

The Burger Court Opinion Writing Database

Widmar v. Vincent

454 U.S. 263 (1981)

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



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 17, 1981

RE: No. 80-689 Widmar v. Vincent

Dear Byron:

Will you please add at the foot of your dissent
in the above:

"Justice Brennan would grant the
petition for certiorari."

Sincerely,



Mr. Justice White

cc: The Conference

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
~~Mr.~~ Justice Blackmun
Mr. Justice Powell
Mr. Justice Renquist
Mr. Justice Stevens

From: Mr. Justice White

NO. 80-689 - WIDMAR V. VINCENT Circulated: 9 FEB 1981

Recirculated: _____

JUSTICE WHITE, dissenting,

In this case, the University of Missouri - Kansas City, which permits student organizations to use certain university facilities for political, cultural, educational, social and recreational events, prohibits the use of similar facilities for the purpose of either religious worship or religious teaching. A religiously-oriented student group brought suit challenging the regulation on various constitutional grounds, including the claim that the regulation infringed the constitutional rights of its members to practice their religion and to engage in religious speech. The district court sustained the regulation, holding among other things, "that the university's present ban on religious services in its buildings is required by the establishment clause" of the United States Constitution. Chess v. Widmar, 480 F.Supp. 907, 916 (WD Mo. 1979).

The Court of Appeals for the Eighth Circuit reversed. That court held that religious speech is protected under the First and Fourteenth Amendments and that since the effect of the regulation was to single out those groups involved in religious activities and communication, the regulation was unconstitutional because it burdened the constitutional rights of the groups' members and was not justified by a compelling state interest in avoiding an establishment of religion. The court found that an open access

To: The Chief Justice
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STRIKED CHANGES THROUGHOUT.
SEE PAGES: 4

From: Mr. Justice White

2nd DRAFT

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SUPREME COURT OF THE UNITED STATES

GARY E. WIDMAR ET AL. v. CLARK VINCENT ET AL.

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

No. 80-689. Decided February —, 1981

JUSTICE WHITE, dissenting.

In this case, the University of Missouri-Kansas City, which permits student organizations to use certain university facilities for political, cultural, educational, social and recreational events, prohibits the use of similar facilities for the purpose of either religious worship or religious teaching. A religiously-oriented student group brought suit challenging the regulation on various constitutional grounds, including the claim that the regulation infringed the constitutional rights of its members to practice their religion and to engage in religious speech. The District Court sustained the regulation, holding among other things, "that the university's present ban on religious services in its buildings is required by the establishment clause" of the United States Constitution. *Chess v. Widmar*, 480 F. Supp. 907, 916 (WD Mo. 1979).

The Court of Appeals for the Eighth Circuit reversed. That court held that religious speech is protected under the First and Fourteenth Amendments and that since the effect of the regulation was to single out those groups involved in religious activities and communication, the regulation was unconstitutional because it burdened the constitutional rights of the groups' members and was not justified by a compelling state interest in avoiding an establishment of religion. The court found that an open access rule permitting all student groups to use the facilities would not violate the Establishment Clause since the University could not be said to be promoting any one religion. Indeed, the Court of Appeals held, because the prohibition had the effect of inhibiting religion and creating an entanglement between religion and the

TO: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Permadee me
WJP

From: Mr. Justice White

3rd DRAFT

Circulated: _____

Recirculated: 19 FEB 1981

SUPREME COURT OF THE UNITED STATES

GARY E. WIDMAR ET AL. v. CLARK VINCENT ET AL.

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

No. 80-689. Decided February —, 1981

JUSTICE WHITE, with whom JUSTICE POWELL joins,
dissenting.

In this case, the University of Missouri-Kansas City, which permits student organizations to use certain university facilities for political, cultural, educational, social and recreational events, prohibits the use of similar facilities for the purpose of either religious worship or religious teaching. A religiously-oriented student group brought suit challenging the regulation on various constitutional grounds, including the claim that the regulation infringed the constitutional rights of its members to practice their religion and to engage in religious speech. The District Court sustained the regulation, holding among other things, "that the university's present ban on religious services in its buildings is required by the establishment clause" of the United States Constitution. *Chess v. Widmar*, 480 F. Supp. 907, 916 (WD Mo. 1979).

The Court of Appeals for the Eighth Circuit reversed. That court held that religious speech is protected under the First and Fourteenth Amendments and that since the effect of the regulation was to single out those groups involved in religious activities and communication, the regulation was unconstitutional because it burdened the constitutional rights of the groups' members and was not justified by a compelling state interest in avoiding an establishment of religion. The court found that an open access rule permitting all student groups to use the facilities would not violate the Establishment Clause since the University could not be said to be promoting any one religion. Indeed, the Court of Appeals held, because the prohibition had the effect of inhibiting reli-

February 19, 1981

No. 80-689 Widmar v. Vincent

Dear Byron:

Please add my name to your dissent from denial of
cert.

Sincerely,

Mr. Justice White

LFP/lab

Copies to the Conference