RedState.com

Atheist Christians, Republican Democrats, and Other Absurdities – What's at Stake in CLS v. Martinez

Posted by mcaseymattox (Profile)

Monday, February 15th at 10:22AM EST

16 Comments

M. Casey Mattox is co-counsel for the case referenced in this post. — Erick

Can a public university force a religious student group to deny its faith in order to exist on campus? Does the First Amendment allow government-run colleges to simply ban any group from associating around *any* common ideas? Can government treat a religious organization's faith requirements for voting power and leadership positions as the equivalent of racism? The Supreme Court will be examining those questions this term in *Christian Legal Society v. Martinez.*

For the last three decades, Christian student groups have fought to be treated equally with other student groups on campus. Prior to 1981, many universities refused to permit Christian students to worship on campus or even to meet on the same terms as other groups. When the University of Missouri-Kansas City kicked a Christian student group off campus in 1979 for the unpardonable sin of "worshipping," dozens of schools called the school to ask for advice on how to do the same.

The Supreme Court's decisions in *Widmar*, *Mergens*, *Lamb's Chapel*, and *Rosenberger* largely turned the tide, definitively foreclosing the misguided argument that the Establishment Clause requires government to discriminate against religious students. But this has not ended the hostility to religious groups whose beliefs are out of line with the educational establishment's orthodoxy.

Having lost their Establishment Clause weapon (because it did not turn out to be one), universities have turned to the next in their arsenal, the application of "nondiscrimination" rules to ban or neutralize religious groups on campus. And the University of California Hastings School of Law has decided that it is willing to go so far as to abolish the First Amendment rights of every student group in order to justify its discrimination against a small group of Christian students.

The purpose of laws prohibiting religious discrimination has generally been thought to be to *protect* religious people, not to prevent them from associating together for a common purpose. Thus, every state and federal law recognizes that the faith-based hiring, membership, and related policies of religious organizations is not the government's business, in keeping with the true intent of the Establishment Clause. But pushed by animosity toward religious groups from administration, faculty, and some students, many universities have lost this common-sense understanding. As a result, they have attempted to treat a Christian student group's desire for Christian leaders – who among other things abstain from sex before marriage (a highly countercultural view on today's campus) – as comparable to racism.

Even so, in every one of the dozens of instances over the past 20 years in which a religious or other group was threatened with derecognition or denial of certain access because it limited its leaders and voting power to people who shared its beliefs, the schools have backed down, either by court order or after careful consideration by university counsel.

Then, in 2004, the University of California - Hastings College of Law in San Francisco refused to recognize the Christian Legal Society student chapter. Why? Because, while the group is open to and enthusiastically welcomes anyone in any of its meetings and activities, CLS limits its officers and those who select them and lead Bible studies—its voting members—to persons who affirm a five-point basic statement of historic Christian beliefs in the Trinity; the death, resurrection, and burial of Christ; and the authority of Scripture. CLS, a nearly fifty year old membership organization of thousands of Christian lawyers, law students and judges nationwide, interprets this statement of faith to include the view that Christians should not engage in sexual conduct outside of marriage between a man and a woman.

Hastings deems CLS's policies to be religious and sexual orientation discrimination. As a result, CLS lost all benefits of recognition enjoyed by other student groups including its ability to meet on campus on the same terms as those groups, to use channels of communication like bulletin boards, e-mail lists, and the student organization fair to communicate with other students and recruit members. It also lost eligibility for funding from the student activity fees all students, including CLS's own members, pay so that the group can bring in speakers and host debates open to everyone just like other groups do. In short, CLS is now an outsider, prevented from functioning on campus because it will not pledge to allow those who reject its beliefs to lead it and select its leaders.

As the case proceeded, however, and CLS pointed out that Hastings' rule would prohibit only religious groups from limiting their leadership to people who agreed with their views, Hastings made a last minute change in its policy. Seeking to avoid the consequences of discriminating only against Christians, Hastings decreed that it inexplicably interpreted its nondiscrimination rule to actually prohibit *every* group from excluding *anyone* from any position for *any* reason. Hence, Hastings' officials testified that the Hastings Democrats must allow Republicans to vote and the feminist group must allow male chauvinists to lead them. The rule would also mean that Hastings cannot have an academic honor club or even a Third Year Council. Hastings was willing to violate every group's rights and create this bizarre system in order to defend its treatment of CLS.

It worked. The San Francisco based Federal District Court held for UC Hastings, stating that CLS must "take the chance" of being taken over by hostile outsiders if it wanted to be a student group at UC Hastings. The "chance" that CLS would have to take is put into some context when one recognizes that of the 60 student groups at a school of over 1,300 students, no Republican or pro-life group exists. To say that CLS is countercultural at UC Hastings is an understatement. The U.S. Court of Appeals for the Ninth Circuit also affirmed, in a three-sentence opinion, that requiring all student groups to let anyone lead them – whether they agreed with the group's beliefs or not – was "viewpoint neutral and reasonable."

The U.S. Supreme Court will now take up this question in April, determining whether public universities can dictate to student groups who speaks for them on university campuses. But Hastings' argument is not limited to the university. By Hastings' argument, government can dictate who will speak for a church that wants to reserve a park for a picnic, a pro-life group seeking a parade permit for the March for Life, or a faith-based charity that simply wants to retain its tax exemption. Anytime the government offers any "benefit" at all, including use of any government property and a government employee's time to process your request, it can require citizens to waive their fundamental rights. The Supreme Court has rejected that argument for over a half century, but it is the core of Hastings' argument.

That is why CLS has been joined by nearly 100 people and organizations from a diversity of perspectives in friend-of-the-court (*amicus*) briefs urging the Supreme Court to reverse the Ninth Circuit and not allow government to force religious organizations to deny their faith. Fourteen state attorneys general, Campus Crusade for Christ, InterVarsity (and a dozen other Christian student organizations), the American Islamic Congress, Boy Scouts of America, Cato Institute, Coalition of African-American Pastors, Gays and Lesbians for Individual Liberty, College Republicans, the Republican National Lawyers Association, Union of Orthodox Jewish Congregations of America, World Vision, and two dozen past presidents of the Evangelical Theological Society are among those who have filed briefs urging the high court to reverse the Ninth Circuit's

decision.

After 30 years of progress for equal treatment for religious organizations and speakers, the Supreme Court's decision will determine whether the "marketplace of ideas" on campus is truly a free market. For more information on the case, or to read the opening brief, visit the ADF media page on the case.

Category: ADF, Alliance Defense Fund, Christian Legal Society, Religious Liberty, Universities

16 Comments

Ninth Circuit. You need say no more. [nt]

bs Monday, February 15th at 10:40AM EST (link)

Decorum is fo' suckas - unless it's one of the good guys

REPLY TO THIS

55555555 Indeed....9th Circus at work (nt)

SteveLA Monday, February 15th at 10:43AM EST (link)

Competency over ideological purity and litmus tests

REPLY TO THIS

I think there is something from the founders that deals with this

AceInTX Monday, February 15th at 10:52AM EST (link)

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That **to secure these rights, Governments are instituted among Men,** deriving their just powers from the consent of the governed, — **That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it,**

I would say, when any government at any level forces people of faith to deny that faith and to deny the dictates of their own consciences….that government has become "destructive of these ends"!

The administration of this college and the 9th circuit have violated the most basic concept enshrined in our constitution and Bill of rights….that being the right of every American to follow the dictates of his conscience and faith. The Judges of the 9th Circuit should be impeached and the administrators at this college who are responsible for this abomination should be thrown out on their ears!