Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 08–1371. Argued April 19, 2010—Decided June 28, 2010

Respondent Hastings College of the Law (Hastings), a school within the University of California public-school system, extends official recognition to student groups through its "Registered Student Organization" (RSO) program. Several benefits attend this school-approved status, including the use of school funds, facilities, and channels of communication, as well as Hastings' name and logo. In exchange for recognition, RSOs must abide by certain conditions. Critical here, all RSOs must comply with the school's Nondiscrimination Policy, which tracks state law barring discrimination on a number of bases, including religion and sexual orientation. Hastings interprets this policy, as it relates to the RSO program, to mandate acceptance of all comers: RSOs must allow any student to participate, become a member, or seek leadership positions, regardless of her status or beliefs.

At the beginning of the 2004–2005 academic year, the leaders of an existing Christian RSO formed petitioner Christian Legal Society (CLS) by affiliating with a national Christian association that charters student chapters at law schools throughout the country. These 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. Among those tenets is the belief that sexual activity should not occur outside of marriage between a man and a woman. CLS interprets its bylaws to exclude from affiliation anyone who engages in "unrepentant homosexual conduct" or holds religious convictions different from those in the Statement of Faith.

Hastings rejected CLS's application for RSO status on the ground that the group's bylaws did not comply with Hastings' open-access policy because they excluded students based on religion and sexual orientation.

CLS filed this suit for injunctive and declaratory relief under 42 U. S. C. §1983, alleging that Hastings' refusal to grant the group RSO status violated its First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion. On cross-motions for summary judgment, the District Court ruled for Hastings. The court held that the all-comers condition on access to a limited public forum was both reasonable and viewpoint neutral, and therefore did not violate CLS's right to free speech. Nor, in the court's view, did Hastings impermissibly impair CLS's right to expressive association: Hastings did not order CLS to admit any student, nor did the school proscribe any speech; Hastings merely placed conditions on the use of school facilities and funds. The court also rejected CLS's free exercise argument, stating that the Nondiscrimination Policy did not single out religious beliefs, but rather was neutral and of general applicability. The Ninth Circuit affirmed, ruling that the all-comers condition on RSO recognition was reasonable and viewpoint neutral.

Held:

1. The Court considers only whether a public institution's conditioning access to a student-organization forum on compliance with an all-comers policy violates the Constitution. CLS urges the Court to review, instead, the Nondiscrimination Policy as written—prohibiting discrimination on enumerated bases, including religion and sexual orientation. The policy's written terms, CLS contends, target solely those groups that organize around religious beliefs or that disapprove of particular sexual behavior, and leave other associations free to limit membership to persons committed to the group's ideology. This argument flatly contradicts the joint stipulation of facts the parties submitted at the summary-judgment stage, which specified: "Hastings requires that [RSOs] allow any student to participate, . . . regardless of [her] status or beliefs. For example, the Hastings Democratic Caucus cannot bar students holding Republican political beliefs . . . ." This Court has long recognized that parties are bound by, and cannot contradict, their stipulations. See, *e.g., Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 226. The Court therefore rejects CLS's attempt to escape from the stipulation and shift its target to Hastings' policy as written. Pp. 8–12.

2. The all-comers policy is a reasonable, viewpoint-neutral condition on access to the RSO forum; it therefore does not transgress First Amendment limitations. Pp. 12–31.

(a) The Court's limited public forum decisions supply the appropriate framework for assessing both CLS's free-speech and expressive-association claims; those decisions recognize that a governmental entity, in regulating property in its charge, may impose restrictions on speech that are reasonable in light of the purposes of the forum and viewpoint neutral, *e.g., Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829. CLS urges the Court to apply to its expressive-association claim a different line of cases—decisions in which the Court has rigorously reviewed restrictions on associational freedom in the context of public accommodations, *e.g., Roberts* v. *United States Jaycees*, 468 U. S. 609, 623. But, because CLS's expressive-association and free-speech arguments merge—*who* speaks on its behalf, CLS reasons, colors *what* concept is conveyed—it makes little sense to treat the claims as discrete. Instead, three observations lead the Court to analyze CLS's arguments under limited-public-forum precedents.

First, the same considerations that have led the Court to apply a less restrictive level of scrutiny to speech in limited public forums, as compared to other environments, apply with equal force to expressive association occurring in a limited public forum. Speech and expressive-association rights are closely linked. See *id.,* at 622. When these intertwined rights arise in exactly the same context, it would be anomalous for a speech restriction to survive constitutional review under the limited-public-forum test only to be invalidated as an impermissible infringement of expressive association. Second, the strict scrutiny the Court has applied in some settings to laws that burden expressive association would, in practical effect, invalidate a defining characteristic of limited public forums—the State's authority to "reserv[e] [them] for certain groups." *Rosenberger*, 515 U. S., at 829. Third, this case fits comfortably within the limited-public-forum category, for CLS may exclude any person for any reason if it forgoes the benefits of official recognition. The Court's expressive-association decisions, in contrast, involved regulations that *compelled* a group to include unwanted members, with no choice to opt out. See, *e.g., Boy Scouts of America* v. *Dale*, 530 U. S. 640, 648. 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. Pp. 12–17.

(b) In three cases, this Court held that public universities had unconstitutionally singled out student groups for disfavored treatment because of their points of view. See *Healy* v. *James*, 408 U. S. 169; *Widmar* v. *Vincent*, 454 U. S. 263; and *Rosenberger*. Most recently and comprehensively, in *Rosenberger*, the Court held that a university generally may not withhold benefits from student groups

because of their religious outlook. "Once it has opened a limited [public] forum," the Court emphasized, "the State must respect the lawful boundaries it has itself set." 515 U. S, at 829. It 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*. Pp. 17–19.

(c) Hastings' all-comers policy is reasonable, taking into account the RSO forum's function and "all the surrounding circumstances." *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 809. Pp. 19–28.

(1) The Court's inquiry is shaped by the educational context in which it arises: "First Amendment rights must be analyzed in light of the special characteristics of the school environment." *Widmar*, 454 U. S., at 268, n. 5. This Court is the final arbiter of whether a public university has exceeded constitutional constraints. The Court has, however, cautioned courts to resist "substitut[ing] their own notions of sound educational policy for those of . . . school authorities," for judges lack the on-the-ground expertise and experience of school administrators. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 206. Because schools 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, the Court approaches its task here mindful that Hastings' decisions about the character of its student-group program are due decent respect. Pp. 19–21.

(2) The justifications Hastings asserts in support of its all-comers policy are reasonable in light of the RSO forum's purposes. First, the policy ensures that the leadership, educational, and social opportunities afforded by RSOs are available to all students. RSOs are eligible for financial assistance drawn from mandatory student-activity fees; the policy ensures that no Hastings student is forced to fund a group that would reject her as a member. Second, the policy helps Hastings police the written terms of its Nondiscrimination Policy without inquiring into an RSO's motivation for membership restrictions. CLS's proposal that Hastings permit exclusion because of *belief* but forbid discrimination due to *status* would impose on Hastings the daunting task of trying to determine whether a student organization cloaked prohibited status exclusion in belief-based garb. Third, Hastings reasonably adheres to the view that its policy, to the extent it brings together individuals with diverse backgrounds and beliefs, encourages tolerance, cooperation, and learning among students. Fourth, the policy incorporates state-law discrimination proscriptions, thereby conveying Hastings' decision to decline to subsi-

dize conduct disapproved by the State. So long as a public school does not contravene constitutional limits, its choice to advance state-law goals stands on firm footing. Pp. 21–24.

(3) Hastings' policy is all the more creditworthy in light of the "substantial alternative channels that remain open for [CLS-student] communication to take place." *Perry Ed. Assn.* v. *Perry Local Educators' Assn.*, 460 U. S. 37, 53. Hastings offered CLS access to school facilities to conduct meetings and the use of chalkboards and certain bulletin boards to advertise events. Although CLS could not take advantage of RSO-specific methods of communication, the advent of electronic media and social-networking sites lessens the importance of those channels. Private groups, such as fraternities and sororities, commonly maintain a presence at universities without official school affiliation. 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. "The variety and type of alternative modes of access present here," in short, "compare favorably with those in other [limited public] forum cases where [the Court has] upheld restrictions." *Id.,* at 53–54. Pp. 24–25.

(4) CLS's arguments that the all-comers policy is not reasonable are unavailing. CLS contends that there can be no diversity of viewpoints in a forum when groups are not permitted to form around viewpoints, but this argument confuses CLS's preferred policy with constitutional limitation—the *advisability* of Hastings' policy does not control its *permissibility*. A State's restriction on access to a limited public forum, moreover, "need not be the most reasonable or the only reasonable limitation." *Cornelius*, 473 U. S., at 808. CLS's contention that Hastings' policy will facilitate hostile takeovers of RSOs by student saboteurs bent on subverting a group's mission is more hypothetical than real; there is no history or prospect of RSO-hijackings at Hastings. Cf. *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 584. Finally, CLS's assertion that Hastings lacks any legitimate interest in urging religious groups not to favor co-religionists erroneously focuses on the benefits the group must forgo, while ignoring the interests of those it seeks to fence out. 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. Pp. 25–28.

(d) Hastings' all-comers policy is viewpoint neutral. Pp. 28–31.

(1) The policy draws no distinction between groups based on their message or perspective; its requirement that *all* student groups accept *all* comers is textbook viewpoint neutral. Pp. 28–29.

(2) Conceding that the policy is nominally neutral, CLS asserts

that it systematically—and impermissibly—burdens most heavily those groups whose viewpoints are out of favor with the campus mainstream. This argument fails 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 others." *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791. Hastings' requirement that RSOs accept all comers, the Court is satisfied, is "justified without reference to the content [or viewpoint] of the regulated speech." *Id.,* at 791. It targets the *act* of rejecting would-be group members without reference to the reasons motivating that behavior. Pp. 29–31.

3. Neither lower court addressed CLS's argument that Hastings selectively enforces its all-comers policy. This Court is not the proper forum to air the issue in the first instance. On remand, the Ninth Circuit may consider this argument if, and to the extent, it is preserved. Pp. 31–32.

319 Fed. Appx. 645, affirmed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, BREYER, and SOTOMAYOR, JJ., joined. STEVENS, J., and KENNEDY, J., filed concurring opinions. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and THOMAS, JJ., joined.