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Law School Groups Back Hastings in High Court Fight With Christian Student Group

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Law school organizations are lining up behind the University of California Hastings College of the Law in the upcoming Supreme Court argument pitting the school against the Christian Legal Society.

The Association of American Law Schools and the Society of American Law Teachers have filed amicus briefs in *Christian Legal Society v. Martinez*, which is scheduled for argument on April 19. The American Bar Association also joined the fray last week with an amicus brief in support of the law school.

The case stems from a 2004 decision by Hastings to deny the Christian Legal Society funding and status as a registered student organization on the grounds that it excludes gays and lesbians. Society members must sign a statement of faith that the group's national chapter has interpreted to bar people with a "sexually immoral lifestyle." Hastings said the Christian Legal Society violates the school's non-discrimination policy.

Last year, the 9th U.S. Circuit Court of Appeals affirmed a lower court ruling in favor of Hastings, finding that the school's open membership rule on student groups is "viewpoint neutral and reasonable."

Jackie Gardina, an associate professor at Vermont Law School and the chair of SALT's committee on lesbian, gay, bisexual and transgender issues said SALT members debated in January whether to get involved in the case.

"It felt like an important discussion to have because of the non-discrimination rules involved and the First Amendment rights being asserted by the Christian Legal Society," Gardina said. "It was a very lively and interesting discussion."

Gardina said that SALT was careful to strike a balance between its desire for both inclusiveness and academic freedom in its amicus brief, which was prepared with the pro-bono assistance of a team of eight attorneys from Schulte Roth & Zabel's New York office led by Mark Mandel. The brief argues that Hastings' non-discrimination policy does not unfairly target the Christian Legal Society's religious message or prevent the organization from conveying its message. At the same time, the brief urges the Court to continue to give schools the autonomy to establish their own policies regarding student groups. Religious groups should not have a constitutionally mandated exception from non-discrimination rules, according to the brief.

"We argue that the position Hastings took was an appropriate one," Gardina said.

Daniel Rodriguez, a professor at the University of Texas School of Law and AALS executive committee member, said the AALS had no interest in taking a position on either Hastings' non-discrimination policy or the member policies of the Christian Legal Society. The AALS represents 171 law schools.

The group's nine-member executive committee decided to submit an amicus brief that is narrowly tailored to emphasize the need for law schools to have the discretion to establish their own non-discrimination policies, said Rodriguez. The brief was written by Cornell law professor Sherry Colb.

"The decision of the AALS even to weigh in at all required a lot of reflection," he said.

Numerous amicus briefs have been filed in the case. In addition to the law school organizations, the American Civil Liberties Union, the National School Boards Association and the Anti-Defamation League are among the groups that have filed amicus brief on behalf of Hastings. The Boy Scouts of America, the Cato Institute and the Association of Christian Schools International are just a few of the groups that have filed amicus brief on behalf of the Christian Legal Society.

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