



# CHRISTIAN LEGAL SOCIETY

## FACT SHEET:

### *Christian Legal Society v. Martinez*

By Kim Colby, Senior Counsel

#### Key points about the case:

- Justice Kennedy joined Justice Ginsburg's 5-4 ruling that an ***all-comers policy*** does not restrict students' free speech and freedom of association, despite the fact that it forces the religious student group to allow a nonbeliever to lead its Bible study if it wants to meet on campus like other groups.
- Justice Alito authored an exceptional dissent joined by three other justices.
- 22 amicus briefs supported CLS, including ones by Union of Orthodox Jewish Congregations, U.S. Conference of Catholic Bishops, Agudath Israel, National Hispanic Christian Leadership Conference, American Islamic Congress, Coalition of African-American Pastors, Sikh American Legal Defense Fund, 14 State Attorneys General (bipartisan), and Boy Scouts of America.
- The Court distinguished between Hastings' idiosyncratic **all-comers policy** and the common enumerated **nondiscrimination policy** at most colleges.
- Four justices, in dissent, stated that application of a typical nondiscrimination policy to a religious group's leadership and membership selection would be unconstitutional because it allows all groups to form around beliefs except religious groups, which is viewpoint discrimination. Justice Kennedy suggested at oral argument that such application would be problematic.
- The Court sent the case back to the lower courts to determine whether the law school selectively applied its all-comers policy, which must be applied to all groups to be constitutional.

- The case did not involve public funding but minimal funding from student activity fees paid by all students, including CLS students. The real issue for CLS was the denial of access to common forms of communication on campus, such as the student organization fair and the student email system.
- CLS welcomes all students to its meetings to participate fully, but to lead the Bible studies and vote for officers requires agreement with its religious beliefs.
- Hastings' representatives admitted that the all-comers policy would require African American student groups to accept KKK members. Republicans must be allowed to lead the Democratic student group, and vice versa. Orthodox Jewish student groups or Muslim groups could be excluded. An all-comers policy guts a nondiscrimination policy's protection of minority groups.
- The majority squandered an opportunity to insist on mutual respect in the marketplace of ideas by requiring colleges to respect all student groups' right to meet on campus and contribute a distinctive voice to the campus dialogue.
- *Martinez* validates religious persons' concerns about the use of legislation regarding "sexual orientation" discrimination to impair the ability of religious groups to live according to the requirements of their faith. Any legislation must contain explicit protection of the rights of religious persons, organizations, and institutions to preserve their religious identity in practice.

#### **Relevant Legislation:**

- 1984 Equal Access Act, 20 U.S.C. §§ 4071-74
- 1993 Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb-1-4
- 2002 Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905

#### **Additional resources:**

- [www.clsnet.org](http://www.clsnet.org) (all briefs and commentary about decision)
- <http://www.huffingtonpost.com/adam-goldstein/supreme-courts-cls-decision-628329.html> (*Martinez* damages all Americans' free speech)
- [http://chronicle.com/article/Many-Colleges-Student-Group/66101/?sid=pm&utm\\_source=pm&utm\\_medium=en](http://chronicle.com/article/Many-Colleges-Student-Group/66101/?sid=pm&utm_source=pm&utm_medium=en) (narrow decision)
- <http://www.pbs.org/wnet/religionandethics/episodes/april-16-2010/christian-legal-society-v-martinez/6109/> (interview with Hastings' acting dean)