The Burger Court Opinion Writing Database

Healy v. James

408 U.S. 169 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 5, 1972

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-452 -- Healy v. James

After reviewing the record and the briefs again since the Conference, it occurred to me that the underlying problem in this case is the failure of the college to establish really clear and adequate standards for the recognition or non-recognition of campus organizations and standards for the decision making. I analogize this situation as somewhat like an application to F. C. C. or F. P. C. We do not allow them to say simply "Granted" or "Denied," even apart from the A. P. A. I agree that it would be improper to deny recognition to an otherwise legitimate organization on the mere suspicion that because it used the name "S. D. S." it might engage in disruptive activities at some future time. It appears that this may be what the college president has done in this case.

Nothing in the skeletal policy standards of the college as to student conduct instructs what standard the president is to use, thus leaving him an unfettered discretion. On the other hand, I know of no First Amendment principle requiring a state university to place its imprimatur on an organization whose policy it is to engage in violence on campus. The First Amendment does not protect such conduct. If it were entirely clear that petitioners' group had been denied recognition on the basis of a well founded fear of violence, I would have no hesitation in voting to affirm. But on this record I find it somewhat difficult to be sure what standards guided the college president in his decision or what he relied on. I can guess that Page 95 of the Appendix loomed large, but neither we nor the student group should be left in the dark. If the conduct of the arrogant lawyer was a factor -- as it could well have been -- should the college be permitted to penalize the students for the misconduct of their advocate?

For these reasons I feel that this is an inappropriate case for deciding major First Amendment questions. I would recommend a remand; since my notions are only tentative, I will not review the facts.

We took this case to determine whether the district court erred in refusing to order the administration of a state college to give official recognition to petitioners' student political organization. This college, like most, has been confronted in recent years with demands from

student groups occasionally leading to irreconcilable conflicts. There was a time when the relations between students and administrators were generally amicable and problems were solved by ad hoc negotiations. To the extent that students and administrators now deal with each other at arms length, the need for regularized procedures and articulated standards are obvious. Recent experience teaches that relations between students and administrators, not unlike those between labor and management, are inevitably smoother if standards exist to guide both.

Few things are greater irritants than unilateral, ad hoc decisions that cannot be related to known standards. The absence of such standards permits, or at least gives the appearance of permitting, a college decision on the basis of subjective and perhaps even impermissible considerations. There can no longer be serious doubt that a public facility must accord equal treatment to its constituents, and a state-sponsored, tax-supported educational institution is no exception. To be sure that the decisional processes in administering such an institution are in fact even-handed and are seen to be even-handed, guidelines should be specific, known to all, applied with uniformity and articulated with some clarity.

Here the college had some, but not fully articulated, guidelines telling students what would be required of groups seeking to use college

facilities, what was unacceptable, or on what basis the college would decide. The college's "Statement on Rights, Freedoms and Responsibilities," adopted by the faculty on May 19, 1969, does establish procedural prerequisites for official recognition of student organizations:

> "Student organizations shall submit a clear statement of purpose, criteria for membership, rules of procedures and a list of officers as a condition of institutional recognition. They shall not be required to submit a membership list as a condition of institutional recognition." Pt. V, B.

The Statement on Rights also contains a general statement on appropriate student behavior which has been deemed relevant to the recognition of student organizations:

> "**** Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others." Pt. V, E.

More important, the college apparently has no guidelines for the manner in which these general principles are to be applied by the college to student groups seeking official recognition. Rather, the college president appears to have virtually unbridled discretion to determine if an organization actually or potentially poses a threat to these basic student rights or is objectionable for other reasons.

The district judge recognized problems in this procedural scheme and ordered a full hearing at the college level, but he did not go far

enough. His order outlined procedures and areas of factual inquiry; even on the remand for a de novo administrative hearing, however, the students and hearing officer were without adequate guidelines as to what had to be proved or how it would be judged.

Petitioners have asked the federal courts to intervene in this dispute and exercise extraordinary, equitable powers. The exercise of equitable jurisdiction has traditionally been characterized by flexibility, and the courts should refrain from ordering injunctive relief where there are means, as yet unused, at the disposal of the parties to resolve the conflict. I would therefore remand the cause to the Court of Appeals with directions that judgment be entered in the district court requiring (a) that Central Connecticut State College establish and promulgate more adequate standards for the accreditation of student groups entitled to use student facilities; (b) that the college conduct a further administrative hearing on the application of petitioners pursuant to those standards; (c) that if petitioners' application is rejected, the college president or other final-decision maker supply a clear statement of reasons for that decision; and (d) that the district court retain jurisdiction to review the results of the administrative hearing on the application of either party.

This is all very hasty and tentative but, in general, it expresses my view as to why this case does not warrant a major constitutional adjudication.

Regards,

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 14, 1972

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: JUN 14 1972

Recirculated: _____

No. 71-452 -- Healy v. James

Dear Lewis:

I will add, as my concurrence, the following:

* * * *

MR. CHIEF JUSTICE BURGER, concurring.

I am in agreement with what is said in the Court's opinion and I join in it. I do so because I read the basis of the remand as requiring that student organizations seeking the privilege of official campus recognition must be willing to abide by reasonable rules of the institution applicable to all such organizations. This is a reasonable requirement so long as it is cast in broad general terms disavowing resort to force and disruption or interference with the rights of others.

The District Judge was troubled by the lack of a comprehensive procedural scheme that would inform students of the steps to be taken to secure accredited standing and by the lack of articulated criteria to be used in evaluating eligibility for accreditation. It was for this reason, as I read the record, that he remanded the matter to the college for a factual inquiry and for a more orderly processing in a de novo hearing within the college administrative structure. It is within that structure and within the academic

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1972

Re: No. 71-452 - Healy v. James

Dear Lewis:

I have made changes on my conurrence as per the attached.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Re: No. 71-452 - Healy v. James

From: The Chief Justice

Circulated: _____

Recirculated: JUN 2 2 1972

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The District Judge was troubled by the lack of a comprehensive procedural scheme that would inform students of the steps to be taken to secure accredited standing and by the lack of articulated criteria to be used in evaluating eligibility for accreditation. It was for this reason, as I read the record, that he remanded the matter to the college for a factual inquiry and for a more orderly processing in a de novo hearing within the college administrative structure. It is within that structure and within the academic community that problems such as these should be resolved. The courts, state or federal, should be a last resort. Part of the educational experience of every college student should be an experience in responsible self-

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-452

Catherine J. Healy et al., Petitioners, *v.* F. Don James et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 26, 1972]

MR. CHIEF JUSTICE BURGER, concurring.

I am in agreement with what is said in the Court's opinion and I join in it. I do so because I read the basis of the remand as recognizing that student organizations seeking the privilege of official campus recognition must be willing to abide by valid rules of the institution applicable to all such organizations. This is a reasonable condition insofar as it calls for the disavowal of resort to force, disruption and interference with the rights of others.

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BM

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 31, 1972

Dear Chief:

As I said in Conference, I suggest that No. 71-452 - Healy v. James, be assigned to Lewis.

William O. Douglas

The Chief Justice

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June ninth
1972

Re: No. 71-452 - Healy v. James

Dear Lewis:

Please join me in your opinion.

I may file a separate opinion which in no way will derogate from yours.

William O. Douglas

Mr. Justice Powell

CC: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-452

Catherine J. Healy et al., Petitioners, *v.* F. Don James et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1972]

MR. JUSTICE DOUGLAS.

While I join the opinion of the Court, I add a few words.

As Dr. Birenbaum* says, the status quo of the college or university is the governing body (trustees or overseers), administrative officers, who include caretakers and the police, and the faculty. Those groups have well-defined or vaguely inferred values to perpetuate. The customary technique has been to conceive of the minds of students as receptacles for the information which the faculty have garnered over the years. Education is commonly thought as the process of filling the receptacles with what the faculty in its wisdom deems fit and proper.

Many inside and out of faculty circles realize that one of the main problems of faculty members is their own re-education or re-orientation. Some have narrow specialties that are hardly relevant to modern times. History has passed others by, leaving them interesting relics of a by-gone day. More often than not they represent those who withered under the pressures of McCarthyism or other forces of conformity and represent but a timid replica of those who once brought distinction to the ideal of academic freedom.

*See the Appendix to the opinion.

June 13, 1972

Dear Lewis:

In No. 71-452 - Healy v. James, I had a talk this morning with Bill Brennan and he listed some of the difficulties he has had with the opinion that you circulated.

It seemed to me on listening to him and knowing what your general position is that an accommodation can be made between your views and his.

I am dropping this note before catching a plane to express my desire that you and Bill Brennan sit down and work out something that is mutually satisfactory. Whatever the two of you decide upon is O.K. with me.

William O. Douglas

Mr. Justice Powell

CC: Mr. Justice Brennan

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM J. BRENNAN, JR.

June 13, 1972

RE: No. 71-452 - Healy v. James

Dear Lewis:

I fully agree, of course, that the judgment below must be reversed for the First Amendment reasons your opinion so finely sets out. But I have some trouble with a few matters in your opinion and I take the liberty of mentioning them for your consideration.

First, would you consider dropping footnote 8? A complete ban on student organizations seems to me to be of very doubtful constitutionality for the same cogent reasons your opinion gives for reversal here. Moreover, as you indicate, it is unlikely that any college would ever want to attempt such a prohibition.

Second, might the discussion (at, e.g., pages 14-15, 20, and 22) be revised to state merely that petitioners have not argued either that they were improperly required to file an application for recognition, or that the standards for recognition were invalid, and that we therefore do not address those questions? It seems to me that Talley v. California, 362 U.S. 60, NAACP v. Alabama, 357 U.S. 449, and Staub v. Baxley, 355 U.S. 313, counsel that those issues be left open, and we may do so since petitioners have not raised them.

Third, could the first sentence in the paragraph beginning on page 17 be omitted, since the rule stated in the preceding sentence would seem to indicate that recognition could not be denied simply because of affiliation with a national organization dedicated to unlawful conduct?

Fourth, could the last phrase quoted from Esteban on page 23 be omitted? I suggest that it appears overbroad and indefinite.

Fifth, I am unclear why the case is to be remanded. Is it for a determination (1) whether the college has a rule denying recognition to groups that refuse to affirm that they will abide by time, place and manner restrictions on their associational activities and (2) whether petitioners were denied recognition for failure to comply with such a rule? Or is it for a determination whether petitioners are now prepared to make the affirmation? If the latter, it would seem (even though not intended) that the remand is for a determination whether petitioners failed to comply with a rule established not by the college, but by this Court.

If the former, your premise must be that the record is ambiguous as to whether the college has a rule denying recognition to groups that refuse to affirm and also as to whether petitioners were denied recognition for failure to comply with the rule. But if the record is ambiguous as to the existence of a rule, would not Staub v. Baxley require the holding that the denial of recognition in petitioners' case would be unconstitutional whether they had made the affirmation or not? In other words unless the record before us shows that the college had a clearly established rule which was applied against petitioners, Staub v. Baxley would be authority that this Court should not even address the question of affirmation rules, let alone approve such rules in general terms. Rather we should at most reserve discussion of the problem until it is presented in an appropriate context in which its ramifications may be assessed. I suggest this may be the appropriate course for the following reasons:

1. As your opinion states, "a 'heavy burden' rests on the college to demonstrate the appropriateness of" a prior restraint on associational freedom, and recognition regulations may possibly not be "an appropriately related and narrow response" to the state's interest in controlling disruption on the campus. If so, can we say at this juncture that any affirmation rule in implementation of those regulations satisfies, regardless of its content, First Amendment requirements? Moreover, wouldn't such a statement be particularly inappropriate when the constitutional validity of an affirmation rule apparently hasn't been briefed or argued here?

2. On the assumption that an affirmation rule may be valid in some circumstances, its precise terms may have an important, and perhaps crucial, bearing on its validity. Would we, for example, uphold a rule requiring "willingness to abide by campus regulations" without some requirement that those regulations themselves be constitutional? Or a rule calling for an affirmative promise to comply rather than an indication of present intent? Or a rule making the applicants for recognition responsible for the intent or conduct of all members of the group? The consequences of failure to abide by the affirmation (e.g., revocation of recognition versus perjury conviction) may be no less significant.

3. In view of these questions, would a general approval of affirmation rules at this time open up a host of issues rather than help resolve the difficulties that colleges must face in drawing the fine line between protected freedoms and unprotected conduct? Moreover, would it cause colleges to focus, not on the drawing of that fine line, but on affirmation rules that, like loyalty oaths, must at best be an ineffective solution to controlling future conduct?

In sum, I wonder whether the case should be reversed and not remanded. Under that disposition your discussion in section IIID indicating the fourth basis for the denial of recognition here could be modified to say that even if petitioners refused to affirm, still recognition could not be refused since the college had not previously established an affirmation rule. If it had, the validity of the rule would present an important question, which, however, need not be addressed in this case. If you have the time, perhaps we can get together and talk about these comments.

Sincerely,

Bill

Mr. Justice Powell

June 14, 1972

RE: No. 71-452 - Healy v. James

Dear Lewis:

Further reflection on my suggestions in my memorandum yesterday prompts me to suggest the possible resolution of Point Fifth in my memo along the following lines:

1. Petitioners have not challenged any procedural or substantive aspects of CCSC's requirement that proposed organizations file for official campus recognition.

2. CCSC may have, as part of that requirement, a rule calling for an affirmation by the proposed organization that it intends to comply with reasonable regulations governing campus associational activities.

3. The case may be remanded, then, tocconsider whether CCSC, in fact, has such a rule and, if so, whether petitioners are willing to comply with it. Only if the rule exists and petitioners are not willing to comply with it need the lower courts address the constitutional validity of the application of the affirmation rule to this case.

I suggest this because with that treatment I think I can join your disposition to remand.

Sincerely,

WJB

Mr. Justice Powell

(b)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 16, 1972

RE: No. 71-452 - Healy v. James

Dear Lewis:

Thank you so very much for your consideration of my suggestions. With your revisions, I am very happy to join.

Sincerely,

Mr. Justice Powell

cc: The Conference

June 21, 1972

RE: No. 71-452 - Healy v. James

Dear Lewis:

I am not going to file or indeed even circulate the attached if you think I should not. As the firaft states, I prepared this only in response to the concurring opinions, but the last thing I want to do is upset your applecart. I'll hold it until I hear from you.

Sincerely,

WJB

Mr. Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1972

71-452 - Healy v. James

Dear Lewis,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 16, 1972

Re: No. 71-452 - Healy v. James

Dear Lewis:

Subject to our conversation, I join your opinion in this case.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1972

Re: No. 71-452 - Healy v. James

Dear Lewis:

Please join me.

Sincerely,

T.M.

Mr. Justice Powell

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

AMBERS OF
RRY A. BLACKMUN

June 19, 1972

Re: No. 71-452 - Healy v. James

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1972

MEMORANDUM TO THE CONFERENCE:

Re: No. 71-452 Healy v. James

Here is my circulation in the above case.

The Conference vote was 5 to 4 for reversal. My opinion is in accord with that vote. In addition, I concluded that with respect to one issue the case should be remanded for further consideration.

It is clear to me that First Amendment associational rights of the student group which sought recognition were infringed by the action of the College, as sustained by the courts below. Yet, upon a careful reexamination of the record, I conclude that there was a significant ambiguity as to whether the student group was willing to agree to abide by the College's rules and regulations, the reasonableness of which was not challenged.

In my view, a college is entitled before it accords official recognition to any organization to have the minimal assurance of an intention and willingness to abide by reasonable rules and regulations applicable to all student organizations and activities.

It is apparent from what the College President said in this case that he was concerned, in view of petitioners' ambiguous statements as to disruption, as to whether petitioners intended to comply with the rules embodied in the "Student Bill of Rights." This concern may well have been a significant factor in his decision. Yet, this issue was not a subject of consideration at the court-ordered hearing; nor was it focused upon in either of the opinions below. It can be resolved quite simply on remand.

In view of the reversal and remand, I have tried to write the opinion in a way that will afford appropriate guidance to college administrators and student organizations in this case and in the future.

L. F. P., Jr.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-452

Catherine J. Healy et al., Petitioners, *v.* F. Don James et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case, arising out of a denial by a state college of official recognition to a group of students who desired to form a local chapter of Students for a Democratic Society (SDS), presents this Court with questions requiring the application of well-established First Amendment principles. While the factual background of this particular case raises these constitutional issues in a manner not heretofore passed on by the Court, and only infrequently presented to lower federal courts, our decision today is governed by existing precedent.

As the case involves delicate issues concerning the academic community, we approach our task with special caution, recognizing the mutual interest of students, faculty members, and administrators in an environment free from disruptive interference with the education process. We also are mindful of the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order. Where these interests appear to compete the First Amendment, made binding on the States by the Fourteenth Amendment, strikes the required balance.

changes pp. 5, 10, 12, 14, 17, 18, 22, 24, 25 — and minor stylistic changes

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

3rd DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-452

Recirculated: JUN 20 1972

Catherine J. Healy et al., Petitioners, *v.* F. Don James et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1972]

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B

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

No. 71-452 - Healy v. James

From: Rehnquist, J.

Circulated: 6/7/72

Recirculated: _____

MR. JUSTICE REHNQUIST, concurring in the result.

While I do not subscribe to some of the language in the Court's opinion, I concur in the result that it reaches. As I understand the Court's holding, the case is sent back for reconsideration because respondent may not have made it sufficiently clear to petitioner that the decision as to recognition would be critically influenced by petitioner's willingness to agree in advance to abide by reasonable regulations promulgated by the college.

I find the implication clear from the Court's opinion that the constitutional limitations on the government acting as administrator of a college differ from the limitations on the government acting as sovereign to enforce its criminal laws. The Court's quotations from Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969), to the effect that First Amendment rights must always be applied "in light of the special characteristics of the . . . environment," and from Esteban v. Central Missouri State College, 415 F.2d 1077, 1089, to the effect that a college "may expect its students to adhere to generally accepted standards of conduct," emphasize this fact.