

Supreme Court: Christian Student Group Seeks Campus Recognition

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Contributor

On Monday the Supreme Court will hear arguments in a case that, on its face, is about the touchy relationship between the First Amendment and anti-discrimination policies, but it is also a dispute that has reignited tensions connected with the exercise of religious beliefs in publicly-funded schools.

The case, *Christian Legal Society v. Martinez*, began in 2004 when the University of California's Hastings School of Law denied an application by the Christian Legal Society to become an officially recognized student organization.

The group requires members to sign a faith statement, which includes language barring homosexuals and non-Christians from joining the organization in leadership positions. The school claimed the prohibitions violated the university's anti-discrimination policy and denied the application. That meant the Christian Legal Society could not tap into benefits given student organizations, including university funding, priority in reserving university-owned spaces and listing as an official student organization.

Both sides say the outcome of the case will have implications both on college campuses and in American society.

"The larger implications are extremely troubling," said Ethan Schulman, lead attorney for Hastings College of Law in San Francisco. "They're not asserting these claims solely on behalf of religious organizations — they say any expressive organization. The same principles would require universities to fund hate groups."

Schulman insists that Hastings "always made it clear that the group was welcome to meet on campus. The only real issue had to do with the availability of funds and the access to certain bulletin boards."

But attorneys for Christian Legal Society argue that access to bulletin boards is just one piece of the bigger issue — that the stu-



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dents were denied the right to a public forum, created by the university, because of their religious beliefs.

"It can't be discriminatory for a religious group to choose its leaders based on their religious beliefs," said Kim Colby, the lead attorney for the Christian Legal Society, a national organization. "If that's true, there is no religious freedom in this country." The point of the Constitution, Colby said, "is to protect people's religious liberty. Not to squelch it. That's what they're trying to do."

However, Hastings is a public university and the dollars it distributes to student organizations are considered public funding. Officials argue that their anti-discrimination policy is intended to allow all students equal access to university-financed programs and organizations.

"They couldn't both say we want access to public funds but we want to be exempted from the reasonable criteria that seek the same benefits," Schulman said. "As to the claim that these requirements undermined the group's ability to exist, all one has to do is see that they continued to meet and doubled their membership after the decision."

Members of Christian Legal Society maintain that they were denied the First Amendment right to freely associate in the University's public forum. They also argue that previous case law requires all university funds to be distributed without bias.

"It doesn't matter that some students are unhappy with how the fees are spent," Colby said. "You have a fee system that collects money and distributes it to the student groups of all creeds."

"It's really a sham," Colby continued. "They did not give us the access to reserve classroom space. They did not give us to any access to channels of communication or to the Web site, or to student admissions packets, or the student activity fares."

The two lower federal courts hearing the case ruled for Hastings.

In advance of oral arguments Monday, dozens of organizations and advocacy groups filed briefs, from the American Civil Liberties Union and the National LGBT Bar Association, to the libertarian think-tank, the Cato Institute, and also religious groups of various faiths.

The ACLU, with its long history of supporting both First Amendment and anti-discrimination cases, chose to side with

Hastings on this one.

The Christian Legal Society “surely has a constitutional right to its religious expression and to associate with like-minded people,” said Daniel Mach, director of the ACLU religion program. “But this is a case not about the group’s right to hold its views, but its claimed right to have the government subsidize their discriminatory conduct.”

For Mach, protecting all students’ rights to participate in any group funded by the university outweighs the membership requirements of the Christian Legal Society.

However, Roger Pilon, vice president for legal affairs at the Cato Institute argued that the university’s policy is exclusionary.

“In the name of anti-discrimination Hastings discriminated,” Pilon said. “It’s just picking and choosing in what it’s prepared to give. The members of CLS and their families are taxpayers just like the other students and their parents. What you have to do under the equal protection clause is protect all equally. You can’t start discriminating on the basis of you’re subsidizing religion.”

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