



# CLIENT NEWS BRIEF

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## UNITED STATES SUPREME COURT UPHOLDS LAW SCHOOL'S ANTI-BIAS POLICY

The Supreme Court of the United States recently held that Hastings College of the Law ("Hastings") did not violate the First Amendment in denying official recognition to a Christian student group that effectively excluded homosexual students from membership. In Christian Legal Society v. Martinez (2010) \_\_\_ U.S. \_\_\_ (2010 WL 2555187), the Supreme Court affirmed lower court rulings that a public law school may require groups seeking recognition or funding to comply with anti-bias rules by opening their membership to all students.

At Hastings, all officially recognized student groups must comply with the school's nondiscrimination policy, which tracks state law barring discrimination on a number of bases such as religion and sexual orientation. Hastings interprets this policy as requiring all student groups to accept any student as a member, regardless of the student's status or beliefs. In exchange for compliance with this "all-comers policy," Hastings-approved groups receive several benefits, including the use of school funds and facilities.

In the fall of 2004, the leaders of an existing Christian student organization, which had been a recognized student group at Hastings for a decade and had previously accepted a gay student as a member, created the Christian Legal Society (CLS) by affiliating with a national Christian association. The national association requires its chapters to adopt bylaws that exclude from membership anyone who engages in "unrepentant homosexual conduct" or fails to affirm a belief in Christian doctrines.

Hastings rejected CLS's application to become a registered student organization on the ground that the group's bylaws excluded students based on religion and sexual orientation and therefore violated its all-comers policy. CLS refused to alter its bylaws and filed suit against Hastings, alleging that Hastings' refusal to grant it official recognition violated its First Amendment freedoms of speech and association.

In rejecting CLS's arguments, the Supreme Court held that a public institution may require a student group to comply with an all-comers policy before granting it status as a recognized student group. The court concluded that Hastings did not violate CLS's constitutional rights because its all-comers policy was reasonable: funding for student groups is drawn from mandatory student fees, and the policy ensures that no student is forced to finance a group that would reject that student as a member. Additionally, Hastings applies the all-comers policy neutrally by requiring all student groups to accept all comers, without singling out CLS based on its message or perspective.

The court emphasized that Hastings is not compelling any student group to change its membership policies. Instead, by enforcing the all-comers policy Hastings "is dangling the carrot of subsidy, not wielding the stick of prohibition." Groups like CLS remain free to exclude any person if they forgo the benefits of official recognition.

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It is important to note that the court addressed only all-comers policies, which require student groups to accept all students as members, and did not rule on the constitutionality of nondiscrimination policies that prohibit discrimination on enumerated bases such as race, religion, and sexual orientation. Such policies are common in higher education, and often address the relationship between the institution and the students (or the student groups), as well as interactions between students themselves. Also, note that Hastings is a public institution, and so rules regarding limited public forums and freedoms of speech and expressive association, which were key elements here, will differ for a private institution.

While this decision involved an institute of higher education, other courts have reached similar conclusions in the K-12 setting. A Ninth Circuit case, Truth v. Kent School District (9th Cir. 2008) 542 F.3d 634, held that a school district could withhold official sponsorship and funding of student clubs that impose membership requirements that discriminate on the basis of religion. Because Truth involved a high school, the court also discussed whether the school complied with the Equal Access Act, a law that requires federally-funded, public high schools to provide equal access to non-curricular student clubs. (For more on the Truth case, please see our [2007 CNB No. 41](#).) We also note that under the Boy Scouts of America Equal Access Act (20 U.S.C. § 7905 et seq.), if a K-12 school creates a limited public forum for patriotic groups (e.g., for use of school facilities for meetings) the forum must be open and available to the Boy Scouts as well, regardless of the organization's membership restrictions and requirements.

If you have any questions regarding the ruling and implications of this decision, or for other higher education or student law issues, please do not hesitate to contact one of our [seven offices](#) located statewide. For more information on LOZANO SMITH's Higher Education Practice Area, please be sure to visit our [website](#).



#### INTRODUCING ATTORNEY KEVIN MILLS

Noted higher education attorney Kevin Mills has joined the firm as a shareholder in our Walnut Creek office. Most recently, Kevin was a partner with the San Francisco law firm of Burgess, Mills & Ring. His practice is focused on providing general counsel and litigation services to private and public universities operating in California. Kevin also represents private and non-profit corporations, as well as individuals, in business advising, litigation, and employment matters. Read [more](#).

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