

2010 ROBERT ORSECK MEMORIAL MOOT COURT COMPETITION

FACTS

Rigby College, a public university in Jacksonville, Florida, prides itself on its diverse student population. The school is home to a host of student organizations, including The Crusaders, a group of devout fundamentalist Christians whose stated mission is to “spread God’s true message.” The group’s charter provides that membership is open to all; however, in order to be eligible for membership, a student must take an oath confirming his/her belief that, according to the edicts of the Bible, homosexuality is “immoral,” and the officers must unanimously agree that the prospective member’s “lifestyle is consistent with Christianity and the guiding principles of The Crusaders.” Unsurprisingly, there are no gay or lesbian members. The Crusaders’ general meetings are open to all students including non-members, but only members may vote and/or be elected as officers. On occasion The Crusaders call special members-only meetings.

Some of the other recognized organizations on campus are the Students of Diversity, who welcome all members committed to “advancing the opportunities for minorities and recognizing the importance thereof”; the Oldies but Goodies, a group of middle-aged students who open membership to all who “profess their dedication to ensuring education is accessible for students of all ages”; and Rocks for Jocks, a group that welcomes any students who “require help in school, but not in sports.”

Rigby College has a policy forbidding discrimination based on “race, religion, national origin, ancestry, disability, age, gender or sexual orientation” in all of its programs. As with the other student groups on campus, The Crusaders receive school funding and the use of school facilities to conduct their meetings. Additionally, The Crusaders receive funding for their officers to travel to the National Crusaders Conference each fall in Albany, New York.

During the 2007-2008 school year, one openly gay student, Thomas Paxton, routinely lashed out against The Crusaders in his weekly column in the student newspaper, *The Rigby Reader*. Mr. Paxton frequently argued that Rigby College should disband the organization because its membership requirement violated the school policy against discrimination. Mr. Paxton was a gifted writer and advocate for his cause—a true lawyer in the making—and garnered much support from his fellow students. The positive feedback he received from his columns inspired him to organize protests whenever The Crusaders held a meeting or conducted an event on campus. The movement spearheaded by Mr. Paxton deeply angered the members of The Crusaders. While aware of the growing conflict between The Crusaders and Mr. Paxton’s entourage, college administrators declined to take any action as no violence had ever erupted and they felt that such confrontations were inevitable in a diverse and open collegiate environment.

When the students returned to campus to begin the following school year in August 2008, the Crusaders v. Paxton episodes resumed with equal fervor. Unfortunately, in September 2008, Mr. Paxton was diagnosed with liver cancer. Doctors estimated he had a mere three months to live. The sad news further impassioned his followers, who continued to protest whenever and wherever The Crusaders congregated on campus. The escalated protests against them only ignited The Crusaders, who became more committed to spreading their message than ever before.

Mr. Paxton's abbreviated but influential life came to an abrupt end on December 3, 2008. The many attendees of Mr. Paxton's funeral, held Saturday, December 6, 2008, were shocked when, approaching the church, they saw The Crusaders picketing (at a distance that complied with local ordinances) with signs that read, "All Gays Go to Hell," "Fight Against Truth and Die," "Gay and Proud Equals Death," "God Gives Gays Cancer," "God Condemns You," and "Burn in Hell."

In an effort to counteract the negative publicity that resulted from the protest, on December 10, 2008, Rigby College rescinded The Crusaders' status as an official student group, and withdrew further funding and benefits attendant to official group status. College administrators stated the action was necessary because "The Crusaders' membership requirements operate to systematically exclude gay and lesbian students, which contravenes Rigby College's antidiscrimination policy." Rigby College had never before denied recognition to any student group or disbanded any existing student organization.

LITIGATION

In February 2009, Velma and Patrick Paxton, parents of the late Thomas Paxton, filed suit in Florida's Fourth Judicial Circuit Court against The Crusaders sounding in tort for (1) intentional infliction of emotional distress and (2) invasion of privacy by intrusion upon seclusion. The Paxtons sought damages for the "devastating and irreversible" impact of the The Crusaders' words and actions. They alleged that the words on the signs were "forever implanted in their minds," and would torture them for the rest of their lives. The Crusaders answered the complaint, arguing their actions were protected by the First Amendment to the United States Constitution. The Crusaders filed a motion for summary judgment in April 2009, which the trial court granted, finding there were no disputed issues of material fact and The Crusaders were entitled to judgment as a matter of law because the speech that they displayed on signs at the funeral was protected by the First Amendment. Velma and Patrick Paxton appealed that decision to the First District Court of Appeal, which affirmed the order of summary judgment and the trial court's finding that the speech contained in the signs was protected by the First Amendment. Velma and Patrick Paxton appealed the decision to the Florida Supreme Court.

Meanwhile, in March 2009, The Crusaders filed suit in Florida's Fourth Judicial Circuit Court against Rigby College, contending that by rescinding The Crusaders' official recognition as a student group, the school violated their right to expressive association, free speech, free exercise of religion, and equal protection of the law. Rigby College answered the complaint, arguing that its antidiscrimination policy justified dissolving the organization. Rigby College filed a motion for summary judgment in May 2009, which the trial court granted, finding there were no disputed issues of material fact and Rigby College was entitled to judgment as a matter of law because its antidiscrimination policy was viewpoint neutral. The Crusaders appealed, and the First District Court of Appeal affirmed, finding the antidiscrimination policy served to regulate conduct rather than speech. The Crusaders appealed the decision to the Florida Supreme Court.

The Florida Supreme Court has granted review of both cases, and the cases have been consolidated for purposes of review.

ISSUES ON APPEAL

The only issues on appeal are:

- (i) Whether the statements exhibited on The Crusaders' signs are protected by the First Amendment.
- (ii) Whether a public university may deny official recognition, funding, and other benefits to a student organization because the group requires its members to take an oath affirming their belief that homosexuality is "immoral," when the school has a policy prohibiting discrimination based on sexual orientation in all school programs.

ADDITIONAL INSTRUCTIONS

Counsel for The Crusaders should argue both issues. Counsel for Velma and Patrick Paxton should argue the first issue, while counsel for Rigby College should argue the second issue.

Both state and federal law may be used to address the issues on appeal. Jurisdiction in the Florida Supreme Court is not an issue for purposes of appeal. There are no issues of ripeness, mootness, or standing.