[e] . . . that a group seeking official recognition affirm in advance its willingness to adhere to reasonable campus law. Such a requirement does not impose an impermissible condition on the students' associational rights. . . . It merely constitutes an agreement to conform with reasonable standards respecting conduct. . . . [T]he benefits of participation in the internal life of the college community may be denied to any group that reserves the right to violate any valid campus rules with which it disagrees." 408 U. S., at 193–194.

ute a newspaper because the publication discussed issues from a Christian perspective. 515 U. S., at 825–827. By "select[ing] for disfavored treatment those student journalistic efforts with religious editorial viewpoints," we held, the university had engaged in "viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations." *Id.,* at 831, 830.

In all three cases, we ruled that student groups had been unconstitutionally singled out because of their points of view. "Once it has opened a limited [public] forum," we emphasized, "the State must respect the lawful boundaries it has itself set." *Id.,* at 829. The constitutional constraints on the boundaries the State may set bear repetition here: "The State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum, . . . nor may it discriminate against speech on the basis of . . . viewpoint." *Ibid.* (internal quotation marks omitted).

C

We first consider whether Hastings' policy is reasonable taking into account the RSO forum's function and "all the surrounding circumstances." *Cornelius*, 473 U. S., at 809.

1

Our inquiry is shaped by the educational context in which it arises: "First Amendment rights," we have observed, "must be analyzed in light of the special characteristics of the school environment." *Widmar*, 454 U. S., at 268, n. 5 (internal quotation marks omitted). This Court is the final arbiter of the question whether a public university has exceeded constitutional constraints, and we owe no deference to universities when we consider that question. Cf. *Pell* v. *Procunier*, 417 U. S. 817, 827 (1974) ("Courts cannot, of course, abdicate their constitutional

responsibility to delineate and protect fundamental liberties."). Cognizant that judges lack the on-the-ground expertise and experience of school administrators, however, we have cautioned courts in various contexts to resist "substitut[ing] their own notions of sound educational policy for those of the school authorities which they review." *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 206 (1982). See also, *e.g., Hazelwood School Dist.* v. *Kuhlmeier*, 484 U. S. 260, 273 (1988) (noting our "oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges"); *Healy*, 408 U. S., at 180 ("[T]his Court has long recognized 'the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.'" (quoting *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 507 (1969))).

A college's commission—and its concomitant license to choose among pedagogical approaches—is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process. See *Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty.* v. *Earls*, 536 U. S. 822, 831, n. 4 (2002) (involvement in student groups is "a significant contributor to the breadth and quality of the educational experience" (internal quotation marks omitted)). Schools, we have emphasized, enjoy "a significant measure of authority over the type of officially recognized activities in which their students participate." *Board of Ed. of Westside Community Schools (Dist. 66)* v. *Mergens*, 496 U. S. 226, 240 (1990). We therefore "approach our task with special caution," *Healy*, 408 U. S., at 171, mindful that Hastings' decisions about the character of its student-group program are due

decent respect.[16]

2

With appropriate regard for school administrators' judgment, we review the justifications Hastings offers in defense of its all-comers requirement.[17] First, the open-access policy "ensures that the leadership, educational, and social opportunities afforded by [RSOs] are available

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[16] The dissent mischaracterizes the nature of the respect we accord to Hastings. See *post*, at 1, 15–16, 27. As noted *supra*, at 19–20, this Court, exercising its independent judgment, must "interpre[t] and appl[y] . . . the right to free speech." *Post*, at 16. But determinations of what constitutes sound educational policy or what goals a student-organization forum ought to serve fall within the discretion of school administrators and educators. See, *e.g., Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 206 (1982).

[17] Although the dissent maintains it is "content to address the constitutionality of Hastings' actions under our limited public forum cases," *post*, at 17, it resists the import of those cases at every turn. For example, although the dissent acknowledges that a university has the authority to set the boundaries of a limited public forum, *post*, at 17, 24, the dissent refuses to credit Hastings' all-comers policy as one of those boundaries. See *ibid.* (insisting that "Hastings' regulations . . . impose only two substantive limitations: A group . . . must have student members and must be non-commercial."). In short, "the design of the RSO forum," *post*, at 26, which the dissent discusses at length, *post*, at 24–31, is of its own tailoring.

Another example: The dissent pointedly observes that "[w]hile there can be no question that the State of California could not impose [an all-comers] restrictio[n] on all religious groups in the State, the Court now holds that Hastings, a state institution, may impose these very same requirements on students who wish to participate in a forum that is designed to foster the expression of diverse viewpoints." *Post*, at 27. As noted *supra*, at 12–13, and n. 11, this difference reflects the lesser standard of scrutiny applicable to limited public forums compared to other forums. The dissent fights the distinction between state *prohibition* and state *support*, but its real quarrel is with our limited public forum doctrine, which recognizes that distinction. CLS, it bears repetition, remains free to express whatever it will, but it cannot insist on an exemption from Hastings' embracive all-comers policy.

to all students." Brief for Hastings 32; see Brief for American Civil Liberties Union et al. as *Amici Curiae* 11. Just as "Hastings does not allow its professors to host classes open only to those students with a certain status or belief," so the Law School may decide, reasonably in our view, "that the . . . educational experience is best promoted when all participants in the forum must provide equal access to all students." Brief for Hastings 32. RSOs, we count it significant, are eligible for financial assistance drawn from mandatory student-activity fees, see *supra*, at 3; the all-comers policy ensures that no Hastings student is forced to fund a group that would reject her as a member.[18]

Second, the all-comers requirement helps Hastings police the written terms of its Nondiscrimination Policy without inquiring into an RSO's motivation for membership restrictions. To bring the RSO program within CLS's view of the Constitution's limits, CLS proposes that Hastings permit exclusion because of *belief* but forbid discrimination due to *status*. See Tr. of Oral Arg. 18. But that proposal would impose on Hastings a daunting labor. How should the Law School go about determining whether a student organization cloaked prohibited status exclusion in belief-based garb? If a hypothetical Male-Superiority Club barred a female student from running for its presidency, for example, how could the Law School tell whether the group rejected her bid because of her sex or because, by seeking to lead the club, she manifested a lack of belief in its fundamental philosophy?

This case itself is instructive in this regard. CLS contends that it does not exclude individuals because of sex-

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[18] CLS notes that its "activities—its Bible studies, speakers, and dinners—are open to all students," even if attendees are barred from membership and leadership. Reply Brief 20. Welcoming all comers as guests or auditors, however, is hardly equivalent to accepting all comers as full-fledged participants.

ual orientation, but rather "on the basis of a conjunction of conduct and the belief that the conduct is not wrong." Brief for Petitioner 35–36 (emphasis deleted). Our decisions have declined to distinguish between status and conduct in this context. See *Lawrence* v. *Texas*, 539 U. S. 558, 575 (2003) ("When homosexual *conduct* is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual *persons* to discrimination." (emphasis added)); *id.,* at 583 (O'Connor, J., concurring in judgment) ("While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons as a class."); cf. *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 270 (1993) ("A tax on wearing yarmulkes is a tax on Jews."). See also Brief for Lambda Legal Defense and Education Fund, Inc., et al. as *Amici Curiae* 7–20.

Third, the Law School reasonably adheres to the view that an all-comers policy, to the extent it brings together individuals with diverse backgrounds and beliefs, "encourages tolerance, cooperation, and learning among students." App. 349.[19] And if the policy sometimes produces discord, Hastings can rationally rank among RSO-program goals development of conflict-resolution skills, toleration, and readiness to find common ground.

Fourth, Hastings' policy, which incorporates—in fact, subsumes—state-law proscriptions on discrimination, conveys the Law School's decision "to decline to subsidize with public monies and benefits conduct of which the

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[19] CLS's predecessor organization, the Hastings Christian Fellowship (HCF), experienced these benefits first-hand when it welcomed an openly gay student as a member during the 2003–2004 academic year. That student, testified another HCF member, "was a joy to have" in the group and brought a unique perspective to Bible-study discussions. See App. 325, 327.

people of California disapprove." Brief for Hastings 35; *id.,* at 33–34 (citing Cal. Educ. Code §66270 (prohibiting discrimination on various bases)). State law, of course, may not *command* that public universities take action impermissible under the First Amendment. But so long as a public university does not contravene constitutional limits, its choice to advance state-law goals through the school's educational endeavors stands on firm footing.

In sum, the several justifications Hastings asserts in support of its all-comers requirement are surely reasonable in light of the RSO forum's purposes.[20]

3

The Law School's policy is all the more creditworthy in view of the "substantial alternative channels that remain open for [CLS-student] communication to take place." *Perry Ed. Assn.*, 460 U. S., at 53. If restrictions on access to a limited public forum are viewpoint discriminatory, the ability of a group to exist outside the forum would not cure the constitutional shortcoming. But when access barriers are viewpoint neutral, our decisions have counted it significant that other available avenues for the group to exercise its First Amendment rights lessen the burden created by those barriers. See *ibid.*; *Cornelius*, 473 U. S., at 809; *Greer* v. *Spock*, 424 U. S. 828, 839 (1976); *Pell*, 417 U. S., at 827–828.

In this case, Hastings offered CLS access to school facilities to conduct meetings and the use of chalkboards and generally available bulletin boards to advertise events. App. 232–233. Although CLS could not take advantage of RSO-specific methods of communication, see *supra*, at 3, the advent of electronic media and social-networking sites reduces the importance of those channels. See App. 114–

[20] Although the Law School has offered multiple justifications for its all-comers policy, we do not suggest that each of them is necessary for the policy to survive constitutional review.

115 (CLS maintained a Yahoo! message group to disseminate information to students.); *Christian Legal Society* v. *Walker*, 453 F. 3d 853, 874 (CA7 2006) (Wood, J., dissenting) ("Most universities and colleges, and most college-aged students, communicate through email, websites, and hosts like MySpace . . . . If CLS had its own website, any student at the school with access to Google—that is, all of them—could easily have found it."). See also Brief for Associated Students of the University of California, Hastings College of Law as *Amicus Curiae* 14–18 (describing host of ways CLS could communicate with Hastings' students outside official channels).

Private groups, from fraternities and sororities to social clubs and secret societies, commonly maintain a presence at universities without official school affiliation.[21] Based on the record before us, CLS was similarly situated: It hosted a variety of activities the year after Hastings denied it recognition, and the number of students attending those meetings and events doubled. App. 224, 229–230. "The variety and type of alternative modes of access present here," in short, "compare favorably with those in other [limited public] forum cases where we have upheld restrictions on access." *Perry Ed. Assn.*, 460 U. S., at 53–54. It is beyond dissenter's license, we note again, see *supra*, at 21, n. 17, constantly to maintain that nonrecognition of a student organization is equivalent to prohibiting its members from speaking.

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[21] See, *e.g.*, Baker, Despite Lack of University Recognition, Pi Kappa Theta Continues to Grow, The New Hampshire, Sept. 28, 2009, pp. 1, 5 (unrecognized fraternity able to grow despite severed ties with the University of New Hampshire); Battey, Final Clubs Provide Controversial Social Outlet, Yale Daily News, Apr. 5, 2006, pp. 1, 4 (Harvard social clubs, known as "final clubs," "play a large role in the experience of . . . students" even though "they became completely disassociated from the university in 1984").

CLS nevertheless deems Hastings' all-comers policy "frankly absurd." Brief for Petitioner 49. "There can be no diversity of viewpoints in a forum," it asserts, "if groups are not permitted to form around viewpoints." *Id.,* at 50; accord *post*, at 25 (ALITO, J., dissenting). This catchphrase confuses CLS's preferred policy with constitutional limitation—the *advisability* of Hastings' policy does not control its *permissibility*. See *Wood* v. *Strickland*, 420 U. S. 308, 326 (1975). Instead, we have repeatedly stressed that a State's restriction on access to a limited public forum "need not be the most reasonable or the only reasonable limitation." *Cornelius*, 473 U. S., at 808.[22]

CLS also assails the reasonableness of the all-comers policy in light of the RSO forum's function by forecasting that the policy will facilitate hostile takeovers; if organizations must open their arms to all, CLS contends, saboteurs will infiltrate groups to subvert their mission and message. This supposition strikes us as more hypothetical than real. CLS points to no history or prospect of RSO-hijackings at Hastings. Cf. *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 584 (1998) ("[W]e are reluctant . . . to invalidate legislation on the basis of its hypothetical application to situations not before the Court." (internal quotation marks omitted)). Students tend to self-sort and presumably will not endeavor en masse to join—let alone

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[22] CLS's concern, shared by the dissent, see *post*, at 25–26, that an all-comers policy will squelch diversity has not been borne out by Hastings' experience. In the 2004–2005 academic year, approximately 60 student organizations, representing a variety of interests, registered with Hastings, from the Clara Foltz Feminist Association, to the Environmental Law Society, to the Hastings Chinese Law and Culture Society. App. 215, 237–238. Three of these 60 registered groups had a religious orientation: Hastings Association of Muslim Law Students, Hastings Jewish Law Students Association, and Hastings Koinonia. *Id.*, at 215–216.

seek leadership positions in—groups pursuing missions wholly at odds with their personal beliefs. And if a rogue student intent on sabotaging an organization's objectives nevertheless attempted a takeover, the members of that group would not likely elect her as an officer.

RSOs, moreover, in harmony with the all-comers policy, may condition eligibility for membership and leadership on attendance, the payment of dues, or other neutral requirements designed to ensure that students join because of their commitment to a group's vitality, not its demise. See *supra*, at 4, n. 2. Several RSOs at Hastings limit their membership rolls and officer slates in just this way. See, *e.g.,* App. 192 (members must "[p]ay their dues on a timely basis" and "attend meetings regularly"); *id.,* at 173 (members must complete an application and pay dues; "[a]ny active member who misses a semester of regularly scheduled meetings shall be dropped from rolls"); App. to Pet. for Cert. 129a ("Only Hastings students who have held membership in this organization for a minimum of one semester shall be eligible to be an officer.").[23]

Hastings, furthermore, could reasonably expect more from its law students than the disruptive behavior CLS hypothesizes—and to build this expectation into its educational approach. A reasonable policy need not anticipate and preemptively close off every opportunity for avoidance or manipulation. 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. See Tr. of Oral Arg. 41 (counsel for Hastings); Brief for Hastings 38.

Finally, CLS asserts (and the dissent repeats, *post*, at

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[23] As Hastings notes, other "checks [are also] in place" to prevent RSO-sabotage. Brief for Hastings 43, n. 16. "The [Law] School's student code of conduct applies to RSO activities and, *inter alia*, prohibits obstruction or disruption, disorderly conduct, and threats." *Ibid.* (internal quotation marks and brackets omitted).

29) that the Law School lacks any legitimate interest—let alone one reasonably related to the RSO forum's purposes—in urging "religious groups not to favor co-religionists for purposes of their religious activities." Brief for Petitioner 43; *id.*, at 50. CLS's analytical error lies in focusing on the benefits it must forgo while ignoring the interests of those it seeks to fence out: Exclusion, after all, has two sides. Hastings, caught in the crossfire between a group's desire to exclude and students' demand for equal access, may reasonably draw a line in the sand permitting *all* organizations to express what they wish but *no* group to discriminate in membership.[24]

D

We next consider whether Hastings' all-comers policy is viewpoint neutral.

1

Although this aspect of limited-public-forum analysis has been the constitutional sticking point in our prior decisions, as earlier recounted, *supra*, at 17–19, we need not dwell on it here. It is, after all, hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers. In contrast to *Healy*, *Widmar*, and *Rosenberger*, in which universities singled out organizations for disfavored treatment because of their

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[24] In arguing that the all-comers policy is not reasonable in light of the RSO forum's purposes, the dissent notes that Title VII, which prohibits employment discrimination on the basis of religion, among other categories, provides an exception for religious associations. *Post*, at 28, n. 8. The question here, however, is not whether Hastings *could*, consistent with the Constitution, provide religious groups dispensation from the all-comers policy by permitting them to restrict membership to those who share their faith. It is instead whether Hastings *must* grant that exemption. This Court's decision in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 878–882 (1990), unequivocally answers no to that latter question. See also *infra*, at 31, n. 27.

points of view, Hastings' all-comers requirement draws no distinction between groups based on their message or perspective. An all-comers condition on access to RSO status, in short, is textbook viewpoint neutral.[25]

2

Conceding that Hastings' all-comers policy is "nominally neutral," CLS attacks the regulation by pointing to its effect: The policy is vulnerable to constitutional assault, CLS contends, because "it systematically and predictably burdens most heavily those groups whose viewpoints are out of favor with the campus mainstream." Brief for Petitioner 51; cf. *post*, at 1 (ALITO, J., dissenting) (charging that Hastings' policy favors "political[ly] correc[t]" student expression). This argument stumbles from its first step because "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not

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[25] Relying exclusively on *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217 (2000), the dissent "would not be so quick to jump to th[e] conclusion" that the all-comers policy is viewpoint neutral. *Post*, at 31, and 31–32, n. 10. Careful consideration of *Southworth*, however, reveals how desperate the dissent's argument is. In *Southworth*, university students challenged a mandatory student-activity fee used to fund student groups. Finding the political and ideological speech of certain groups offensive, the student-challengers argued that imposition of the fee violated their First Amendment rights. 529 U. S., at 221. This Court upheld the university's choice to subsidize groups whose expression some students found distasteful, but we admonished that the university could not "prefer some viewpoints to others" in the distribution of funds. *Id.,* at 233. We cautioned that the university's referendum process, which allowed students to vote on whether a student organization would receive financial support, risked violation of this principle by allowing students to select groups to fund based on their viewpoints. *Id.*, at 235. In this case, in contrast, the all-comers policy governs *all* RSOs; Hastings does not pick and choose which organizations must comply with the policy on the basis of viewpoint. App. 221. *Southworth* accordingly provides no support for the dissent's warped analysis.

others." *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791 (1989). See also *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 763 (1994) ("[T]he fact that the injunction covered people with a particular viewpoint does not itself render the injunction content or viewpoint based.").

Even if a regulation has a differential impact on groups wishing to enforce exclusionary membership policies, "[w]here the [State] does not target conduct on the basis of its expressive content, acts are not shielded from regulation merely because they express a discriminatory idea or philosophy." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 390 (1992). See also *Roberts*, 468 U. S., at 623 (State's nondiscrimination law did not "distinguish between prohibited and permitted activity on the basis of viewpoint."); *Board of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U. S. 537, 549 (1987) (same).

Hastings' requirement that student groups accept all comers, we are satisfied, "is justified without reference to the content [or viewpoint] of the regulated speech." *Ward*, 491 U. S., at 791 (internal quotation marks and emphasis omitted). The Law School's policy aims at the *act* of rejecting would-be group members without reference to the reasons motivating that behavior: Hastings' "desire to redress th[e] perceived harms" of exclusionary membership policies "provides an adequate explanation for its [all-comers condition] over and above mere disagreement with [any student group's] beliefs or biases." *Wisconsin* v. *Mitchell*, 508 U. S. 476, 488 (1993). CLS's conduct—not its Christian perspective—is, from Hastings' vantage point, what stands between the group and RSO status. "In the end," as Hastings observes, "CLS is simply confusing its *own* viewpoint-based objections to . . . nondiscrimination laws (which it is entitled to have and [to] voice) with viewpoint *discrimination*." Brief for Hastings 31.[26]

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[26] Although registered student groups must conform their conduct to

Finding Hastings' open-access condition on RSO status reasonable and viewpoint neutral, we reject CLS' free-speech and expressive-association claims.[27]

IV

In its reply brief, CLS contends that "[t]he peculiarity, incoherence, and suspect history of the all-comers policy all point to pretext." Reply Brief 23. Neither the District Court nor the Ninth Circuit addressed an argument that Hastings selectively enforces its all-comers policy, and this Court is not the proper forum to air the issue in the first instance.[28] On remand, the Ninth Circuit may consider

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the Law School's regulation by dropping access barriers, they may express any viewpoint they wish—including a discriminatory one. Cf. *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 60 (2006) ("As a general matter, the Solomon Amendment regulates conduct, not speech. It affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*."). Today's decision thus continues this Court's tradition of "protect[ing] the freedom to express 'the thought that we hate.'" *Post*, at 1 (ALITO, J., dissenting) (quoting *United States* v. *Schwimmer*, 279 U. S. 644, 655 (1929) (Holmes, J., dissenting)).

[27] CLS briefly argues that Hastings' all-comers condition violates the Free Exercise Clause. Brief for Petitioner 40–41. Our decision in *Smith*, 494 U. S. 872, forecloses that argument. In *Smith*, the Court held that the Free Exercise Clause does not inhibit enforcement of otherwise valid regulations of general application that incidentally burden religious conduct. *Id.,* at 878–882. In seeking an exemption from Hastings' across-the-board all-comers policy, CLS, we repeat, seeks preferential, not equal, treatment; it therefore cannot moor its request for accommodation to the Free Exercise Clause.

[28] Finding the Ninth Circuit's analysis cursory, the dissent repeatedly urges us to resolve the pretext question. See, *e.g., post*, at 2, 31–35, and 17, n. 2. In doing so, the dissent forgets that "we are a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). When the lower courts have failed to address an argument that deserved their attention, our usual practice is to remand for further consideration, not to seize the opportunity to decide the question ourselves. That is especially true when we agree to review an issue on the understanding that "[t]he material facts . . . are undisputed," as

CLS's pretext argument if, and to the extent, it is preserved.[29]

* * *

For the foregoing reasons, we affirm the Court of Appeals' ruling that the all-comers policy is constitutional and remand the case for further proceedings consistent with this opinion.

It is so ordered.

CLS's petition for certiorari emphasized was the case here. Pet. for Cert. 2.

[29] The dissent's pretext discussion presents a one-sided summary of the record evidence, *post*, at 31–34, an account depending in large part on impugning the veracity of a distinguished legal scholar and a well respected school administrator, *post*, at 3, 5, 6, 7, 8, 9, 11, 24, 32, 34. See also *supra*, at 10, n. 7.