



CHRISTIAN LEGAL SOCIETY  
CENTER FOR LAW AND  
RELIGIOUS FREEDOM

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Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter at University of New Hampshire

Dear Dean Cooper and Ms. Birmingham:

This letter responds to Ms. Birmingham’s email reply to our letter of October 24 that was sent on behalf of the Christian Legal Society Student Chapter at University of New Hampshire (“CLS-NH”). As you know, CLS-NH seeks recognition as an official student organization at the Franklin Pierce School of Law and has filed the necessary documents to be an officially recognized student organization. Unfortunately, instead of treating the CLS students fairly and with respect, the School of Law’s Student Body Association (“SBA”) has delayed recognizing CLS-NH and subjected its student leaders to an unseemly inquisition regarding their religious beliefs, particularly religious standards for leaders. We understand that the SBA will meet this evening.

Today, we became aware of a tweet by REDACTED, a student at UNH Law School and presumably a member of the SBA, indicating his belief that this matter would be “a new *CLS v Martinez*.” Of course, this is not a situation governed by *CLS v. Martinez*, 561 U.S. 661 (2010), as the Court made abundantly clear in its 5-4 opinion. There the Court considered only whether an “all-comers policy” could constitutionally be applied to all student organizations. It specifically said that it was not deciding whether a nondiscrimination policy with enumerated categories could be constitutionally applied to a religious student group’s religious leadership requirements. *See, e.g., Martinez*, 561 U.S. at 678 (“This opinion, therefore, considers only whether conditioning access to a student-organization forum on compliance with an *all-comers policy* violates the Constitution) (emphasis supplied”); *id.* at 698 (Steven, J., concurring) (“The Court

correctly confines its discussion to the narrow issue presented by the record . . . the all-comers policy.”).

It is clear that UNH does not have an “all-comers policy.” Instead, the policy is a nondiscrimination policy with enumerated categories, which the *Martinez* decision explicitly did not address. Few if any public universities have an “all-comers policy” because such a policy is categorically incompatible with fraternities and sororities, a capella groups, or single-sex club sports teams. *See, e.g., Business Leaders in Christ v. University of Iowa*, 991 F.3d 969, 973-74 (8<sup>th</sup> Cir. 2021). Just by way of example, under an “all-comers policy,” Democratic student organizations could not require that their leaders agree with the Democratic platform, reproductive rights groups could not require their leaders to condemn the *Dobbs* decision, and environmental groups could not require their leaders to agree that fracking is bad policy.

Furthermore, as the University of Iowa learned firsthand, prohibiting one faith group from having religious leadership standards means prohibiting all faith groups—Catholic, Jewish, Muslim, Sikh—from requiring their leaders to agree with their religious beliefs. *Business Leaders in Christ v. University of Iowa*, 360 F. Supp. 3d 885, 894 (S.D. Iowa 2019) (“Following the University’s review, over thirty groups were deregistered. . . . The University has suspended the registration of various religious student groups pending the outcome of this litigation.”).

As detailed in our October 24 letter, university officials have not fared well in their attempts to invoke *Martinez* to justify their denial of recognition to religious student organizations because of their religious leadership standards. Instead, they have lost their qualified immunity. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021); *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). And those cases arose *before* the United States Department of Education adopted its regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), setting as a material condition on any grants that a university receives from the Department, either directly or through the State or a subgrantee, that the university not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Finally, we would be remiss if we failed to note that the Court’s caselaw regarding religious organizations’ ability to choose their leaders without government interference has evolved dramatically since 2010. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 196 (2012) (“The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.”). Four of the five members of the *Martinez* majority no longer serve on the Court after the departures of Justices Stevens, Kennedy, Ginsburg, and Breyer. Three of the four dissenters continue to serve: Chief Justice Roberts and

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Justices Alito and Thomas. Justice Gorsuch, who replaced Justice Scalia, is a strong voice for religious freedom, as are Justices Kavanaugh and Barrett.

In our previous letter, as legal counsel for CLS-NH, we requested that communication regarding this matter be directed to me rather than the CLS-NH student leaders. In her email response, Ms. Birmingham indicated “that the law school will continue to communicate with the students who are petitioning for recognition for a CLS chapter.” We understand that you were to talk with CLS-NH before the meeting tonight and share requested documents with them. We consent to that but reiterate that, after today, any communication from university officials should be directed to me as legal counsel for CLS-NH. Not only is this a matter of legal ethics, but it also avoids unnecessary confusion in trying to resolve this legal matter.

If I can be of any assistance, I remain happy to schedule a time to talk. Thank you for your consideration. I look forward to resolving this matter quickly.

Yours truly,

/s/ Laura Nammo

Laura Nammo

Center for Law & Religious Freedom

Christian Legal Society