

MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ILLINOIS

RADICAL RAINBOW JUSTICE CHAPTER)
AT GREATER ILLINOIS STATE COLLEGE)
LAW SCHOOL, a student organization at)
the Greater Illinois State College Law)
School, on behalf of itself and its)
individual members,)

Plaintiff,)

vs.)

Morgan RIGGINS, in her official capacity)
as President of the Greater Illinois State)
College; and Raphael Ponder, in his)
capacity as Dean of the Greater Illinois)
State College Law School,)

Defendants.)

Civil Action Number: 8-20-cv-0001

**Brief in Opposition to RRJ's Motion
for Preliminary Injunction**

TO Plaintiff AND their ATTORNEY OF RECORD:

The Defendants, Morgan Riggins and Raphael Ponder, submits this motion brief against the motion for preliminary injunction.

Date: 04/03/2020

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CERTIFICATE OF SERVICE

I do hereby certify that on 04/03/2020, I filed the foregoing with the Clerk of Court and have sent notification of such filing to the following:

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I. Introduction

Samantha Worthington was a student in a monogamous homosexual relationship at Greater Illinois State College. She wanted to fight for marriage equality and found that outlet in Radical Rainbow Justice. Samantha was active in Radical Rainbow Justice, holding an officer at one point during her college career. Then Sam underwent gender reassignment surgery and became Sam. Radical Rainbow Justice, in an act of blatant discrimination, prevented Samantha from holding office in Radical Rainbow Justice, and no longer allowed him to vote on official business. Sam is not alone in this discrimination. A number of other students, including Maxwell Lucie, a bisexual law student at Greater Illinois State College, have been prevented from becoming full members of Radical Rainbow Justice. Complaints started to come into the school administration, alleging violations of campus policies protecting students from discrimination based on sexual orientation and gender identity. Radical Rainbow Justice, to give a prima facie case for inclusion, allowed all students to participate in their events, but discriminated against those they saw as antithetical to the cause of marriage equality. This behavior was wrong and was serving to inflame tensions against LGBT students on campus that Radical Rainbow Justice had wrongfully rejected, harkening back to an era Greater Illinois College had seen before, where LGBT people and their allies were targeted for attack. Radical Rainbow Justice served as the only refuge for LGBT people on campus, and they turned their backs on bisexual and transgendered students when they were most vulnerable. Seeing this discrimination unfold, blatantly disregarding the policies of the school, Greater Illinois State College took action and, after several investigative steps, rightfully derecognized Radical Rainbow Justice.

Radical Rainbow Justice will argue that derecognition was improper. However, they fail to account for these facts: the policy of Greater Illinois State College is reasonable and viewpoint neutral, the policies of Radical Rainbow Justice directly conflict with the policies of the college, and these policies have been the basis for espousing a discriminatory philosophy that have left students like Sam Worthington, Maxwell Lucie and others from being able to participate in the only outlet on campus that works for LGBT rights. In attempting to push for equality, Radical Rainbow Justice forgot about all the students they were oppressing in the process, and derecognition was the proper remedy for that fact.

II. Statement of Facts

Radical Rainbow Justice (RRJ) is a student group at Greater Illinois State College (GISC) focused on marital equality for monogamous homosexuals. Their mission is to “foster an environment conducive to the support and maintenance of stable, healthy and monogamous relationships for the purpose of demonstrating that same-sex marriage is as necessary as heterosexual

marriage for building a strong and fully functioning society” *RRJ Mission Statement at 1*. The group requires their members who agree to the RRJ’s statement of beliefs, which affirm that “sex outside of monogamous homosexual relationships is forbidden for members and officers...” and that “engaging in or affirming active heterosexuality, as lived in monogamous and non-monogamous relationships, is forbidden...” *RRJ Statement of Belief at 4*. Radical Rainbow Justice was recognized as a student organization by GISC and GISC Law in 2013. While being recognized is not required to maintain status as a student organization, there are benefits to being recognized including meeting spaces, funding, and access to the law school’s listserv *see* (Ponder Dep. 1:21-26.) Additionally, recognized groups are listed on the school’s website *Id.* RRJ serves as the only LGBT student group exclusive to the GISC Law campus, and its capacity as an official student group marks an important step in GISC’s quest for equality on campus *see generally* (Worthington Dep. 2:22-24); (Ponder Dep. 4:17-18.)

The struggle for LGBT equality at GISC began in 1961, when the State of Illinois adopted new protections for LGBT individuals, modeled after the American Law Institute’s Model Penal Code. In response to that legislation, GISC implemented an anti-discriminatory policy that included protections for students based on their sexual orientation *see generally* (Ponder Dep. 4:7-10.) The policy provided that “GISC will provide equal employment [and] educational opportunities for all qualified persons without regard to... sexual orientation” *see Affirmative Action and Equal Employment Opportunity Policy of GISC*.

Following the implementation of this policy, backlash against LGBT students erupted on campus. Classes were disrupted and violence against LGBT students increased, leaving LGBT students fearing for their safety. While programs implemented by the school, including forums and workshops, decreased tensions over time, the campus community is still fragile *see generally* (Ponder Dep. 4:12-19.)

Then in 2019, that fragile campus community would be rocked again by a wave of targeted LGBT harassment. The students have started to resent the required course on equality and the key mission of the college on encouraging equality. Bisexual students have been threatened physically and harassed publicly, including an incident where a student’s locker was spray painted with the word “confused.” The student group Law School for Family Values (LSFV) ran a panel discussion on whether transgendered individuals are mentally ill. Several transgendered students received letters about how deranged and crazy they were, and one student was even involuntarily institutionalized after being publicly dragged out of class. These events left a campus reeling and resulted in transgendered students being socially outcast *see generally* (Worthington Dep. 3:4-25.)

While a campus community reeled from polarizing events, two students in

particular looked to RRJ for support. Sam Worthington is a 3L student at GISC Law who became a member of RRJ and was later elected treasurer. At the time, Sam was Samantha, and was in a homosexual relationship with her female partner Phil. Sam would undergo sex reassignment surgery in the Spring of 2019, and would be kicked from full RRJ membership sometime later for no longer maintaining a monogamous, homosexual relationship *see* (Ponder Dep. 3:8-12); *see generally* (Worthington Dep. 1:19-20); *see also* (Id at 2:11-14, 25.)

Meanwhile, another student, Maxwell Lucie, wrote an email to GISC President Morgan Riggins and GISC Law Dean Raphael Ponder detailing alleged discrimination by RRJ. Writing on behalf of a “concerned” collective of bisexual students at GISC, Lucie explained that a group of bisexual law students hoped to join RRJ but were rejected by RRJ President Nannette Warfield. Lucie explained that she was told “RRJ does not allow persons in non-monogamous homosexual relationships membership rights and/or the right to hold leadership positions in the organization *Email from Maxwell Lucie to Raphael Ponder, Dean of GISC Law School (August 19, 2019).*”

Around the same time Lucie and Worthington were being kept out of RRJ, another group of students attempted to join RRJ. Led by President Cameron Myers, student from the group Law Students for Family Values attempted to gain membership to RRJ. Like what happened before, RRJ President Warfield informed them that they could participate in events but could not vote or run for office in the organization *Letter from Cameron Myers to Raphael Ponder, Dean of GISC Law School (August 28, 2019).* Myers wrote a letter on August 28, 2019 to Dean Ponder, alleging discrimination against him and the other students who attempted to join.

Between the social unrest on campus and the discriminatory actions of Radical Rainbow Justice, GISC’s administration had no choice but to ensure that tensions did not reach an unrepairable boiling point. On September 13, Dean Ponder sent notice to Ms. Warfield that she would be attending the September 20 meeting for RRJ. After some reluctance, Warfield agreed to let Ponder attend (Ponder Dep. 3:14-22.) Following the meeting, which was uncontroversial, Ponder asked Warfield to send the chapter membership and leadership policy, and Warfield responded with the national organization’s policies that mirrored the policies at the GISC Law chapter (Id at 3:24-26, 4:1-3). In early October, Ponder, following discussions with GISC President Riggins, decided to derecognize the student group at the law school. RRJ was notified of this decision on October 7, and this lawsuit followed (Id at 4: 4, 20-26.)

III. Motion Standard of Review

In order for the motion for preliminary injunction to succeed, the plaintiff must show that a) they are reasonably likely to succeed on the merits, b) they are suffering a harm that is greater than the harm to the defendant created by the injunction, c) there is no adequate remedy at law, and d) there would be no

harm to the public interest if the injunction is granted *Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006). In this case, at issue is whether RRJ is reasonably likely to succeed on the merits. To succeed on the merits, RRJ must show that a) they are an expressive association, b) that the inclusion of currently excluded students would dilute their message, and c) their interest in espousing their message is greater than the school's interest in eradicating discrimination.

ARGUMENT

IV. The Court Should Deny Radical Rainbow Justice's Motion for Preliminary Injunction Because It Is Unlikely to Succeed on the Merits of Its Expressive Association Claim.

A. RRJ is not an expressive association protected by the First Amendment of the United States Constitution

The Supreme Court has held that implicit in the First Amendment rights of speech, assembly, and petition is the freedom to associate *Healy v. James*, 408 U.S. 169 (1972). These associations can be either intimate, those that are small and selective, or expressive, those that are less selective and share a certain goal or set of goals *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

Expressive associations espouse beliefs that can be political, cultural, religious, or educational in nature, are espoused either written or orally, or symbolically by only allowing certain people. The Court, when determining when a group is expressive, looks at the members and evaluates if they share those beliefs. Symbolic associations are also protected under the first amendment. Groups need not have "a narrow, succinctly articulable message" to be granted constitutional protection *Hurley v. Irish American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995). Further, private speakers don't lose protection because they combine various voices or fail to "isolate an exact message" *Id at 569*.

RRJ hold itself out as an expressive association under the First Amendment of the United States Constitution. In order to be afforded the protection, it has to either be an intimate or expressive association. It is by no means an intimate association because of their nationwide outreach, with multiple chapters nationwide including 2,000 students. Further, they allow students who are non-conforming to their virtues of monogamous homosexuality to enjoy membership in the group but restrict their access to elected board positions. The lack of exclusivity among the non-elected body of the group's members clearly shows the group intends to be large and not selective, defeating any claims that they are an intimate association.

Further, RRJ cannot be held to be an expressive association. While its statement of beliefs requires it members to share a common belief of

monogamous homosexuality, this belief is not shared in all of its non-elected members. There are two students who prove this point. One is a bisexual student, Maxwell Lucie, who was refused a board position within RRJ, and the other was a transgendered student, Sam Worthington, who lost her board position after her transition. In both cases, however, both students were allowed to participate in the organization and attend its meetings and events with something other than full membership within the organization. Further, in both cases, the students wanted to help RRJ further its cause of marriage equality. This shows that RRJ was inclusive of all students, even if they didn't maintain a monogamous, homosexual relationship. RRJ was by no means an expressive association and weren't fundamentally built on their goal of monogamous homosexuality.

RRJ should not be protected under the First Amendment right of association, for failing to meet the definition of intimate or expressive association as held by the Supreme Court of the United States. It is, instead, a small number of students of an organization attempting to discriminate based on a declaration of monogamous homosexuality that isn't fully held amongst the members of the group, let alone having their organization firm and unwavering in these beliefs, and espousing these beliefs as an expressive doctrine.

B. The forced inclusion of non-monogamous LGBT students will not dilute RRJ's message or prevent it from espousing any public or private viewpoints.

The freedom of association plainly presupposes the freedom not to associate *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) . Expressive associations don't have to be put together to express ideas in order to be expressive *Id at XXX*. Instead, they have to engage in expressive activity that may be impaired by interference, even if every member of the group does not agree on the messages being presented. As such, government actions that burden a group's internal affairs by requiring admittance members that it does not desire is unconstitutional if this requirement burdens the groups' ability to advocate public or private viewpoints *Id at XXX*. “[Forcing the group to accept members it does not desire] may impair the ability of the original members to express only those views that brought them together” *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

In, *Roberts v. U.S. Jaycees*, the court took up the issue of forced inclusion. In that case, the Jaycees had historically been an organization that only allowed regular membership to only young men. However, some chapters started allowing women to become regular members, including the Minneapolis-St. Paul chapters of the organization. The national organization of Jaycees threatened sanctions for violating the bylaws for admitting women as regular members. The local chapters, in turn, complained to the Minnesota Department of Human Rights, who found that the threatened sanctions were in violation of Minnesota's anti-discrimination law. The national organization sued, alleging that the inclusion of women was inhibiting the free speech rights

of the male members. The Supreme Court held that a large, unselective organization is not afforded first amendment association protections, and so a state policy requiring the admittance of women is not unconstitutional.

RRJ's message of promoting monogamous homosexuality will not be diluted by allowing full membership to students who are either non-monogamous LGBT students or non-LGBT students. Maxwell Lucie, Samantha Worthington or Cameron Myers should all be granted membership into the organization if RRJ wants to be a recognized organization.

First, Ms. Worthington had been active in RRJ prior to her gender reassignment surgery, even holding office at one point *see* (Ponder Dep. 3:8-9.) While her gender reassignment surgery no longer made Samantha a monogamous homosexual, her participation in the group prior to the surgery shows she believes in the cause of RRJ and wants to promote marriage equality like RRJ aims to do. In fact, Ms. Worthington said she joined RRJ because her and her partner wanted to fight for marriage equality and saw RRJ as a group where she could fight for that cause *see* (Worthington Dep. 2:19-22.) Following her surgery, Ms. Worthington was told that she could still participate in meetings and events but could not be elected to a position in leadership or vote on official RRJ business *see* (Worthington Dep. 2:1-2.) In Ms. Worthington's case, the only thing that kept her from being a full voting member in RRJ was the change in her gender identity, a clear violation of the Affirmative Action and Equal Opportunity Policy of Greater Illinois State College.

Ms. Worthington's case, while unique, shows a trend of non-monogamous LGBT students participating in RRJ events and meetings without being allowed full membership. There are multiple instances where RRJ allowed other students to participate in their events and attend meetings without allowing full membership. Maxwell Lucie had attended meetings for an entire semester before being told she couldn't be granted full membership rights *see Email from Maxwell Lucie to Raphael Ponder, Dean of GISC Law School (August 19, 2019)*, and Cameron Myers, in being rejected for membership benefits, was also told he could still participate in meetings and events *see Letter from Cameron Myers to Raphael Ponder, Dean of GISC Law School (August 28, 2019)*.

If RRJ believes that their message would be diluted by the presence of anyone other than monogamous homosexuals, they would have refused students like Ms. Worthington, Mr. Myers, and Mr. Lucie from participating in the organizations public and private events. If they really considered that their message would be weaker by being inclusive, they would not have let these students in. RRJ clearly showed they do not fear dilution as a result of having everyone participate in their organization, and so their fear of being weakened by being non-discriminatory is unfounded, and all students should be allowed to participate in RRJ.

C. GISC's interests in eradicating discrimination outweighs RRJ's

first amendment rights

First Amendment rights are not absolute. However, they may be curtailed only by interests of vital importance, the burden of proving the existence of which rests upon the government *Elrod v. Burns*, 427 U.S. 347, 348 (1976). “[The government’s curtail of speech] must further some vital government end by a means that is least restrictive of freedom of belief and association in achieving that end, and the benefit gained must outweigh the loss of the constitutionality protected rights” *Id* at 348. “Infringements on expressive association are subject to strict scrutiny; the right of expressive association ‘may be overridden ‘regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms’” *Christian Legal Society v. Walker*, 453 F.3d 853 (2006).

GISC’s goal of eradicating discrimination and preventing violence against LGBT students is greater than RRJ’s interests in espousing a divisive, discriminatory political ideology.

First, it is necessary to point out the history of LGBT students at GISC. The school had a history of violence against LGBT students, first following its implementation of the new policy in the 1980s, and again with students in the 2010s. Bisexual students had been targeted for attacks, including their lockers being spray painted with the word “confused.” A transgender student was pulled out of their class in a very public incident, and a student group on campus hosted a forum on whether transgendered students were mentally ill. Clearly, the increase in tension, and the school’s desire to reduce the campus tension and end the discrimination against the LGBT students on campus is a compelling state interest.

Ending discrimination is a compelling state interest that outweighs the first amendment rights of RRJ. RRJ contributed to tensions on a campus that had a difficult relationship with LGBT persons. RRJ refused to admit anyone else that was not a monogamous homosexual to full membership. Their organization’s message would not be threatened by the inclusion of other students, and so the state’s objective in ending LGBT discrimination would outweigh the association rights of RRJ *compare to Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984). GISC’s actions were appropriate and the least intrusive measure to end LGBT discrimination in line with campus policy, which were both reasonable and viewpoint neutral.

D. GISC’s actions in derecognizing RRJ are justified since RRJ violated campus policy that is reasonable and viewpoint neutral.

The state can interfere with a group’s activity on campus, but it bears a ‘heavy burden’ to prove the appropriateness of the action *Healy v. James*, 408 U.S. 169 (1972). The state, however, cannot interfere just because it doesn’t like the

message or values of an organization. In public forums, states can only exclude speakers if it is to serve a compelling state interest that its actions are drawn narrowly to achieve those goals *Christian Legal Society v. Walker*, 453 F.3d 853 (2006). In nonpublic forums, the only restrictions must not discriminate on the basis of viewpoint, but instead the restriction must be reasonable in light of the forum's purpose *Id.*

In college settings, school administrations can interfere with group activities that break campus rules, cause class disruptions, or otherwise impact other students' ability to get an education. Additionally, a college can require groups to affirm their commitment to following such rules prior to official recognition, and such an ask is not a violation of association rights. Any restrictions put in place by college must be viewpoint neutral and reasonable *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010). A policy that requires all groups to accept all students is viewpoint-neutral and reasonable. If this regulation impacts a student group differentially, its acts are not shielded merely because they express a discriminatory philosophy *Id.*

GISC took the proper steps in derecognizing RRJ, which continued to violate the Affirmative Action and Equal Employment Opportunity Policy of Greater Illinois State College and the GISC Board of Trustee Statement on Recognition of Student Organizations, both of which are reasonable and viewpoint neutral. The policy, which provides for, in relevant part, "equal employment [and] educational opportunities for all quailed persons without regard to... sex... sexual orientation or marital status." The policy affords that all students must welcome all comers without fear of discrimination on the basis of a protected class. "It is, after all, hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers" *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010) at 694. The policy at GISC was both reasonable and viewpoint neutral.

The policy has historical context worth noting. The policy was put in place in 1963 and was followed by violence on campus against LGBT persons. The campus, over 50 years later, is still trying to heal the divide, and the incidents with RRJ could have inflamed those tensions again *see generally* (Ponder Dep. 4:9-19.)

In enforcing its policies, the state actors for GISC took several steps before derecognizing RRJ. They had received multiple complaints from students alleging various discriminatory decisions by RRJ and decided to act. In doing so, Dean Ponder attended a meeting for RRJ. Next, on September 26, Ms. Ponder asked for copies of the policies of RRJ, and after receiving them from RRJ's president, she reviewed them with President Riggins *see* (Ponder Dep 4:1-7.) After evaluating the policies for 12 days, Dean Ponder thought it best to prevent RRJ from espousing their discriminatory philosophy and derecognized the organization in an attempt to prevent violence on campus, as had happened 50 years earlier, and in the best interest of the law school (*Id* at pg.

4:21-23.)

Establishing that the policy is reasonable and viewpoint neutral, and that reasonable steps were taken prior to derecognition, it is no wonder that RRJ feels that their rights are violated on its enforcement. They have conducted themselves in a discriminatory way, and their discriminatory philosophy is not protected from the policies of the university.

V. Conclusion

Radical Rainbow Justice has failed to prove that its case would win on the merits and has failed to prove that its policies were anything other than discriminatory and antithetical to Greater Illinois State College's policies. Radical Rainbow Justice cannot claim its message will be diluted while also allowing those same students to participate in events in meetings. Further, it cannot claim that derecognition was improper when on three separate occasions Radical Rainbow Justice told students they could not be full members for their sexual orientation or gender identity. We request the court deny Radical Rainbow Justice's motion for preliminary injunction.

Respectfully Submitted,

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