What Does the United States Supreme Court's Decision in *Christian Legal Society v. Martinez* Tell Us about University Nondiscrimination Policies?

Christian Legal Society v. Martinez
(Decided June 28, 2010)

We are seeing with increasing frequency claims by individuals and institutions that they have a religious right to violate laws designed to end discrimination.

In *Christian Legal Society v. Martinez* (2010), the Supreme Court took up this issue in the context of a student group that sought official university recognition and financial support, but refused to comply with the university's nondiscrimination policy.

Below we discuss the Court's decision and what it tells us about the ability of public universities to enforce their nondiscrimination policies in the face of religious objections.

What was the main question before the Supreme Court in Christian Legal Society v. Martinez*?*

In *Christian Legal Society v. Martinez*, the Court considered whether a public university – the University of California's Hastings College of the Law – could be forced to officially recognize and provide funds to student clubs that don't comply with the school's policy that required all recognized student groups to be open to all registered students.

How did the case come about?

The University of California's Hastings College of the Law has a policy requiring student groups to be open to all enrolled students if the groups are to receive official recognition and university funding. Consistent with this policy, groups must allow all enrolled students "to participate, become a member, or seek leadership positions in the organization, regardless of their status or beliefs." (The Supreme Court referred to this as an "all-comers" policy.)

During the 2004-05 academic year, the Christian Legal Society (CLS), a student club at Hastings, decided to stop accepting members or participants who engage in "unrepentant homosexual conduct" or do not adhere to CLS's Statement of Faith, which affirms, among other things, that sexual activity should not occur outside of a marriage between a man and a woman.

Hastings then denied the group official recognition and funding on the grounds that its new membership rules violated the school's all-comers policy. CLS could, however, still meet on campus and use campus bulletin boards to communicate with students.

CLS sued, arguing that it was entitled to a special exception from Hastings' policy because of its strongly held religious belief that being gay is immoral. According to CLS, the school's insistence that CLS either comply with the policy applicable to all student groups or forfeit official recognition and funding violated its rights to free speech, expressive association, and free exercise of religion.

How did the Court rule?

The Court ruled in favor of Hastings and affirmed the right of public universities to require student clubs seeking official recognition and funding to adhere to a policy that requires all University recognized student groups to accept all interested students under the school's nondiscrimination policy. In so doing, the Court rejected CLS's claim that the Constitution required Hastings to provide official recognition and funding to a student group that claimed the right to discriminate, whether on religious grounds or otherwise.

How will this decision affect students' ability to form religious groups at Hastings and other public universities with a similar policy?

Consistent with the Court's decision, students may form groups, religious or otherwise, that have exclusionary policies. They cannot, however, claim a right to official recognition and funding.

It is not uncommon, as the Court noted, for private groups like fraternities, sororities, and other social clubs with exclusionary membership to exist and indeed thrive on campus without official school affiliation. Religious groups are no different from other groups in this regard. At the same time, many religious clubs at Hastings do comply with the policy, and those groups get the benefits of official recognition and support.

How did the Court address Christian Legal Society's claim that the policy discriminated against its beliefs, or that CLS wasn't discriminating based on sexual orientation?

The Court held that the Hastings policy did not discriminate based on religious belief. In the Court's words, "It is, after all, hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers." Additionally, the Court noted that CLS was not seeking "parity with other organizations, but a preferential exemption from Hastings' policy."

The Court also rejected CLS's claim that it was not discriminating based on sexual orientation, but on the basis of sexual conduct. A majority of the Court recognized that targeting gay people because of their intimate relationships – their conduct -- is in fact discrimination based on sexual orientation, just as a tax on yarmulkes is a tax on Jews.

What does this decision mean for other public universities that wish to enforce nondiscrimination policies?

After this decision, any public university may, like Hastings, deny official recognition and funding to student clubs that refuse to comply with an "all-comers" policy so long as that policy is uniformly enforced.

Other universities may have more traditional nondiscrimination policies that prohibit student groups that receive university recognition and support from rejecting members because of their race, religion, gender, or sexual orientation, for example, while allowing them to require members to meet certain other prerequisites – such as adherence to environmentalism. The Supreme Court's holding in this case does not address the constitutionality of requiring student organizations to comply with a traditional non-discrimination policy as a condition of University benefits.

In our view, however, the Court's reasoning supports the ability of public universities to give university funding and official support to only those student clubs that adhere to traditional non-discrimination policies. Indeed, a federal Court of Appeals recently relied on the Supreme Court's reasoning in the CLS decision to hold that religious student clubs do not have a constitutional right to an exception from such a non-discrimination policy. *See Alpha Delta Chi-Delta Chapter v. Reed* (9th Cir. Aug. 2011).

That court, like the Supreme Court, reasoned that the nondiscrimination policy was reasonable in light of its purpose – to foster diversity and nondiscrimination – and was viewpoint neutral in that it did "not `target speech or discriminate on the basis of content,' but instead serve[d] to remove access barriers imposed on groups that have historically been excluded." Moreover, as the court emphasized, consistent with the policy, the student groups "are free to express any message they wish, and may include or exclude members on whatever basis they like; they simply cannot oblige the university to subsidize them as they do so."

What, if anything, does this decision tell us about other claims for religious exceptions from nondiscrimination laws?

In rejecting CLS's challenge, the Court made several important points that may have consequences beyond the university context. First, as noted above, this decision recognizes a distinction between prohibiting discriminatory groups from meeting, and declining to fund and grant them official recognition. The Court held that the government need not subsidize a claimed religious right to discriminate.

The decision also recognizes that laws, including nondiscrimination policies, that are directed at conduct, without regard to content – here, the act of excluding other students – do not violate the constitutional requirement that government not favor any particular expressive viewpoint. That is the case, the Court reasoned, even if the law has a disparate impact on some groups – like those seeking to discriminate.

The points provide important guidance for future cases.

What position did the ACLU take on the case?

The ACLU filed a friend-of-the-court brief joined by the National Education Association in support of Hastings. The brief highlights the long history of discrimination on university campuses, and argues that Hastings has a compelling interest in ensuring that officially recognized and university-funded student groups do not discriminate on the basis of religion or sexual orientation. To read the full brief, go to: http://www.aclu.org/lgbt-rights-religion-belief/christian-legal-society-v-martinez-aclu-amicus-brief