Written by **Dave Bohon** on July 1, 2010

High Court Rules Against Christian Group at California Law School

The U.S Supreme Court ruled five to four on June 28 that a University of California law school can refuse to recognize a Christian student group that bars membership to homosexuals. In the case of Christian Legal Society v. Martinez, the Christian student group at the Hastings College of Law in San Francisco had challenged the school's policy barring it from requiring students to sign a statement of faith that prohibits homosexual behavior and requires a belief in God.

"If you want state funding, public funding, and you want to use the Hastings name, then you have to abide by the Hastings policy," said Leo Martinez, dean of the law school, in explaining the school's policy, one of the most stringent in the nation.

The case dates back to 2004, when the 30-member Christian Legal Society (CLS) chapter at the Hastings law school was told that it was being denied recognition because of its policy of exclusion. In a press release at the time, the group explained that all students are invited to its meetings, and only CLS voting members and officers must affirm the group's statement of faith. That statement of faith includes "the belief that Christians should not engage in sexual conduct outside of a marriage between a man and a woman."

The High Court's decision upholds a lower court ruling, with the majority deciding that the CLS' First Amendment guarantees of association, free speech, and free exercise were not violated by the law school's policy.

"In requiring CLS — in common with all other student organizations — to choose between welcoming all students and forgoing the benefits of official recognition, we hold, Hastings did not transgress constitutional limitations," wrote Justice Ruth Bader Ginsburg in the majority opinion. "CLS, it bears emphasis, seeks not parity with other organizations, but a preferential exemption from Hastings' policy."

Joining Ginsburg in the majority opinion were associate Justices John Paul Stevens, Stephen Breyer, Sonia Sotomayor, and Anthony Kennedy.

Justice Kennedy likened the Christian student group's policy to a loyalty oath, which he said was inappropriate in today's university climate. "A school quite properly may conclude that allowing an oath or belief-affirming requirement, or an outside conduct requirement, could be divisive for student relations and inconsistent with the basic concept that a view's validity should be tested through free and open discussion," wrote Kennedy.

Justice Stevens opined that while the Constitution "may protect CLS's discriminatory practices off

campus, it does not require a public university to validate or support them." He added that "other groups may exclude or mistreat Jews, blacks and women — or those who do not share their contempt for Jews, blacks and women. A free society must tolerate such groups. It need not subsidize them, give them its official imprimatur, or grant them equal access to law school facilities."

But Justice Samuel Alito, who dissented from the majority ruling, argued that requiring religious groups to accept individuals who do not share their unique convictions could itself be defined as discrimination. "The State of California surely could not demand that all Christian groups admit members who believe that Jesus was merely human," wrote Alito. "Jewish groups could not be required to admit anti-Semites and Holocaust deniers. Muslim groups could not be forced to admit persons who are viewed as slandering Islam. While there can be no question that the State of California could not impose such restrictions on all religious groups in the state, the court now holds that Hastings, a state institution, may impose these very same requirements on students who wish to participate in a forum that is designed to foster the expression of diverse viewpoints."

Alito called the decision "a serious setback" for the First Amendment's guarantee of freedom of expression. "Our proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate,'" Alito wrote, referring to a previous High Court ruling. "Today's decision rests on a very different principle: no freedom for expression that offends prevailing standards of political correctness in our country's institutions of higher learning."

Alito was joined in his minority dissent by Chief Justice John Roberts, along with associate Justices Antonin Scalia and Clarence Thomas.

The High Court's decision was seen as a potential impediment to the thousands of campus religious groups that operate at universities across the nation. "All college students, including religious students, should have the right to form groups around shared beliefs without being banished from campus," said Kim Colby, senior counsel at the Christian Legal Society's Center for Law and Religious Freedom. She added, however, that the decision would likely have limited impact nationwide. "We are not aware of any other public university that has the exact same policy as Hastings," she said.

Gregory S. Baylor of the Alliance Defense Fund (ADF), a legal organization that helped to defend the CLS before the Supreme Court, said that the latest ruling does not settle what he called the "core constitutional issue" of whether non-discrimination policies can compel religious student groups to allow members with divergent beliefs to lead their groups. "Long-term, the decision puts other student groups across the country at risk," warned Baylor. "The Hastings policy actually requires CLS to allow atheists to lead its Bible studies and the College Democrats to accept the election of Republican officers in order for the groups to be recognized on campus. We agree with Justice Alito in his dissent that the court should have rejected this as absurd."

Michael McConnell, a spokesman for the CLS group at Hastings, said the case boiled down to the rights of individuals to associate on the basis of their shared convictions. "This is about … the freedom of everybody to be able to form groups based around shared beliefs and be able to express themselves on campus," he said. "The particulars of what they believe just doesn't matter."

McConnell added that he believes his group will ultimately prevail in the conflict. "The record will show that Hastings law school applied its policy in a discriminatory way," he said, "excluding CLS from campus but not other groups who limit leadership and voting membership in a similar way. The Supreme Court did not rule that public universities can apply different rules to religious groups than

they apply to political, cultural, or other student groups."

That distinction was not lost on other groups at the Hastings law school. Even a homosexual student group, Gays and Lesbians for Individual Liberty, had backed CLS in the case, arguing that the law school's policy would also impact groups wishing to allow only homosexual members.

ADF's senior counsel Jordan Lorence predicted that there would be plenty more legal action over the issue. "It's not over with and there's a lot more litigation," he said. "This isn't even a loss … in the sense that we've lost this issue. It's that the Supreme Court has basically kicked it down the road for another day."

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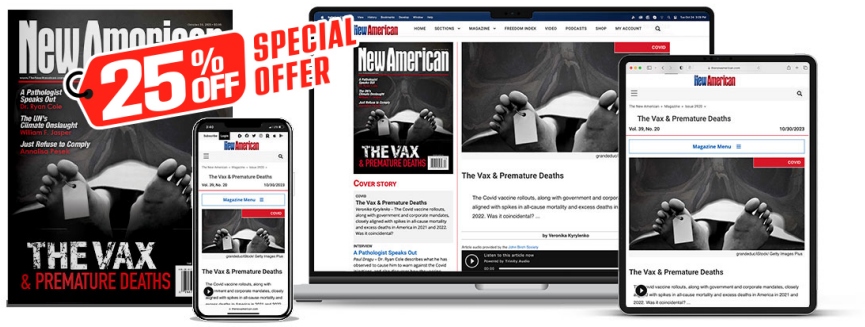

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