In the

Supreme Court of the United States

CATHERINE J. HEALY, et al.,

Petitioners,

vs.

F. DON JAMES, et al.,

Respondents.

No. 71-452

Washington, D. C.
March 28, 1972

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Tuesday, March 28, 1972.

The above-entitled matter came on for argument at 10:55 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F.POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

MELVIN L. WULF, esq., American Civil Liberties Union Foundation, 156 Fifth Avenue, New York, New York 10010; for the Petitioners.

F. MICHAEL AHERN, ESQ., Assistant Attorney General of Connecticut, 30 Trinity Street, Hartford, Connecticut; for the Respondents.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in the case No. 71-452, Healy against James.

Mr. Wulf, you may proceed when you're ready.

ORAL ARGUMENT OF MELVIN L. WULF, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. WULF: Mr. Chief Justice, and may it please the Court:

This case is here on a petition for writ of certiorari from the United States Court of Appeals for the Second Circuit.

The question it presents is whether the First Amendment forbids the president of a State college from refusing official recognition to a student political organization, when the decision is based only upon undifferentiated fear or apprehension of disturbance.

The facts of the case are that the petitioners in this case, following the applicable rules of the college, Central Connecticut State College, submitted an application for recognition of a local chapter of Students for a Democratic Society.

The fact of recognition has significant consequences, because without it a student group cannot meet on campus, it cannot make use of any of the college's facilities, cannot sponsor meetings on campus, can't make use of the student

newspaper, nor use of the student bulletin board, nor can make application for student funds.

Q Are any of the students still enrolled there?

MR. WULF: Two of them are, sir. Testor and Knowles are still duly enrolled at the college, yes.

The application that they submitted, and I want to read it in its entirety, because it's really the foundation of our assertions about their First Amendment claim, said that they would like to form a local chapter of Students for a Democratic Society, and they gave three reasons. They said:

"Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, SDS would provide a forum of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general."

They said that "SDS would provide an agency for integrating through with action so as to bring about constructive changes in the university, in American life, and the world."

And thirdly they said that "SDS would provide a coordinating body for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the Central Connecticut State College chapter of SDS."

That application was submitted to a joint student-faculty committee called the Student Activities Committee. And the petitioners came before the committee, who raised a few questions with them. They, themselves, the committee, was concerned about evidence of violent response of the national SDS organization and local SDS chapters throughout the country. And they asked the petitioners about what their ties would be to the national SDS, and the students replied -- this is on page 94 of the Appendix -- that "The Chapter does not affiliate with the national organization", they said, "We will be completely independent."

And when asked why the chapter, why they cared to use the name of national SDS, they said "Because the name brings to mind the type of organization we wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves."

Q Who were the members of the committee? Was it a student-faculty-administration?

MR. WULF: It's a joint student-faculty committee. I don't know what the --

Q Just student and faculty? No members of the administration, as such?

MR. WULF: I think -- yes, one of the deans, Judd, who was later to serve as the Hearing Officer, as a matter of fact, was a member of that same committee.

Q And you don't know much about the structural -- organizational structure of this college or university, do we, is it in the record?

MR. WULF: No, we don't. Of the university -- well, we know it's a fairly large university.

Q Central Connecticut State College -- it's not a university, I gather? It's a college.

MR. WULF: It's a wholly State-supported college --

Q But it is a college, I mean.

MR. WULF: -- it does grant a graduate Master's degree, as a matter of fact. It has 7,000 -- according to its catalog, which I have here, it has 7,000 full-time day students and an additional 15,000 evening and summer students. So it's a fairly large place.

Q Where is it, Hartford, or where?

MR. WULF: New Bedford, sir.

Q New Bedford, yes. And it's wholly State-supported? Tax supported?

MR. WULF: Wholly State-supported.

It's part of the Connecticut State College System, yes, sir. Fully tax supported.

Q Mr. Wulf, let me get straightened out. As you describe the application, they refer to themselves as a chapter of SDS, am I correct in that impression?

MR. WULF: They did, yes, sir.

Q And yet they disavow any affiliation, according to your later words.

MR. WULF: They originally -- in their original application they described themselves as a local chapter of SDS. Although they describe themselves as that, they protested that they would not have ties to the national SDS organization.

Subsequently, presumably in order to try to meet the objections that various people made to the national SDS, they said that they would call themselves CCSCSDS, which is a lot of initials, but specificaally withdrawing their description as being a local chapter.

Q Had some of these applicants been members of other chapters elsewhere?

MR. WULF: The record doesn't show, sir, and I don't know.

Q I thought one of them had some Michigan State affiliations.

MR. WULF: Their faculty advisor had, when he was a graduate student at Michigan State University, been a member of SDS out there, and he testified at the hearing for the purpose of supporting petitioners' claim that there could be such a thing as a local SDS chapter that didn't really have any official, informal, or certainly formal affiliation with national SDS, that its local chapters could be totally independent. He said that was the way his chapter had functioned, at Michigan

State University.

Q Who is Barbara Healy?

MR. WULF: She was one of the student petitioners, Your Honor.

Q And Appendix 81 says "member of Michigan State chapter".

MR. WULF: Appendix 81. Oh, no, I'm sorry, Catherine Healy is our petitioner student. Barbara Healy -- this is an excerpt from a hearing of the House Internal Security Committee, which was introduced at the hearing by the Hearing Officer, in order to try to show an inevitable relationship between local SDS chapters and national SDS. And this was a membership card that the House Committee acquired somehow or other, I don't know how. But it was one of a number of -- there's one on the preceding page, too. But she is a different Miss Healy.

Q I recall something in the record about questions relating to the use of violence. Was there a response to the effect that that would depend on circumstances, whether violence would be used?

MR. WULF: That's right. That's --

Q Where is that in here?

MR. WULF: That's on page 95 of the Appendix, and it's part of the same meeting of the Student Affairs Committee, which I referred to a little earlier. And I was

next going to describe that Q and A that took place at that hearing.

The committee members asked Miss Healy: "How would you respond to issues of violence as other SDS chapters have?" It seems a little garbled, but that's the way it is in the original transcript. And her answer was: "Our action would have to be dependent upon each issue."

"Would you use any means possible?" "No, I can't say that; would not know until we know what the issues are."

And question 7 was: "Could you envision the SDS interrupting a class?" "Impossible for me to say."

But what that comes to, and I'm going to deal with that later on in my argument, is, notwithstanding the terrible ambiguity of the questions and the equal ambiguity of the answers, we would concede that, at most, it's a refusal to renounce the use of violence under all circumstances.

But --

Q Would you think that a trier of facts hearing that could draw that inference, then? That they might use force and violence to interrupt classes, or --

MR. WULF: No, I don't think that they could draw the inference that they might use it. I think that they must draw -- that the furtherest inference they can draw is that these people are not pacifists, that they would not under all circumstances renounce the use of violence.

Q Well, they weren't talking about the Vietnam War here in this college, they were talking about violence on the campus, in the classroom.

MR. WULF: Precisely. And the whole thrust of our argument is, regardless of these answers, regardless of these answers, and taking into account their ambiguity, that the local chapter had to be recognized because to refuse to do so is a forbidden prior restraint, and then and only then should these petitioners engage in conduct which is either illegal and will be prosecuted or would be misconduct, for purposes of the school administration, and could be dealt with as a local disciplinary problem only until that point, when that point was reached, if it ever was reached. Because this is not a guarantee, by any means, that they were going to engage in any illegal or violent conduct; but only that they did not renounce it. But if and when they did engage in that forbidden concudt, then sanction could be taken appropriately against them.

Q So if the answer to the question had been, Yes, we can envision it and we might very well do so; your answer would be the same?

MR. WULF: Precisely the same, yes, sir.

Q Well, this is related to a question I've had on my mind, there is so much in the brief here, in the record, bearing on the question of whether or not this is or is not a

local chapter, a bona fide affiliated local chapter of the SDS. And in your argument does that make any difference at all?

MR. WULF: No, none at all. I think --

Q I didn't think so, but that seems to be the issue throughout here.

MR. WULF: Well, that's the issue as the respondents and their friends in court make it, because they're trying to put SDS on trial; and our perspective, of course, is that it's the petitioners who are before this Court and not SDS. And you will find very little in the record and very little in respondents' brief about the petitioners.

But our claim, of course, is that it's the petitioners who are making the application here.

Q But I thought your claim was whether or not, or let's just assume it's affiliated with the SDS, nonetheless it was a violation of constitutional rights of your clients not to be accredited as a campus organization.

MR. WULF: Surely. Surely, sir. But I accept --

Q Well, is that a red herring to your argument or isn't it? That's what I wanted to get at. Because that seems to be so much of what the briefs are devoted to. Both briefs.

MR. WULF: Well, perhaps I was misled by it being introduced as a red herring by the respondents, and I tried to deal with it.

Q Well, if it isn't, maybe it isn't; but I just want to be sure I understand your argument.

MR. WULF: Well, I accept my clients' claim that they intended not to have any affiliation with national SDS. But --

Q What difference does that make to your argument?

MR. WULF: It doesn't make any different to my argument, because even if, as initially they said they wanted to be a local chapter of SDS, and if they were in fact going to have a formal relationship with SDS, my argument would still be the same.

Q That's what I thought.

Q Mr. Wulf, are there any grounds, then, upon which you believe that the university or college could refuse recognition to a group?

MR. WULF: I think that, on the whole, the answer to that would be no. I think that if, on the face of an application, the student group wanted to organize for the purpose of engaging in admittedly illegal acts, students to engage in bank robbing, for example, I think that they could deny that kind of an application. But when the application is for a bona fide or political organization, I think that the university or the college has to look to the individual applicant to see what their criteria, what their characteristics are. I don't think they can look very far, as to what their characteristics are.

Q But if they said, We're a bona fide political organization, and at times we achieve our ends through violent means; you would say they have to wait for the violence, or could they, like the bank robbing group, be denied their application?

MR. WULF: That if they're predominantly political, they would have to be -- the college would have to grant the application, and would have to wait to see whether they in fact engage in any illegal conduct.

I don't think that where First Amendment rights are at issue, that the State can make predictions, even on the basis of assertions by the citizens themselves that they might engage in some illegal conduct, that the State cannot predict that they will. And that the purpose of the First Amendment, of course, is to try to discourage people from engaging in illegal conduct, and it might well be that upon participating in the political process those who might be disposed towards illegal conduct will be discouraged from engaging in illegal conduct.

Q Mr. Wulf, suppose that, in this colloquy on page 7, it had been developed, in response to --

MR. WULF: What page, sir? I'm sorry.

Q Page 95, excuse me.

MR. WULF: Yes.

Q Page 95, where they were discussing the use of

interruption of class, and force and violence, use of force and violence, suppose the answer was: We would reserve the right to use force and violence to disrupt the classes of all professors who did not denounce the Vietnam War and several other issues that they might identify with?

Would you think that would be enough to refuse to grant them?

MR. WULF: Did they say they would only, they would exercise it or merely reserve it?

Q Reserve the right to use force and violence.

MR. WULF: Cannot be denied. I don't --

Q Now then, let's take it the next step, your step: that they would use force and violence to disrupt the classes of all professors who did not do certain things in agreement with their organizational policies.

MR. WULF: That would be a hard case, Mr. Chief Justice.

Q It would be easier for some than it would for others, though, I suspect.

[Laughter.]

MR. WULF: I don't know if I would be here arguing that case, frankly, Mr. Chief Justice.

Q What's the --

MR. WULF: But if the intention was that immediately upon recognition they were going to go out and disrupt classes imminently, immediately go out and disrupt classes, professors

who did not agree with their politics, probably it could be denied.

Q What's the difference between reserving the right to use force and violence and announcing the affirmative intent to use it?

MR. WULF: The difference is that they might well be talked out of it, between the time that their organization is granted recognition and the time that they would otherwise have engaged in disruptive acts. And that's, as I said before, is the whole purpose of the First Amendment, is to allow this free kind of political dialogue and, I'm sure all of us here hope, results in the abolition of the use of force.

Q Well, wouldn't the trier of facts again, the triers of fact have a basis for an inference that, yes, we will not use force and violence if you will agree with us and adopt our views, but we will use force and violence if you don't agree with us. Isnt that the thrust of that kind of an answer?

MR. WULF: That may be the thrust, sir, but I still don't think it's an adequate ground upon which to deny a person, a citizen his right to exercise his First Amendment rights. Because that, too, notwithstanding his assertions that he might use it, would be a forbidden prior restraint, because the State cannot make these kinds of predictions, again, even if the applicants do not renounce the use of

violence. I mean, there are people who would renounce the use of violence, but some circumstances might emerge where they would find themselves in the midst of it and participate in it.

But the point is that in this kind of situation where it's the exercise of First Amendment rights being made by citizens, students in this particular case, the State has no right, really, to even to catechise them about what their views are about the use of violence.

Q Just what First Amendment rights are you referring to?

MR. WULF: Well, here I'm referring specifically to the right of speech and the right of association. Both of them are involved in this case.

Q And it's your submission that a college or university, once at least it allows some student organizations on the campus --

MR. WULF: Which is the case here.

Q -- which is the case here, cannot bar any, at least short of the hypothetical situation the Chief Justice put to you in his question?

MR. WULF: Without reservation, yes, that's what --

Q In other words, the college or university could say we want no secret societies on this campus, and we want no Greek-letter societies on this campus, or we want no societites that discriminate against Jews on this campus; they

couldn't do that?

MR. WULF: I think it probably could, and probably has banned organizations which themselves exercise the racial or religious --

Q Why?

MR. WULF: -- discrimination.

Q Why could it, if you're right?

MR. WULF: Well, I don't think that those are political organizations. Those are essentially --

Q Well, let's say they are political organizations.

MR. WULF: The Ku Klux Klan, for example?

Q Let's say the organization is a neo-Fascist organization, we want no Jews, we want only white Arians.

MR. WULF: I don't think that they could be banned at all, on the same principle that --

Q Nor the Ku Klux Klan?

MR. WULF: Nor the Ku Klux Klan, of course.

Q And how about a Greek-letter fraternity that confines its membership to white Anglo-Saxon protestants?

MR. WULF: Well, this Court --

Q Or all Greek-letter fraternities.

MR. WULF: This Court, as a matter of fact, in 1915, in the --

Q I thought it had.

MR. WULF: -- Waugh case, said that a ban in

Mississippi upon Greek-letter fraternities at the University of Mississippi was not unconstitutional. But there wasn't any First Amendment claim made in that case. It was an equal protection claim and the due process claim. And I'm not so sure that there wouldn't be a different -- well, that there couldn't be a strong First Amendment argument made on behalf of Greek-letter fraternities here today, compared to 50 or 60 years ago, whatever the case was.

But I don't think that the Waugh case really has any bearing here, because it was decided well before --

Q Not before the First Amendment.

MR. WULF: Well, before this Court articulated the First Amendment in its modern guise, at all; and I think there might well be a different decision in Waugh.

Q Well, 1915 was before the Court had applied the First Amendment to the States, wasn't it?

MR. WULF: That's true, sir, yes.

Q Well, don't you think discriminatory organizations might be viable because recognition involves the State, the college extending the use of its own facilities for those organizations?

MR. WULF: That has, in fact, I think been the argument to support the forbidding of such organizations on college campuses.

Q Because it does involve recognition in the sense

that the State approves them, authorizes them, it's an affirmative authorization to operate, and it's making available of State facilities for meetings and things?

MR. WULF: Yes. And it would be easier -- although I'm not so sure that you could press that same argument with respect to the Ku Klux Klan on a State-supported university. I think that the State-supported university has a First Amendment duty to allow the formation on campus of a chapter of the Ku Klux Klan, whether it has the same duty to continue to recognize a Greek-letter fraternity which discriminates against Jews, blacks, and every minority group; I don't know. I'm not prepared to argue that case this morning.

Q Do you think the State could furnish facilities, furnish the chapter house for a white Anglo-Saxon organization?

MR. WULF: Of a Greek-letter social organization?

Q Well, whatever you want to call it.

MR. WULF: Well, I think there's a distinction to be drawn between organizations which are political, as difficult as that might be to define.

Q Well, this is the right of association in the sense that it's a discussion organization; they learn, it's part of the whole educational process.

MR. WULF: That was the argument Waugh made here, of course, unsuccessfully in 1915, and perhaps a successor would make it equally unsuccessful now; but I think, without

being able right now to draw the distinction, I think there is an arguable distinction between a group which is arguably political, like SDS, and a group which is predominantly social, like the Greek --

Q And who is to decide that?

MR. WULF: Well, I really --

Q It's not for us to decide that?

MR. WULF: -- I really don't know who would decide that. I really don't know at this time. I think this Court --

Q Well, if they're political, they're political.

Q Well, isn't the right of association extended to others than political organizations?

MR. WULF: That is, and that's why I feel I'm getting myself into a thicket by trying to argue the fraternity case, when it's really not the case before us. And because when I say that Waugh would be argued differently here, the ACLU might in fact be the group that would be arguing it here, because there might well be enough of an associational right to justify a very strong First Amendment claim on behalf of Greek-letter fraternities. And although I'm talking in terms of distinctions, it may be that I might end up believing there aren't any viable distinctions between social and political groups.

I think the right to associate in social organizations is no less important than the right to associate in political

organizations.

Q How about secret societies? They just wouldn't say. In such a hearing as you had here, they'd say: We're sorry, we can't answer any of your questions because we're a secret society.

MR. WULF: Well, the petitioners here, begging your pardon, sir, didn't say that. But if it were a secret society, I think that there is probably some duty as -- some initial duty which the petitioners here follow, to disclose what the purpose of the organization is.

Q Now, what if they just said, We're against all force and violence, but beyond that we can't tell you anything about our purposes or our reason for existence, because we're a secret society.

MR. WULF: And they're seeking recognition on a college campus?

Q Yes, they are. And there are many secret societies on various campuses, as you know.

MR. WULF: I think -- well, I'm really not familiar with those secret societies on campus which you refer to.

Q Well, they're secret; that's the reason you're not.

[Laughter.]

MR. WULF: I really can't believe that they are so secret -- perhaps you're talking about Skull and Bones, of

which I have a vague -- I don't know if that's one of them or not. I think Yale has one or two secret societies. But I really can't believe that the officers at Yale don't know what those secret societies are up to.

I think they have a right to know. I don't think that a student group has the right to official recognition by a college or university unless they disclose --

Q Well, all the Greek-letter fraternities and sororities have elements of secret societies, if I'm not mistaken.

MR. WULF: Yes, but --

Q And many universities have barred them from their campuses, in recent years.

Q Mr. Wulf, I'm surprised you haven't really challenged this whole process of accrediting. You don't challenge -- apparently you haven't challenged the right of the State to have rules for recognition, to go through this procedure.

MR. WULF: No, we haven't.

Q And you don't challenge the standards they use.

MR. WULF: It's not challenged in this -- no, no, it's not challenged in this case, and we don't -- well, we don't challenge the standards here. Well, there really weren't any standards, because that part of the college rule --

Q But you think a State may go through the procedure of making organizations tell about themselves?

MR. WULF: I don't take the position here that a university has to give blanket recognition to groups which want to function as student organizations, which invoke the -- which use the name of the college on which they're organized, no. I think there's probably that minimal obligation by student groups, or minimal right by the universities for purposes of regulation, or simply to know -- the regulation really is a time, place, and matter regulation. They have a right to require these student organizations to be formally recognized so that they can distribute the limited facilities of the university on an equitable basis.

Q Incidentally, Mr. Wulf, of course you're talking only about publicly supported institutions?

MR. WULF: Yes.

Q But Connecticut State, as I understand it, didn't actually prohibit this organization from existing on the campus, it simply refused to give it affirmative recognition, didn't it?

MR. WULF: No, in this case, without recognition, this organization, and according to the respondents any organization, simply could not function as an organization on the campus.

Q But the membership in it wasn't a grounds for

suspension or explusion from the school, was it?

MR. WULF: No, but they simply couldn't function in their organizational role on the campus. They could not meet, in fact the record reflects a meeting that these petitioners -- these very petitioners held, after the initial district court decision, in order to discuss what they would do next. And they met in a campus snack bar. And they were immediately served with a typewritten notice by the dean to disperse, because they said that they were meeting as the formal SDS group, and since they were not recognized they could not meet, even there in the coffee shop.

So denial here -- they could probably be members of SDS somewhere else, but that doesn't serve their purposes as members of the community of Central Connecticut State College. They want to be able to function on the campus as a group, use the school facilities, and talk to their fellow students as an organized political organization.

Q Mr. Wulf, I think you mentioned at the outset that these student organizations had access to some college or student funds. What did you have in mind there?

MR. WULF: Well, the only thing in the record is, at the first meeting of the Student Affairs Committee, in the Appendix at page 95, one of the questions is: "Would you seek funds from Student Government?" And the answer is "Yes". So therefore I assume that recognized organizations are entitled

to seek funds from Student Government. But that's all that appears in the record.

Our basic claim is that in this case there is no reference at all in the hearing, in the record about these petitioners, it's all about SDS. But it's these petitioners who are making the claim to function as a political organization on this campus.

We think that the refusal on this record was a prior restraint based entirely on guilt by association. And I must say that the version of the First Amendment urged upon you by the respondents and their friends in court is -- would be so severely radical a departure from normal judicial standards of First Amendment law as articulated by this Court over the years, that I urge you to reject their version.

And I would like to save a few minutes for rebuttal, Your Honor.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Wulf.

Mr. Ahern.

ORAL ARGUMENT OF F. MICHAEL AHERN, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. AHERN: Mr. Chief Justice, and may it please the Court:

Under the verbal assault of all the high-sounding rhetoric of the past several years concerning the First Amendment rights of students, to wear their hair long, to

express their political views, and to demonstrate, I fear we may well be losing sight of the purpose of the educational process.

And I would like to restate it. The primary purpose of educational institutions at all levels, we submit, is to provide the best education possible to the students, not to provide a platform for the expression of political views by a few students.

The faculty members are hired to teach their academic specialties, not to radicalize and politicize the students. And the students who voluntarily enter the educational community should do so to learn and not to attempt to influence their fellow students to accept their own political philosophies.

Generally speaking, the vast majority of students enter the college community with an understanding that the president and the deans are in charge. And they have the obligation to exercise their authority, to maintain an educational climate that is conducive to learning. Indeed, every student is entitled to expect that the administrators will so operate the college that he will get a full measure, full educational measure for every dollar of tuition expended. This means that any disruption of classes or interference with the educational process cannot be tolerated or condoned.

The campus strikes and disruptions of the last few

years, which have been led by a small minority of radical students, are to be deplored, because they cheated the majority of students out of the opportunity to attend classes, wasted the examination preparation by the students, because the exams were never held, and even cancelled or postponed commencement exercises.

And I submit that at least this situation was partly caused by the college administrators refusing or being unwilling to exercise their authority to quell disturbances at the outset.

However, I submit the administrators are not entirely to blame. The rash of decisions of the federal courts, following the so-called arrival of the Constitution on the campus, has had a chilling effect on its responsible administrators; almost every administrative decision which is made for the purpose of securing order or controlling student conduct on the campus is immediately challenged in the courts and becomes the subject of an extensive and time-consuming legal process before it is resolved.

This case, I submit, exemplifies the difficulties which college officials have faced and continue to face in attempting to administer the colleges throughout the country. When every administrative decision is escalated into a constitutional issue, and a confrontation between a few students and the authorities.

The petitioners in the instant case have arrogantly sought recognition of their local chapter of Students for a Democratic Society on their terms. When the president and his deans refused to accede to those terms, the petitioners immediately raised the spectre of interference with their constitutional rights of free speech and free association, and sought the aid of the federal courts to impose their will on the administrators.

The precise issue in this case has never been considered by this Court previously. That issue, we submit, is whether the denial of official campus recognition to the local chapter of Students for a Democratic Society at Central Connecticut State College violated in any way the individual constitutional rights of the petitioners in this case. We submit that it did not.

Without demeaning in the least the importance of that issue, I submit it pales to insignificance in the light of the greater issue that is involved here. That is, who shall govern the colleges of this country, the students or the college officials?

As the last Justice Black noted in his dissent in Tinker, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools.

And I think those words were prophetic.

Recognizing that there are no legal precedents for their position, the petitioners here have advanced the proposition that a college community is somewhat like a municipality and should be considered as such by the Court in applying the protection of the Constitution. If this Court accepts the petitioners' theory, it will mean that a student entering an educational community has an unfettered right to exercise his First Amendment rights of free speech and free association on the campus, and --

Q Mr. Ahern, do you recognize the fact that this school is governed by the Fourteenth Amendment?

MR. AHERN: Yes, I do, Justice Marshall.

That reasonable -- excuse me?

Q It is my understanding from Mr. Wulf's argument that he concedes that a college is perfectly free to deny recognition to all political organizations, and he says that if you grant it to one you must grant it to all; but I would think, quite consistent with what you're saying, that a college, if it didn't want any of this, could deny recognition to all political organizations.

MR. AHERN: I think it could deny political -- campus recognition to all political organizations. I don't think they can stop political organizations.

Q Well --

MR. AHERN: But they don't have to grant official

campus recognition to such organizations.

Q Well, his claim, is, General, that unless there is campus recognition, there can't be a meeting a-y place on the campus, of any such organization; and Appendix 16 and 17 seems to support that view, talking about the meeting of -- the proposed meeting of November 6.

MR. AHERN: I think -- I think --

Q To take place in Devils' Den.

MR. AHERN: -- I think that notice has been misrepresented to the Court, if it please, Mr. Stewart --

Q "Such meeting may not take place in the Devils' Den of the Student Center nor in or on any other property of the college since the CCSC-SDS is not a duly recognized college organization."

MR. AHERN: That's correct, Justice Stewart, but you didn't read the first paragraph of the notice, which says -- or the memorandum which states: "Notice has been received by this office of a meeting of the CCSC-SDS on Thursday, November 6 at 7:00 o'clock at the Devils' Den."

Q Right.

MR. AHERN: That is altogether different than a casual meeting of a group of students to discuss the president's denial of recognition. This is a local chapter being called to a meeting to discuss the denial by President James of recognition for them, for their chapter.

Q Well, in their brief, in the brief for the petitioners, it is alleged that official recognition is a prerequisite to meeting anywhere on campus.

MR. AHERN: As an organization.

Q Yes.

MR. AHERN: That is correct.

Q And you don't deny that, do you?

MR. AHERN: No, I don't, Your Honor.

Q So, to that extent at least, First Amendment rights, as they're called, are implicated, aren't they? So that in the absence of official recognition this group couldn't meet --

MR. AHERN: Well, the --

Q -- anywhere on the property of the university, of the college.

MR. AHERN: Well, I think there's a distinction, Justice Stewart, between the organization meeting as an organization and individuals meeting together to have a discussion, political or otherwise.

This is a prior, a previously announced meeting of this local chapter of Students for a Democratic Society.

Q Well, I was just referring to that particular meeting, as seeming to confirm the general statement. I was asking you about the general statement.

In the absence of official recognition, no organiza-

tion has any status, it's just --

MR. AHERN: That is correct.

Q -- on the campus of this college. Yes.

MR. AHERN: There is no statute on the campus of the college.

Q And cannot meet on the property, on the campus?

MR. AHERN: That's correct. As an organization.

Q So that if ten people are meeting in the chapel, it's all right?

MR. AHERN: That's correct.

Q But if ten people are meeting in the chapel as the Students for No Action, they couldn't meet unless they were approved?

MR. AHERN: You mean a no action organization? That's correct, Justice Marshall, that's --

Q The same group; they couldn't meet?

MR. AHERN: That's correct.

Q Why?

MR. AHERN: For a very simple reason. By previously announcing the meeting of the local chapter of SDS, they're not only meeting -- those people who are interested in discussing this matter are not only meeting, but they are also notifying the other 7,000 students on the campus that they will have an official meeting of an organization which will discuss a particular idea.

Q Well, the Students for No Action, they don't like to meet privately, they like to have people around.

MR. AHERN: Well, then, they should seek official campus recognition.

Q And if it's denied, they can't meet?

MR. AHERN: If it's denied on the basis that they are affiliated with a national organization that advocates violence and disruption, I think that's a legitimate prohibition.

Q Mr. Ahern, --

Q Apart from the fact that all of them are members or sons and daughters of the most respectable people in the world? Just because the name is a name that the school doesn't like?

MR. AHERN: I don't think it's a question of the school not liking it, I think it's a question of --

Q Well, you don't --you don't see any First Amendment problem in the right to associate together, do you?

MR. AHERN: As an organization, no. Not in this instance, in the peculiar aspects of the college campus.

Q So that when you decided whether or not it's an organization, then that takes it out of the First Amendment?

MR. AHERN: Well, I question whether or not the SDS national organization is basically a political organization.

Q Well, is the -- are they in this case?

MR. AHERN: Pardon me?

Q The national organization in this case?

MR. AHERN: They're not a party to this case, no.

Q Is there anything in the record about it?

MR. AHERN: There's something in the record concerning the national SDS, yes.

Q One section which said they wanted to be affiliated with it, that's all?

MR. AHERN: That's correct. That's right, Mr. Justice Marshall.

Q And that's enough?

MR. AHERN: Certainly that opens up the area of --

Q No, no, no. Do you have any other reason not to let them in?

MR. AHERN: I don't follow you. You mean as --

Q Do you have any other reason not to recognize this group?

MR. AHERN: Yes.

Q What's the other reason?

MR. AHERN: Because the petitioners have never divulged the purposes and aims of the national, which they adopt, the organization.

Q Well, did they divulge the aims and purposes of their organization?

MR. AHERN: That's correct.

Q And that's who you're dealing with?

MR. AHERN: That's who we're dealing with, but the purposes and aims, as they set forth in their statement of purpose, have a different perspective when they affiliate themselves with a national organization.

Q So you're really keeping the national organization out?

MR. AHERN: No, we're keeping a local chapter of the national organization out. Unless it determines and tells the administrators what aims and purposes of the national association they adopt for their own.

Q Suppose they don't know?

MR. AHERN: Well, then, how can they organize a group if they don't know what their aims and purposes are going to be?

Q Are you looking to the future or are you looking to the present?

MR. AHERN: We're looking to the present.

Q Didn't they tell you what their organization was?

MR. AHERN: They told us that they were a local chapter of the SDS -- the national SDS.

Q That's right.

MR. AHERN: So that I think the president of the

college could --

Q They were denied their right to meet together as a local chapter of SDS?

MR. AHERN: I didn't follow that, Mr. Justice --

Q They were denied the right to meet together?

MR. AHERN: As a local chapter of the SDS, that is correct, on the campus.

Q And you don't see any First Amendment problem?

MR. AHERN: No, I do not.

Q Mr. Ahern.

MR. AHERN: Yes, sir.

Q Supposing these petitioners, after they had been turned down, went to the rooms of one of them, say, in university housing, and wanted to discuss it, would they have faced any disciplinary sanction for doing that?

MR. AHERN: No, they would not, Justice Rehnquist. As I stated to Justice Marshall, there was a previous notice of a meeting of the local chapter of SDS at the Devils' Den, at a particular time on a particular day, and that is the meeting that Dean Judd and Dean Clow attended, or visited, and told them they could not meet as a local chapter of SDS on the campus.

Q Mr. Ahern, referring to pages 94 and 95 that we were discussing, after Mr. Wulf focused somewhat on them, -- you'll have to watch that microphone, it's very sensitive.

MR. AHERN: Yes, sir.

Q Was that the only meeting or hearing or inquiry or were there others of this kind?

MR. AHERN: There were two meetings of the -- you're talking now of the Student Affairs Committee.

Q The student committee, yes.

MR. AHERN: There were two meetings, the date on page 94 I think is incorrect, I think it was a meeting of October 2nd, 1969, at which the initial application was presented, and petitioner Healy was questioned. That meeting was postponed until a later time, to give the petitioners, as I understand it, an opportunity to present a statement to the committee as to their affiliation with the national SDS.

At that latter meeting, a statement was read into the record, I believe, stating that although they call themselves a local chapter of SDS, they would not be under the dictates or influence of the national organization.

Thereafter, the committee conditionally approved their application.

We submit that the petitioners' attempt to --

Q Were there any further inquiries about whether they would or would not follow a policy of disruption or violence?

MR. AHERN: There was --

Q Was that passage on 95 the only thing in the

record about --

MR. AHERN: No, the court-ordered administrative hearing, the minutes of these minutes were introduced into the record without objection by petitioner Healy or counsel, and petitioner Healy was present at the hearing at the time they were introduced.

Q And made no other statement?

MR. AHERN: Made no other statement, and did not object to their introduction at that time, as I understand the record.

Q So, as the record stands, this is the organizations's response to those inquiries, final response to them?

MR. AHERN: That is correct, Justice White.

We submit that the petitioners' attempted treatment of this case as a prior restraint case is specious. The respondents have never restrained the individual petitioners in the exercise of their individual rights of free speech or free association, and the record is devoid of any such indication.

All they have done is to refuse to give the administrative stamp of approval to the local chapter of SDS, which, we submit, is perfectly proper under the circumstances of this case.

In each of the federal court cases in which administrative recognition was required to be given to the

American Civil Liberties Union, or a local chapter of the American Civil Liberties Union, that is the Radford College case and the University of Southern Mississippi case, both of which are cited in all of our briefs, the court cited the aims and purposes of the American Civil Liberties Union, the national organization, in considering whether the local chapters would be disruptive influences on the campus.

So we submit it was reasonable for Dr. James to consider the aims and purposes of the national SDS in reviewing the petitioners' application for a local chapter of SDS at Central Connecticut State College.

The national SDS and its chapters, in 1968 and '69, had instigated and participated in violence and disruption on the campuses of the country and caused millions of dollars of damage to property and personal injuries to students, faculty, and administrators.

In the face of that track record of the national SDS movement, the petitioners could hardly claim an innocuous purpose.

Q On that score, this connection with national movement, I notice on page 90 and before and after 90 are these exhibits, committee Exhibit No. 1, et cetera, which quote leaders of the SDS as saying "We will have to destroy at times, even violently, in order to end the establishment power, and that we are going to build a guerrilla force, and

we are engaging in sedition."

Now, was there presentation of these documents to the applicants for this recognition? Were these matters part of the record before that committee?

MR. AHERN: These documents were introduced -- no, these documents were introduced at the court-structured administrative hearing, which was conducted by Dean Judd at the order of the district court judge, Judge Clarie. So that this documentation was not before the student-faculty committee. It didn't come into the record until the court-structured administrative hearing.

Q Then this was part of the basis of the district judge's decision as distinguished from the faculty of the school?

MR. AHERN: This -- initially, when this matter was heard by the district judge, the judge raised the ambiguity, which appeared on the face of the application, and sent the matter back for an administrative hearing, to clear up the ambiguity. At that administrative hearing, which the court ordered, this documentation was submitted through the Hearing Officer --

Q Then the applicants had an opportunity to meet it and explain it, is that it?

MR. AHERN: The applicants, one of the applicants or one of the petitioners, Healy was present at the two

administrative hearings, accompanied by counsel, by legal counsel; that's correct, Mr. Chief Justice Burger.

Q And how close in point of time would that colloquy which appears on Appendix 95, in which some student, one of the petitioners apparently, said that they would not know whether they would use violence or not?

MR. AHERN: I think the Student Affairs Committee meeting was in October of 1969, and the court-structured administrative hearing took place the following May; so it would be approximately five months.

As this Court is aware, administrative decisions are not made in a vacuum, and we submit that Dr. James, who had the ultimate responsibility for maintaining a peaceful campus, was also aware of the recent violent history of the SDS, and very properly took it into consideration in reaching his determination that the local chapter of SDS would be a harmful presence on the campus.

At the court-ordered administrative hearing, which was intended by the court to allow petitioners to present evidence to resolve the ambiguity in their application, the petitioners consistently refused, on advice of counsel, to contribute anything constructive to the record, except a statement that the local chapter would not be affiliated with the structure of the national SDS.

The statement did not contain those aims and purposes

of the national SDS, which the local chapter adopted as their own, nor did it contain a statement disavowing the violent and disruptive tactics of the national organization, nor did it contain a statement that the local chapter would not disrupt the campus or engage in violence.

On the other hand, the material submitted by the administration substantiated the fact that under the national constitution of the SDS, the national organization controlled the chapter. Also reproductions of local and national membership cards clearly evidenced a continuing relationship between local and national offices, and also indicated joint membership recordkeeping systems.

In that connection, I have made reference in my brief, and I'd like to do so orally here, to the fact that in printing the single Appendix a one-page exhibit, Hearing Officer's Exhibit G, has been spread over three pages in the Appendix, and also the overprint on the membership applications, indicating which portion of the dual application form was for national office records and which portion was for local chapter records, has been deleted.

So that the effect of that exhibit is lost in its printing in the Appendix.

I would therefore urge the Court to look at the original exhibit in order that the respondents' purpose in submitting it in evidence can be deduced.

Or, if the Court would like, I will make reproductions for the use of the Court.

Q That might be a little more convenient, if you will first give a copy to Mr. Wulf.

MR. AHERN: A copy was given to Mr. Wulf at the time the single Appendix was printed, Your Honor, Mr. Chief Justice.

Q Well, would you say that if an organization is asked, What is your policy about disruption, and the organization says, None of your business; that it could be denied recognition?

MR. AHERN: Justice White, I don't think the college president is required to buy a pig in a poke.

Q Yes. So your answer is yes, they could be denied recognition?

MR. AHERN: If they don't succinctly state to the administrator just what --

Q Disavow --

MR. AHERN: -- their aims and purposes are, and if they are affiliated with an organization that's --

Q Well, let's assume there's nothing about affiliation. They just -- and the question is: Do you anticipate that you would use violence and disrupt classes? and the answer is, None of your business.

MR. AHERN: I think they can be denied campus recognition.

Q Do you think this record is equivalent to that?

MR. AHERN: Yes, I do, Justice White.

The dissent below cites several cases, indicating that the clear and present danger rule should be applied in this case. But we submit that the analysis of the case and the issue in the case by the dissent below was erroneous. Those cases cited by the dissent dealt with the citizen's relationship to society at large, while here we are dealing with the student's relationship in a voluntary community, composed of students, faculty, and administrators.

The administrator -- pardon me, the petitioners advance the proposition in their brief that this case gives the court the opportunity to implant the First Amendment firmly on the college campus. We submit that the Constitution has already been firmly entrenched on the college campus, and a few radical students have used it, or, rather, abused it, to spread violence and disruption.

What is needed is more responsible administrative leadership on the campus, not further restriction of administrative authority in the name of constitutional freedom.

As we stated previously, what has caused the problems on the campuses in prior years, we submit, has been the failure of the authorities to govern. It would be indeed ironic if, in the name of the petitioners' alleged right to administrative support, of their so-called political program, this Court would

announce a rule that deprices school officials with backbone to face up to their responsibilities, as the respondents in this case, of any power to govern their institution.

This Court would be upholding the attack by a few on the rights of academic freedom of the vast majority of students. For without the power to prohibit a campus organization, which he reasonably believes to be harmful to the academic climate of his college, the college president might as well resign.

He would have no authority in the one area where it really counts, that is, upholding the moral integrity of the school. Lacking the essential governing power, he would lack the authority to protect the majority of students on the campus. And lacking such support of the administration, those students would have no means, save cumbersome and expensive legal process, to insure their personal academic freedom.

So we submit that thus, in the name of freedom for the few, would the freedom of all be compromised.

I submit that the Court shoudl re-emphasize and re-state in unequivocal terms the authority of the school administrators to prescribe and control conduct in the schools, and that, although the students do not leave their constitutional rights at the door, those rights may be curtailed and restricted by reasonable rules and regulations.

A judge in the United States District Court for the

Southern District of Texas recently phrased it very concisely in the case of Egner vs. Texas City Independent School District, reported in 40 U.S. Law Week 2556, the February 29, '72, edition. And I quote from it:

To the extent that such routine conflicts become the subject of frequent constitutional adjudication in the lower federal courts, it is inevitable that a monolithic and stultifying national uniformity will be judicially imposed in the name of the Fourteenth Amendment.

Since the general terms of the amendment contain no concrete standards of decision for the great majority of such suits, it is predictable that the federal common law of school discipline which would develop will reflect nothing more than an amalgam of the eductional views of diverse federal judges, most of whom are suited to the task by neither disposition nor competence.

It is in this spirit that we ask the Court to affirm the judgment below.

Thank you.

Q General Ahern, do you think the same standard should apply to a college or university that apply to a public high school? You kept referring to schools. We have here a college.

MR. AHERN: Well, in view of the fact that the particular case decided by this Court reached down, I think one of

the boys was eight years old --

Q Below the college level. Down to the primary grades.

MR. AHERN: Right. -- it would seem to me that a college student has more perspicacity than an eight-year-old in grammar school. And, as the petitioners stated in their brief, the recent decision of this Court, in Tilton, indicates that college students are more mature and more able to determine what is good for them.

Q And you think, in considering the requirements of the protection of the First and Fourteenth Amendments, there should be a difference in a college or university which has a sort of a captive population, which is off somewhere in the country, where all the students live on the campus, on the one hand, that a distinction could and should be made between that kind of institution and an institution where the students are only at the university for classes and go home and have plenty of places and time available, off campus, for whatever associational and speech rights they want to indulge in?

MR. AHERN: I don't think that would be a basis for distinction, I think the distinction as to the basis of age would be more desirable.

Q Yes. Well, and the distinction would be on-campus or off-campus, regardless of --

MR. AHERN: Well, off-campus --

Q Regardless, if -- even if you had a situation where if they wanted to organize at all it had to be on campus because the only thing off-campus would be woods and mountains?

MR. AHERN: Well, the school administrators have no control of the students off the campus.

Q Yes, but there are campuses which, as I say, have sort of a captive population, where everybody lives on campus, and where, by contrast, there is, as I gather this place may be, in New Britain, Connecticut, where many of the students live at home or at least off campus -- is that correct?

MR. AHERN: That's correct, Justice Stewart.

Q Do you think that -- you're not suggesting that there should be any flexibility at all?

MR. AHERN: Well, when you say that I'm not suggesting any flexibility, I think the college has to make the reasonable rules and regulations as to activities on the campus, whether the students are living on the campus or whether they are day hops and come on the campus during the day. But their activities on the campus should be the subject of reasonable rules and regulations, otherwise you'd have chaos on the campus.

So that I think as far as the First Amendment rights of students are concerned, I think the administration should

be allowed to make reasonable rules and regulations so as to insure order on the campus and be orderly -- the orderly process of educating the students without interference by everyone who feels that they want to make a speech.

Q This position of the State that you've just suggested, would that interfere with the right of the individuals up before the Court, and any of their friends, to pass out leaflets saying "this evening at eight" or "tomorrow evening at eight we will meet down at Maury's place, in the basement, offcampus"?

MR. AHERN: I don't see how we could stop it. They're not using the campus for a meeting place.

Q They using Maury's place as off campus?

MR. AHERN: At this point it's off campus.

Q Right.

MR. AHERN: And it also allows women in the bar.

Q Now.

MR. AHERN: Now.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Wulf, you have just one minute left.

REBUTTAL ARGUMENT OF MELVIN L. WULF, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. WULF: I would just like to close by saying that Mr. Ahern's argument confirms our fundamental claim that the

respondent is not arguing this case, he's arguing some other case.

There's nothing --

Q Well, Mr. Wulf, assume that your organization, when asked about their policies, including the policies with respect to whether they would engage in violence or disruption, said, None of your business.

MR. WULF: I don't think that would make any difference, Mr. Justice White. I --

Q Well, I understood a while ago that you thought the secret society could be forced to state its purposes.

MR. WULF: I think that they have a minimal responsibility to describe the purpose of the organization --

Q Tell me this, is it your purpose to engage in violent disruption; None of your business.

MR. WULF: If they have made a prima facie showing on their application that they intend to engage in protective political activity, they cannot be asked that question, if they don't volunteer it. They were asked here and they did volunteer to answer it. But if they refuse to answer it, I think that the fundamental system and the notion still require that they be granted recognition and that the administration abide the event, if any, of illegal conduct.

Q Well, Mr. Wulf, in relation to what Mr. Justice White has put to you, page 95, I think it was, in the Appendix,

would appear to be an answer, None of your business, uttered in a more circumspect way, would you agree with that?

MR. WULF: No, I think that that was a very shorthand way of expressing a philosophical view that rejects non-violence. I don't think that it was a reply that said, None of your business. I mean, certainly to try to engage people in a philosophy of violence in that shorthand kind of way is never going to be successful.

But I think -- I disagree that it was a response that said, None of your business. I think they answered it. And they certainly didn't say that they didn't believe in violence, and to that extent they were terribly candid. They said, "We can't say under some conditions that we might not do it." But that is not ample reason, under First Amendment law, to prohibit the exercise of their First Amendment rights. The State has to wait and see.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Wulf.

Thank you.

Thank you, Mr. Ahern.

The case is submitted.

[Whwereupon, at 11:58 o'clock, a.m., the case was submitted.]