

No. 08-1371

IN THE

Supreme Court of the United States

CHRISTIAN LEGAL SOCIETY CHAPTER OF
THE UNIVERSITY OF CALIFORNIA,
HASTINGS COLLEGE OF THE LAW,

Petitioner,

v.

LEO P. MARTINEZ, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE* ASSOCIATED STUDENTS OF
THE UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE
OF LAW IN SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST

The Associated Students of the University of California, Hastings College of Law (“ASUCH”) is the official student body association of the College.¹ ASUCH governs issues relating to the welfare of Hastings students and the activities in which they participate. The ASUCH General Council is composed of school-wide elected officers and representatives from each of the three classes at the College. The General Council has the power to enact legislation necessary and proper to exercise its powers, and to delegate the authority required to execute these powers.² All current Hastings students are members of ASUCH, and every Hastings student is required to pay an annual student activity fee, portions of which comprise ASUCH’s general operating fund. This fund is used to provide financial support to the almost seventy Registered Student Organizations (“RSOs”) operating on the Hastings campus.³ ASUCH often

¹ Counsel of Record for all parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than the *amicus curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

² See ASUCH Const. Art I, § 2; Art. VI, § 9, *available at* http://www.uchastings.edu/asuch/records/ASUCH_Constitution.pdf (last visited March 12, 2010).

³ See App. A, Current List of Registered Student Organizations at Hastings.

advocates on behalf of its members to the Hastings Administration and Board, the California Legislature, and other entities whose decisions touch and concern the Hastings student community.

This case raises legal questions of vital importance for the Hastings student body, for ASUCH as an institution, and for the Hastings community at large. ASUCH and the students it represents are profoundly concerned with maintaining equal student access to all RSOs at Hastings. To this end, ASUCH, duly elected by and acting on behalf of Hastings' student body, has passed a unanimous resolution supporting the Hastings Policy on Nondiscrimination.⁴ ASUCH strongly believes that the interests of present and future Hastings students will be best served by ensuring that all students have equal access to all school-funded groups—particularly when the students themselves help subsidize those groups.

SUMMARY OF ARGUMENT

This Court has long recognized that the University represents a “marketplace of ideas” where students’ academic and personal development is furthered through exposure to diverse viewpoints. Because such groups ensure that students “have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life

⁴ See App. B, ASUCH Res. *In Support of the UC Hastings Policy on Nondiscrimination* (Feb. 24, 2010).

outside the lecture hall,” a thriving community of extracurricular groups and activities are central to the University’s goals. *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000).

The Hastings Nondiscrimination Policy protects and nurtures the thriving, dynamic student community on campus by promoting dialogue between and among students. There is tremendous benefit in having a community in which all students are guaranteed access to all groups, and no student feels excluded. The Hastings Nondiscrimination Policy also exposes groups to a broader range of ideas and viewpoints by fostering a vigorous discussion both within and among groups. Additionally, the Nondiscrimination Policy ensures that students are not forced to fund groups that would not have them as members.

Religious student organizations are and have been an important part of student life at Hastings. Numerous religious organizations are active at Hastings and abide by the Nondiscrimination Policy. These organizations maintain strong religious communities without excluding any of their fellow students from their membership and leadership positions. Indeed, ASUCH is not aware of any other organization, religious or otherwise, that has objected to the Hastings’ Nondiscrimination Policy.

CLS’s decision to forego registered status has not adversely affected its ability to engage with Hastings students and thrive as an organization. After forgoing registration, CLS continued to hold meetings and social events, and actually increased

its membership. And Hastings continued to offer some resources to CLS to ensure that it would remain a viable campus organization.

Additionally, CLS's inability to use a Hastings bulletin board must be evaluated in light of how students communicate in this modern age. Hastings student groups use various modes of communication to alert students of opportunities, events, and important information. Student groups today communicate with actual and prospective members through e-mail, third-party social networking sites, and Internet chat groups. The importance of access to a school bulletin board is much less important than in previous generations.

ARGUMENT

I. THE HASTINGS CAMPUS REPRESENTS A "MARKETPLACE OF IDEAS" WHERE STUDENTS LEARN THROUGH EXPOSURE TO DIVERSE VIEWPOINTS.

Because they represent a "tradition of thought and experiment that is at the center of our intellectual and philosophic tradition," the university classroom and its environs have long commanded distinctive respect from this Court. *Rosenberger v. Rector and Visitors of the Univ. Of Va.*, 515 U.S. 819, 835 (1995). At Hastings, as on thousands of other higher education campuses across the Nation, students gather to learn new ideas and pursue unexpected lines of inquiry. Through exposure to diverse viewpoints in a dynamic "marketplace of ideas," students learn to critically evaluate unfamiliar or challenging ideas and defend (or

amend) their own set of beliefs and values. *Id.* at 831. Students emerge not only intellectually enriched, but better able to succeed in an increasingly multicultural world characterized by a heterogeneity of worldviews.

This is a style of learning that this Court knows and has strongly endorsed. In even its earliest cases addressing the issue, this Court recognized that diversity on campus has an inherent pedagogical value. Approvingly quoting the President of Princeton University, for example, the Court has observed that a “great deal of learning” comes through informal “interactions among students...who are able, directly or indirectly, to learn from their differences and to stimulate one another to reexamine even their most deeply held assumptions about themselves and their world.” *Regents of the Univ. of Ca. v. Bakke*, 438 U.S. 265, 312 n.48 (1978) (opinion of Powell, J.). Or, to put it more plainly, “[p]eople do not learn very much when they are surrounded only by the likes of themselves.” *Id.*

Building and exposing students to a diversity of viewpoints on campus, then, is not simply an academic fad. Indeed, it stands as a compelling interest of constitutional dimension for the public university. *See Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) (“Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School’s proper institutional mission...”). And it is in the similarly compelling interests of the Nation as a whole. *See Keyishian v. Bd. of Regents of the Univ. of*

the State of N.Y., 385 U.S. 589, 603 (1967) (“The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’”) (citation omitted).

Students’ exposure to this “multitude of tongues” happens both inside and outside the classroom. *Id.* Hastings, like most colleges and universities, offers all its students the opportunity to participate in a wide variety of extracurricular groups that range from the personal to the political. Such student groups complement and enrich the academic experience by ensuring students have a place to “engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall.” *Southworth*, 529 U.S. at 233. Hastings currently recognizes almost seventy such organizations. *See* App. A.

Precisely because they meet outside the more formalized atmosphere of the lecture hall, these student groups often incubate the types of new ideas that challenge conventional academic, political, and cultural opinions. This type of critical thought is characteristic of a healthy university and fundamental to its mission of encouraging new ways of thinking and challenging ingrained beliefs. Indeed, the constitutional protections afforded those views is emblematic of a vital democracy. *See Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957) (“Mere unorthodoxy or dissent from the prevailing mores is not to be condemned.”). As this Court has

declared, “the absence of such voices would be a symptom of grave illness in our society.” *Id.*

Student groups, then, are not incidental to the university experience. They are part and parcel of the “marketplace of ideas,” and crucial to the university’s mission.⁵ See *Southworth*, 529 U.S. at 222-23 (“In the University’s view, the activity fees [that support student groups] ‘enhance the educational experience’ of its students by ‘promot[ing] extracurricular activities,’ ‘stimulating advocacy and debate on diverse points of view,’ enabling ‘participa[tion] in political activity,’ ‘promot[ing] student participa[tion] in campus administrative activity,’ and providing ‘opportunities to develop social skills,’ all consistent with the University’s mission.”); see also *Board of Ed. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 832 n.4 (2002) (observing that participation in student organizations “is a significant contributor to the breadth and quality of the educational experience”). By serving as a forum in which *all* Hastings students can vigorously debate and advocate for new ideas, student groups contribute to the “quality and creative power of student intellectual life,” which remains a “vital

⁵ Many empirical studies have similarly concluded that student groups enhance the learning experience on campus. See generally Br. for *Amici Curiae* American Council on Education, Association of Public and Land-Grant Universities, Association of Jesuit Colleges and Universities, and American Dental Education Association In Support of Respondents.

measure of [the] school's influence and attainment.”
Rosenberger, 515 U.S. at 836.

**A. Hastings' Policy Creates An Inclusive
Campus Atmosphere That Is Conducive
To Collaborative Learning.**

The vitality of the university marketplace of ideas hinges upon the freedom students feel to have their say in that forum. The university atmosphere must be “conducive to speculation, experiment and creation,” or dissenting voices will be lost and new ideas stifled. *Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring) (citation omitted). And as Justice Stevens has concluded, that same open “atmosphere” must extend to student groups. *Widmar v. Vincent*, 454 U.S. 263, 279 n.2 (1981) (“...it is clear that the ‘atmosphere’ of a university includes such a critical aspect of campus life” as extracurricular activities) (Stevens, J., concurring).

ASUCH has unanimously resolved that the school's nondiscrimination policy “benefits the student community” and fosters an atmosphere of “dialogue” on campus by ensuring that any student has the opportunity to join any officially recognized group. *See* App. B. This is not to say that many students will decide to join groups whose views they find objectionable. But some may, and, regardless, it is important that students know they could if they wished to do so. And Hastings' policy at least ensures that students are not forced to fund groups that would not have them as members.

A contrary rule that would allow officially-recognized student groups to categorically exclude

students on the basis of their faith, race, ethnicity, sexual orientation, disability, military status, martial status or parenthood, or political affiliation is antithetical to the inclusive atmosphere ASUCH supports. “Speculation, experiment, and creation” cannot flourish in an environment where students are targeted for exclusion on the basis of characteristics over which they may have no control. *See Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring). And a rule that sanctions unvarnished exclusion can only inspire resentment by forcing some students to subsidize organizations that advocate messages with which they disagree, and that they cannot even join in order to effect change from within.

A decision from this Court requiring Hastings and ASUCH to support groups that practice naked discrimination against certain students, if they are to support any groups at all, would create a campus atmosphere of “suspicion and distrust.” *Sweezy*, 354 U.S. at 250. This Court has been vigilant in ensuring that universities have the constitutional authority to avoid that ruinous result. *See id.* (“Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”).

B. Hastings' Policy Helps Promote Vigorous Debate Between Student Groups By Facilitating Debate Within Student Groups.

The university marketplace of ideas is only as vibrant as the diversity of viewpoints represented within the university. *See Bakke*, 438 U.S. at 312 (“The atmosphere of ‘speculation, experiment and creation’—so essential to the quality of higher education—is widely believed to be promoted by a diverse study body.”). Student groups play a vital role in this marketplace by clarifying different points of view and amplifying the voices of members who may otherwise stay silent. The respectful dialogue between different-minded organizations—between the American Constitution Society (“ACS”) and Federalist Society, for example—is thus a vital part of that “robust exchange of ideas” out of which students determine their own truth. *See Keyishian*, 385 U.S. at 603. ASUCH both supports and encourages this type of inter-organizational dialogue.

Just as a healthy community of extracurricular groups serves the University’s mission of “foster[ing] vibrant campus debate among students,” Hastings’ policy has the unremarkable effect of ensuring that student groups also benefit from a “debate among students” *internally*. *See Southworth*, 529 U.S. at 234. As a way of example, a member of the Federalist Society may wish to join the ACS and vigorously debate the merits of different approaches to judicial interpretation. To the extent those types of internal debates encourage members to evaluate critically their organization’s positions, those

members are better prepared to defend and advocate their perspective to the broader campus community. The “robust exchange of ideas” *within* the organization results in a more nuanced, articulate debate *among* organizations. See *Keyishian*, 385 U.S. at 603.

In ASUCH’s experience, the Hastings Policy has successfully fostered this type of dialogue both within and between student groups. Indeed, ASUCH itself is emblematic of intra-organizational debate, as each year brings a fresh crop of elected leaders who inevitably critique and refresh ASUCH’s agenda and priorities. Other groups have had the same revitalizing experience.⁶ And even a cursory stroll through the Hastings campus and its environs reveals a vast array of fliers and leaflets from student groups, some advertising meetings and some advocating causes, but all competing for students’ attention in a healthy and heterogeneous marketplace of ideas.⁷

⁶ In the 2007-2008 school year, for example, a student of Asian descent ran for and was elected president of the Black Law Students Association (BLSA), bringing a unique (and popularly-endorsed) perspective to the organization. This would not have been possible, of course, if BLSA had both the constitutional latitude and desire to adopt a CLS-style rule excluding students who were not of African descent.

⁷ Inter-organizational meetings and debates are common at Hastings. For example, each election season brings a series of debate-watching parties co-hosted by the Hastings Democrats and the Federalist Society. Those same groups participate in an annual “Supreme Court Review,” where visiting academics (continued...)

Indeed, many of the ASUCH officers, and the students they represent, chose to attend Hastings because of the opportunity to participate in and help shape the agendas of a diverse community of registered student groups.⁸ But not all students came knowing whether they were attracted to the ACS or Federalist perspective on matters of the law, for example. Students' freedom to participate in these and similar groups has shaped the development of their personal and legal values. And students' ability to seek leadership positions, insulated from ideological or substantive litmus tests, has ensured student groups remain vital, responsive to new ideas, and relevant to both students and the legal community at large.

The Constitution should not compel Hastings to choose between the extremes of only promoting debate within groups or only promoting debate among groups. The school may do both. And by guaranteeing that every student may join every registered group, Hastings' Policy ensures that students are not forced to choose between the extremes of participating in groups with which they

discuss this Court's upcoming docket and field questions from members of these groups.

⁸ Hastings enthusiastically promotes its diverse community of student organizations to potential students. *See, e.g.*, Hastings Admission Viewbook, *available at* http://www.uchastings.edu/site_files/Admissions/Viewbook.pdf (listing sample of student groups that contribute to "an intellectually stimulating environment like no other") (last visited March 12, 2010).

already agree, or no groups at all. Allowing groups to shelter themselves from dissenting viewpoints internally in the name of protecting their ability to advocate externally represents a profound departure from principles this Court has long embraced. If the First Amendment “does not tolerate laws that cast a pall of orthodoxy over the classroom,” nor should it tolerate rules that cast a similar pall over the student organizations that play such a critical role in university learning. *See Keyishian*, 385 U.S. at 603.

C. Hastings’ Policy Is Reasonable In Light of the College’s Interest In Preserving a Diverse Marketplace of Ideas.

In ASUCH’s experience, Hastings’ Policy has proven itself a “reasonable” rule in “light of the purpose of the forum and all the surrounding circumstances.” *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 809 (1985). As discussed above, it was reasonable for Hastings to conclude that the Policy promotes a “robust exchange of ideas” by fostering an inclusive atmosphere that exposes students to diverse voices both inside and outside the lecture hall. *See Keyishian*, 385 U.S. at 603. Furthermore, it was reasonable for Hastings to conclude that applying the Policy to all groups avoids the type of intrusive entanglement with student groups—by either the administration or ASUCH—that could ultimately chill dialogue on campus.

By adopting a policy that applies to every group that seeks official recognition, neither ASUCH nor the Hastings Administration is required to make inherently subjective, ad hoc judgments about

whether a student group is excluding individual members on impermissible grounds or not. Certainly ASUCH neither seeks nor desires that responsibility, which would put elected student leaders in the unwanted and unpopular position of scrutinizing the genuineness of their fellow students' beliefs and motivations. A policy that called for—indeed, mandated—those sorts of intrusive inquiries would inevitably foster a campus environment of “suspicion and distrust.” *Sweezy*, 354 U.S. at 250.

Indeed, it is not inconceivable that Hastings and other public universities, forced with the choice between funding student groups under an intrusive regime that institutionalizes group monitoring and engenders ill will, on the one hand, and not funding student groups at all, on the other, may well choose the latter. As the ASUCH resolution notes, Hastings' decision to cease funding student organizations altogether would have a “chilling effect on student speech and association.” *See* App. B. Avoiding that result is surely one goal on which both Hastings, ASUCH, and the CLS can agree.

II. CLS'S DECISION TO FOREGO REGISTERED STATUS HAS WORKED AT MOST AN INCIDENTAL BURDEN ON THE GROUP'S ABILITY TO ADVOCATE ITS VIEWPOINT AND COMMUNICATE WITH THE HASTINGS STUDENT BODY.

A. Even As An Unregistered Organization, CLS Has The Ability To Actively Engage With The Hastings Student Body.

As discussed in the Respondent's and

Respondent-Intervenor's briefs, even as an unregistered organization, CLS maintained a strong presence on campus. CLS has the ability to be engaged on campus and communicate with active and prospective members through a host of mediums. Because CLS was not excluded from campus and enjoys access to facilities and campus, *Healy* is inapposite. See *Healy v. James*, 408 U.S. 169, 176, 181 (1972) (university affirmatively sought to exclude the disfavored groups from campus entirely); *Widmar*, 454 U.S. at 265 n.3 (same).

CLS contends that it is being deprived of benefits that are given to registered organizations—benefits that allegedly impact CLS's ability to engage adequately with the Hastings student body. Pet. Br. 12. These benefits purportedly include access to certain bulletin boards, a weekly Hastings newsletter, Student Information Center space, eligibility to send out certain mass emails using a Hastings email address, participation in the student organization fair, and access to the general operating funds from ASUCH. *Id.* at 4. But CLS's argument that it is being denied access to "the customary means by which student organizations communicate with the student body" fails to take account of the ways in which the "customary means" of communication have dramatically changed in recent years, at Hastings and other campuses of higher learning. See *id.*; see also *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 874 (7th Cir. 2006) (Wood, J., dissenting) ("Moreover, the importance that physical campus bulletin boards have today is nothing like the situation [when *Healy* was decided] in 1972. Most universities and colleges, and most college-aged

students, communicate through email, websites, and hosts like MySpace.”).

First, groups communicate with actual and prospective student members through a variety of different electronic media that bear no relationship to whether or not an organization is registered. Every Hastings student can send e-mail communications to other Hastings students through the Hastings exchange server. Because almost all communication occurs through e-mail, every Hastings student has the ability to communicate with their fellow students, including providing information about meetings and other group activities. Alternatively, many campus organizations, RSOs and unregistered organizations alike, use e-mail distribution lists created on third-party software, such as Google Groups and Yahoo! Groups, to communicate with members. Indeed, CLS itself used a Yahoo! group to communicate with members. *See* JA 114. Additionally, numerous Hastings organizations presently use third-party social networking sites to organize meetings, engage in online debates, and otherwise communicate with current and prospective members. Whether they are registered or not has no bearing on these groups’ presence on sites ranging from Facebook, to Twitter, to Internet chat groups.⁹

⁹ Several organizations maintain active Facebook and Twitter pages. *See, e.g.,* ASUCH Facebook group, *available at* <http://www.facebook.com/group.php?v=wall&ref=search&gid=2404446850> (last visited March 14, 2010); ASUCH Twitter page, *available at* <http://twitter.com/asuch> (last visited March 14, (continued...))

Second, CLS was not in fact excluded from campus simply because it could not participate in the student organization fair. The student organization fair presents a short (2-3 hours) opportunity for RSOs to meet new students that attend the fair. However, over the years, student attendance has declined and the number of students a group can reach during the student activity fair is dwarfed by the students reached by attendance at organization meetings and by electronic means.

Third, CLS argues that it seeks its “legal right to meet on the premises of the law school.” Pet. Br. at 11. There is no evidence that Hastings did anything to prevent CLS from using the campus facilities for its meetings. In fact, the record shows that Hastings did almost everything to ensure CLS would remain active on campus other than confer registered status on it. Hastings provided CLS (and any other unregistered organization) the opportunity to use the campus facilities for its meetings. Pet. App. 78a-79a.¹⁰ Indeed, CLS remained an active member of the Hastings community the year after it decided to

2010); South Asian Law Students Association Facebook group, *available at* <http://www.facebook.com/group.php?v=wall&gid=5789339342> (last visited March 14, 2010); American Constitution Society Facebook group, *available at* <http://www.facebook.com/group.php?v=wall&ref=search&gid=123262933291> (last visited March 14, 2010).

¹⁰ Additionally, Hastings informed CLS that “[i]f CLS wishes to form independent of Hastings we would be pleased to provide the organization the use of Hastings facilities for its meetings and activities.” Joint Appendix (JA) 294.

forego RSO status. CLS hosted several events throughout the year including a beach barbecue, a Thanksgiving dinner, a campus lecture, fellow dinners, an end-of-year banquet, informal social activities, and weekly Bible-study meetings. Pet. App. 13a.

Lastly, by foregoing RSO status, CLS did not receive the modest monetary awards that are given to RSOs. But because these awards represent a small amount of the total monies typically needed for an event, student groups are encouraged to raise funds and seek money from additional sources. Consequently, not receiving the modest award, does not affect the ability of an organization to have a successful event. Any effect that resulted from CLS's failure to receive a small monetary award from ASUCH was *de minimis*.

In short, CLS exaggerates the importance of the limited benefits offered to RSOs. Hastings did not prohibit CLS from taking advantage of routine electronic modes of communication and CLS was able to hold group meetings in the law school (and had access to other locales for meetings). CLS's ability to engage with the student body is similar to those used by all student organizations on campus.

**B. Groups That Choose Not To Register
Can Still Successfully Advocate Their
Viewpoint On Campus.**

As discussed above, Hastings seeks to create an environment where all groups are welcome on campus regardless of its registration status. Over the years, several unregistered, informal groups

have assembled and thrived on campus. For example, during the last presidential election, several Hastings students created the “UC Hastings Law Students for Obama” group.¹¹ This informal group used campus facilities and did not complain to ASUCH about difficulty in conveying its message to the students. There are also private study groups and informal interest groups that are actively involved on the college campus without being a RSO. Tellingly, the record shows that CLS continued to hold activities and doubled its membership after refusing to comply with the Nondiscrimination Policy and foregoing its RSO status. The denial of the limited benefits that come with being a RSO were not detrimental to the organization.

¹¹ See UC Hastings Law Students for Obama group, *available at* <http://my.barackobama.com/page/group/UCHastingsLawStudentsforObama> (last visited March 14, 2010) (“We are a group of current law students, faculty, and alumni from UC Hastings College of the Law in San Francisco, CA who have banded together to support Barack Obama on his road to the White House!”); *see also* Hastings for Obama Facebook group, *available at* <http://www.facebook.com/group.php?v=wall&ref=search&gid=8456222162> (last visited March 14, 2010).

III. RELIGIOUS AND OTHER GROUPS THAT ENGAGE IN EXPRESSIVE ASSOCIATION HAVE SOUGHT RECOGNITION, COMPLIED WITH THE NONDISCRIMINATION POLICY, AND STILL THRIVED AT HASTINGS.

For many years, other RSOs have complied with Hastings' Nondiscrimination Policy without suffering from or complaining of any adverse effects. ASUCH has not received complaints that the Nondiscrimination Policy significantly infringes on any of these organizations' ability to advocate their viewpoints. Additionally, CLS has not put forth evidence showing how their situation is dissimilar from other religious organizations at Hastings such that complying with the policy would work a unique burden on them.

There are presently four RSOs at Hastings that represent specific religious faiths. Each of these organizations has traditionally and continues to comply with the Nondiscrimination Policy. For example, the Hastings Jewish Law Students Association ("HJLSA") has been a RSO for over fifteen years. The HJLSA seeks to "promote activities related to Judaism on campus; provide a forum for Jewish students to meet and network; and represent the interests of Jewish students to Hastings' administration." See HJLSA Bylaws, Art II.¹² And as set out in its bylaws, HJLSA "is open to

¹² HJLSA Bylaws, Art II, *available at* <http://www.uchastings.edu/student-> (continued...)

all full-time students of Hastings College of the Law.” *Id.*, Art. III. The J. Reuben Clark Society seeks to “affirm the strength brought to the study of law by a law student’s personal religious conviction.” *See* JRCS Bylaws, Art. II.¹³ But the group’s bylaws stipulate that their membership is “multi-faith and open to all currently enrolled law students at the University of California, Hastings College of the Law, without regard to race, color, religion, national origin, ancestry, disability, age, sex, or sexual orientation.” *Id.* The Law Students’ Christian Fellowship and the Hastings Catholic Law Students Association (“HCLSA”) are new RSOs. The HCLSA’s purpose is “to promote an understanding of Catholicism and its relation to the legal community; to provide a forum for students to meet, network and celebrate the Catholic faith; to promote and provide opportunities for service to the community.” *See* HCLSA student organization page.¹⁴ Membership in HCLSA is open to all students.

There is nothing that inherently distinguishes these religious organizations from CLS. The purpose of CLS is, *inter alia*, “[t]o provide a means of society,

services/docs/bylaws/bylaws-jewish-law-students-assoc.pdf (last visited March 12, 2010).

¹³ JRCS Bylaws, Art. II, *available at* <http://www.uchastings.edu/student-services/docs/bylaws/bylaws-j-reuben-clark-law-society.pdf> (last visited March 14, 2010).

¹⁴ HCLSA student organization page, *available at* <http://www.uchastings.edu/student-services/student-orgs/HCLSA.html> (last visited March 12, 2010).

fellowship and nurture among Christian lawyers” and “[t]o clarify and promote the concept of the Christian lawyer and to help Christian lawyers integrate their faith with their professional lives.” CLS Bylaws, JA 358. Indeed, the CLS mission statement is very similar to the goals of the HJLSA and the HCLSA, both active RSOs seeking to create a group of Hastings students who share the same religious conviction, but neither organization insists on categorically excluding fellow classmates. ASUCH is not aware of any problems that HJLSA and HCLSA have had in creating a religious community while abiding by the Hastings Nondiscrimination Policy. The record also shows that CLS’s predecessor group, the Hastings Christian Fellowship, agreed to abide by the Hastings Nondiscrimination Policy and was recognized for a decade without any deleterious effect. *See* JA 222-23.

Other officially-recognized groups at Hastings are organized around similar backgrounds and interests and, like CLS, engage in expressive association. For example, the La Raza Law Students Association seeks to “create a safe space where Latina/o students can forge a vibrant community by fostering political involvement, social awareness, cultural celebration, professional growth and academic excellence.” *See* La Raza organization page.¹⁵ The obvious membership for this

¹⁵ La Raza student organization page, *available at* <http://www.uchastings.edu/student-services/student-orgs/la-raza.html> (last visited March 12, 2010)

organization is Hastings students of Hispanic heritage. However, La Raza has a nondiscrimination clause in its bylaws which requires the Association “not to discriminate on the basis of race, color, religion, national origin, ancestry, age, sex, sexual orientation or disability.” See La Raza Bylaws, Art. II.¹⁶ ASUCH has never received complaints from La Raza that complying with the Hastings Policy has been to their detriment.

Consistent with the success these various groups have enjoyed without a discriminatory policy, the record here contains no evidence that the open membership policy that CLS maintained while previously identified as the Hastings Christian Fellowship caused any problems with its or its members’ ability to express their stated goals. ASUCH has also never received complaints that the Hastings’ Policy has led to or even encouraged students to join who do not support the organization’s mission. CLS’s concern that members will join for the sole reason to “sabotage the enterprise and wreak havoc on the group’s chosen message” is inconsistent with the way membership in the organizations actually happens. Pet. Br. at 28. While it is certainly true that most students join groups that align with their interests and background, the rule that all groups must accept all comers nevertheless creates an inclusive atmosphere

¹⁶ La Raza Bylaws, Art. II, *available at* <http://www.uchastings.edu/student-services/docs/bylaws/bylaws-la-raza.pdf> (last visited March 14, 2010).

that fosters the academic experience. The rule advocated by CLS would allow groups to discriminate against students on the basis of any number of factors—including faith, race, gender, ethnicity, sexual orientation, disability, military status, marital status, or political affiliation—which not only undermine debate but create a hostile environment for students. In addition, it could single particular groups of students for unfavorable treatment on campus, including gay and lesbian students or students with a particular political affiliation. Such a result would be very destructive for the academic environment and experience.

CLS's suggestion that the policy will require groups to accept leaders not of its own choosing is also totally unfounded. All the policy requires is that every member is eligible for a leadership position (so that every member is a full-fledged and not second-class member). RSOs select their leaders in different ways, ranging from a vote of all members¹⁷ to academic competitions.¹⁸ In practice, ASUCH is not aware of any group that has been prevented from selecting the leaders it wants.

¹⁷ See, e.g., La Raza Bylaws, Art. V; Hastings Federalist Society Bylaws, Article IV, *available at* <http://www.uchastings.edu/student-services/docs/bylaws/bylaws-federalist-society.pdf> (last visited March 14, 2010).

¹⁸ See, e.g. Hastings Law Journal Bylaws, Arts. III and VI, *available at* <http://www.uchastings.edu/student-services/docs/bylaws/bylaws-hlj.pdf> (last visited March 14, 2010).

CONCLUSION

ASUCH has formally endorsed Hastings' Nondiscrimination Policy, not because it is "fashionable," as Petitioners suggest, Pet. Br. 39, but because it is ASUCH's conclusion that the vast majority of Hastings students share the values the school seeks to promote by enforcing the Policy against RSOs. For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

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APPENDIX A

Current List of Registered Student Organizations at Hastings (2009-2010 academic year)

American Constitution Society (ACS)
Armenian Law Students Association (ALSA)
Asian Pacific American Law Student Association
(APALSA)
Associated Students UC Hastings (ASUCH)
Association of Communications, Sports &
Entertainment Law (ACSEL)
Black Law Students Association (BLSA)
Business Law Association of Hastings
Clara Foltz Feminist Association (CFFA)
Employment and Labor Law Students Association
(ELLSA)
Environmental Law Society (ELS)
Federalist Society UC Hastings Chapter
General Assistance Advocacy Project (GAAP)
Hastings Advocates for the Arts (HAART)
Hastings Animal Law Society (HALS)
Hastings Ballroom Dance Club
Hastings Business Law Journal (HBLJ)
Hastings Catholic Law Students Association
(HCLSA)
Hastings Chinese Law & Culture Society (HCLCS)
Hastings Client Counseling Organization
Hastings Communications & Entertainment Law
Journal (COMM/ENT)
Hastings Constitutional Law Quarterly (CLQ)
Hastings Cycling League
Hastings Democrats
Hastings Entrepreneurs

Hastings Golf Club
Hastings Health Law Organization (HHLO)
Hastings Hurricane Relief (HHR)
Hastings In-House Organization
Hastings Intellectual Property and Cyber Law Society
Hastings International and Comparative Law Review (HICLR)
Hastings International and Comparative Law Society (HICLS)
Hastings International Human Rights Organization
Hastings Intramural Basketball League
Hastings Jewish Law Students Association (HJLSA)
Hastings Law Journal (HLJ)
Hastings Legal Vines
Hastings OUTLAW
Hastings Public Interest Law Foundation (HPILF)
Hastings Race Poverty Law Journal (HRPLJ)
Hastings Race Poverty Law Organization
Hastings Science & Technology Law Journal
Hastings Soccer Club
Hastings Tax Law Students Association (HTLSA)
Hastings to Haiti Partnership (HHP)
Hastings Trial Law Association
Hastings Vietnamese American Law Society (VALS)
Hastings Women's Law Journal (HWLJ)
Homeless Legal Services
Iranian Law Students Association (ILSA)
J. Reuben Clark Law Society, UC Hastings Chapter
Japanese Law Society
Korean-American Law Students Association (KALSA)
La Raza Law Students Association
Law Students' Christian Fellowship (LSCF)
Law Students for Reproductive Justice

Legal Eagles - Hastings Running Club
Legal Notes
Middle Eastern Law Students Association (MELSA)
Military Law Students Association
National Lawyers Guild - Hastings Chapter
Native American Law Students Association (NALSA)
Othello Club
Phi Alpha Delta, Law Fraternity
Pilipino American Law Society (PALS)
South Asian Law Students Association (SALSA)
Third Year Class Council
UC Hastings Association of Students for Kids (ASK)
Usual Suspects Criminal Justice Film Club
West-Northwest Journal of Environmental Law and
Policy

APPENDIX B

ASUCH Resolution

**IN SUPPORT OF THE UC HASTINGS
POLICY ON NONDISCRIMINATION**

February 24, 2010

WHEREAS, it is the Purpose of the Associated Students of the University of California –Hastings (“ASUCH”) to govern the affairs pertaining to the welfare and activities of the associated students (ASUCH Const. art I, § 2), and the General Council has the power to enact the legislation necessary and proper to exercise its powers, and to delegate the authority required to execute these powers (ASUCH Const. art. XI, § 9); and

WHEREAS, on June 22, 1990, the Board of Directors of the University of California, Hastings College of the Law (“the College”) adopted and, on June 3, 2002, amended the Policy on Nondiscrimination, which governs all student governments, covers access and treatment in Hastings - sponsored programs and activities, and, in relevant part, prohibits discrimination on the basis of religion and sexual orientation (Policies and Regulations Applying to College Activities, Organizations and Students, § 20); and

WHEREAS, the Student Activity Fee is paid for by each student at the College, and the Policy on Nondiscrimination ensures that all students have equal access to the activities and organizations their monies fund, and the General Council already

demonstrates its support of the Policy on Nondiscrimination by specifically refusing to fund student organizations that do not comply (Budget Regulations for Student Organizations at UC Hastings 2009 - 2010); and

WHEREAS, the College is party to the case *Christian Legal Society v. Martinez* (08 - 1371) set to be argued April 19, 2010 before the Supreme Court of the United States, arising from an incident in 2004 where the College followed the Policy on Nondiscrimination by withholding registration from a student organization that refused to change their bylaws to include a policy prohibiting discrimination on the basis of religion and sexual orientation, and the deadline to file amicus briefs is March 15, 2010; therefore, be it

RESOLVED, in his capacity as the chief executive officer of ASUCH, that the ASUCH President retain Counsel to write and file an amicus brief not inconsistent with the following nonexclusive list of arguments, statements, and values:

- (1) Student organizations are and provide a forum for student speech, and ASUCH actively promotes student speech and association;
- (2) Public institutions forced to choose between subsidizing discriminatory organizations and not funding or recognizing any organizations will likely choose the latter to avoid litigation and goodwill costs, resulting in a chilling effect on student speech and association;

(3) The nondiscrimination policy is workable and furthers the interests of all students, and the policy allows ASUCH and the College to ensure that school monies are not put toward discriminatory or illegal purposes by student organizations without impracticable monitoring and tracking;

(4) The resulting all comers policy for membership is reasonable and benefits the student community, promoting inclusiveness and dialogue;

(5) Religious student groups are and have been an important part of student life, and all student organizations but the Christian Legal Society have readily amended their bylaws when made aware they were in violation of the Policy on Nondiscrimination;

(6) Any of the foregoing facts and findings in this resolution; and be it

FURTHER RESOLVED, in balancing the interests of expediency and integrity, that the finished amicus brief gain the General Council's final approval for filing upon a majority vote of the ASUCH President, Internal Vice President and External Vice President finding that it comports with the foregoing provisions.