

Read More About:

The Supreme Court decision.

The opinion of the Court in *Christian Legal Society v. Martinez*: <http://www.supremecourt.gov/opinions/09pdf/08-1371.pdf>.

Further information on the decision:

http://www.oyez.org/cases/2000-2009/2009/2009_08_1371.

http://www.scotuswiki.com/index.php?title=Christian_Legal_Society_v._Martinez.

Brief *Amici Curiae* of American Islamic Congress, Coalition of African-American Pastors, National Council of Young Israel, National Hispanic Christian Leadership Conference, Project Nur, Sikh American Legal Defense and Education Fund, and Sikh Coalition in Support of Petitioners, http://www.abanet.org/publiced/preview/briefs/pdfs/09-10/08-1371_PetitionerAmCu7VariousReligiousGrps.pdf.

Brief of *Amica Curiae* States of Michigan, Alabama, Colorado, Florida, Idaho, Louisiana, Nebraska, New Mexico, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and West Virginia in Support of Petitioner, http://www.abanet.org/publiced/preview/briefs/pdfs/09-10/08-1371_PetitionerAmCu14States.pdf.

Peter Schmidt, "Ruling Is Unlikely to End Litigation Over Policies on Student Groups," *Chronicle of Higher Education* (June 30, 2010), http://chronicle.com/article/Many-Colleges-Student-Group/66101/?sid=pm&utm_source=...; Peter Schmidt, "Supreme Court Decision on Law School's Anti-Bias Policy May Have Limited Impact," *Chronicle of Higher Education* (June 28, 2010), http://chronicle.com/article/Supreme-Court-Decision-on-Law/66077/?sid=at&utm_source=...

Scott Jaschik, "New Venue for Anti-Bias Debate," *Inside Higher Ed* (June 29, 2010), <http://www.insidehighered.com/layout/set/print/news/2010/06/29/supreme>.

Other school policies.

University of North Carolina-Chapel Hill: Its current policy states, "Student organizations that select their members on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership and participation in the organization to students who, upon individual inquiry, affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership or participation on the basis of his or her age, race, color, national origin, disability, religious status or historic religious affiliation, veteran status, sexual orientation, or,

unless exempt under Title IX, gender." <http://www.unc.edu/campus/policies/studentorgnondiscrim.html>.

University of Wisconsin: Board of Regents Policy 30-06 on Recognition of Student Organizations currently states, "Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex."

Federal law concerning student fees.

The Foundation for Individual Rights in Education, *Guide to Student Fees, Funding, and Legal Equality on Campus*, <http://www.thefire.org/public/pdfs/student-fees.pdf?direct>.

Launched in 1995, the **American Council of Trustees and Alumni (ACTA)** is an independent, non-profit organization dedicated to working with alumni, donors, trustees, and education leaders across the country to support liberal arts education, high academic standards, the free exchange of ideas on campus, and high-quality education at an affordable price.



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Freedom of Association



Supreme Court Decision: CLS *versus* MARTINEZ

*How does it affect your campus?
What can you do?*



The Issue

As a trustee, you are responsible for ensuring the integrity of students' educational experience and the free exchange of ideas on campus. A campus climate that welcomes a robust, vigorous mix of ideas helps broaden students' horizons and challenges students to refine their ideas. Crucial to creating such a climate is a vibrant, diverse range of student-run groups—from the College Democrats to the College Republicans to faith-based, social, and civic organizations of all political, cultural, and religious persuasions. The more kinds of student groups there are, the more interests and outlooks they represent, the richer and more engaging the student experience.

But these student opportunities may be in jeopardy. A recent, closely-divided Supreme Court decision may prompt administrators to make hasty changes that will adversely affect students' right of association in their political, religious, and social groups. It's time for sound and steady judgment.

Our advice: Go slow.

The Ruling

On June 28, 2010, the Supreme Court ruled 5-4 in *Christian Legal Society vs. Martinez* that public colleges and universities, in certain circumstances, can refuse to recognize and fund student groups that exclude from membership those who do not share the group's foundational principles or religious beliefs.

Administrators from the University of California Hastings College of the Law argued that the Christian Legal Society violated the university's "all comers" policy by requiring members to sign a "statement of faith" declaring that they share the group's religious beliefs and will adhere to its standards of sexual morality. The Christian Legal Society responded that it had a First Amendment right to limit membership to those who shared the Society's beliefs and that opening membership to everyone would leave the society subject to takeover or dilution by those with fundamentally different values.

In finding for Hastings, the Court ruled that a public college or university **may** constitutionally require student organizations to apply an "all comers" policy, as long as the university enforces the policy equally for all student groups. The ruling **does not require** schools to adopt an "all comers" policy.

Because of disputed facts in the case, the decision was remanded to the lower court, which has yet to determine whether Hastings discriminates against religious groups in its enforcement of the policy.

What Does the Ruling Mean for Your Campus?

Legally, **not very much** at this point.

- The case has been **remanded** to the lower court on issues of fact.
- The decision itself is narrow: It **permits** an "all comers" policy but does not **require** one.
- Most institutions have in place nondiscrimination policies that, in various ways, **allow students to maintain the ideological, philosophical, or political makeup of their group. These policies are not affected by this decision.**

What Can You Do?

Find out what policies your school has in place. Read the policies and examine the forms that student groups must submit for recognition. Understand how recognition procedures work and who is in charge. Since *CLS v. Martinez* involves a school with a mandatory student activity fee imposed on all students, find out your school's policy on collection and use of student fees. Are student activities subsidized by mandatory or voluntary student fees? Does your school give students the opportunity to opt out of paying fees for activities and associations? Prepare for discussions to come.

Avoid hasty changes in policy. Until there is greater clarity, there is no reason for an institution to change policies currently in place governing recognition and funding of student groups. An "all comers" policy may not be practical or desirable and could endanger freedom of association. According to William Creeley, director of legal and public advocacy for the Foundation for Individual Rights in Education: "Although colleges have the

power to enforce an all-comers policy, they are best not doing so, if they wish to continue a robust debate on their campuses."

Indeed, consider the implications. An "all comers" policy requires that voting membership and leadership positions within a student group be open to all students, even those who disagree with or are hostile to the group's core beliefs. In other words:

- Any student or group of students, regardless of what they believe, can join any organization, vote on the organization's policies and plans, and even assume leadership roles within that organization.
- Operationally, College Democrats could find themselves saddled with Republican officers—and vice versa.
- Pro-choice groups would be required to admit pro-life members—and vice versa.

Such a policy could marginalize controversial or unpopular campus groups and increase hostility among groups. It could also increase the likelihood of litigation: A student organization could sue, claiming that the university failed to police groups' membership policies and therefore failed to apply the policy equally, as the law demands.

Insist that administrators report to you any changes they propose in policy concerning recognition of student groups, **before any action occurs.**

Acquaint yourself with policies at other institutions. Both the University of North Carolina and University of Wisconsin, for example, currently have policies that permit belief-based organizations to select members on the basis of belief. At the University of Southern Illinois, the Christian Legal Society is allowed to require officers and voting members to adhere to its religious beliefs, provided that programs are open to all.

