

Good morning. I am Kim Colby, Senior Counsel for the Christian Legal Society, where I have worked for over 30 years to protect students' rights to meet for religious speech on campus. Christian Legal Society has long believed that pluralism, essential to a free society, prospers only when the First Amendment rights of all Americans are protected regardless of the current popularity of their speech. For that reason, CLS was instrumental in passage of the Equal Access Act of 1984 that protects the right of all students to meet for "religious, political, philosophical or other" speech on public secondary school campuses.

Thank you for inviting me to discuss the ongoing problem of college administrators using nondiscrimination policies to exclude religious student groups from campus. At too many colleges, religious student groups are being told that they cannot meet on campus if they require their leaders to agree with their religious beliefs. But it is common sense and basic religious liberty – not discrimination -- for religious groups to expect their leaders to share their religious beliefs.

On a typical university campus, hundreds of student groups meet. As recognized student groups, they can reserve meeting space, communicate with other students, and apply for student activity fee funding available to all groups. Without recognition, it is virtually

impossible to exist on campus.

The Supreme Court acknowledged the importance of recognition in its landmark 1972 decision, *Healy v. James*. The Court ruled that the First Amendment required a public college to recognize the Students for a Democratic Society. The Court rejected the college's argument that it would be endorsing the SDS's sometimes violent political agenda if it recognized the group. Recognition, the Court said, is not endorsement.

In 1981, in *Widmar v. Vincent*, the Court ruled that the First Amendment protects religious student groups' right to be recognized, and the Establishment Clause does not prohibit religious groups' meetings. Again the Court ruled that recognition is not endorsement.

After the Court removed the Establishment Clause as a justification for denying religious groups recognition, university nondiscrimination policies became the new justification. Nondiscrimination policies are good and essential. But, at some colleges, although by no means most colleges, nondiscrimination policies are being *misinterpreted* and *misused* to exclude religious student groups.

Nondiscrimination policies are intended to *protect* religious students, not *prohibit* them from campus. It is common sense, not discrimination, for a religious group to require its leaders to agree with its

religious beliefs.

But last year, Vanderbilt University administrators excluded fourteen Catholic and evangelical Christian groups from campus because they required their leaders to share the groups' religious beliefs. In August 2011, Vanderbilt administrators informed the Christian Legal Society student chapter that its expectation that its leaders would lead its Bible studies, prayer, and worship was discrimination. Its requirement that its leaders agree with its core religious beliefs was also discrimination. In April 2012, Vanderbilt told another Christian student group that it could remain recognized only if it deleted five words from its constitution: "personal commitment to Jesus Christ." Those students left campus rather than recant their belief in Jesus. While Vanderbilt refused to allow religious groups to have religious leadership requirements, it specifically announced that fraternities and sororities could continue to engage in sex discrimination in their selection of both leaders and members.

That this is an ongoing national problem is demonstrated by the Supreme Court's decision in 2009 to hear *Christian Legal Society v. Martinez*. Unfortunately, in its decision, the Court explicitly avoided addressing the issue of nondiscrimination policies, instead addressing an "all-comers" policy unique to Hastings College of Law. The state law

school denied recognition to CLS law students because Hastings claimed that their religious requirements for leaders and voting members violated its nondiscrimination policy. During litigation, however, Hastings discovered a new “all-comers” policy that prohibited any group from requiring its leaders to agree with its beliefs.

Five justices upheld this novel policy that eliminated all student groups’ associational rights. But in doing so, the Court was unequivocal that if a college allows *any* exemption to its “all-comers policy,” it cannot deny an exemption to a religious group.

For evidence of what the Supreme Court will do when it actually decides the issue of college nondiscrimination policies, consider the Court’s recent ruling in *Hosanna-Tabor v. EEOC*. The Court ruled unanimously, in the context of the “ministerial exception,” that nondiscrimination laws cannot be used to prohibit religious organizations from deciding who their leaders will be. The Court acknowledged that nondiscrimination laws are “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.”

Of course, many colleges have recognized that nondiscrimination policies and religious liberty are entirely compatible and have embedded

robust protection for religious liberty within their nondiscrimination policies.

Misuse of nondiscrimination policies to exclude religious persons from the public square threatens the pluralism at the heart of our free society. The genius of the First Amendment is that it protects everyone's speech, no matter how unpopular, and everyone's religious beliefs, no matter how unfashionable. When that is no longer true -- and we seem dangerously close to the tipping point -- when nondiscrimination policies are misused as instruments for the intolerant suppression of traditional religious beliefs, then the pluralism so vital to sustaining our political and religious freedoms will no longer exist.

----- Forwarded message -----

From: **Person, Gretchen** <gretchen.person@vanderbilt.edu>
Date: Tue, Aug 9, 2011 at 10:40 PM
Subject: RE: Christian Legal Society status
To: "Gunter, Justin Philip" <justin.p.gunter@vanderbilt.edu>
Cc: "Salters, Courtney N" <courtney.n.salters@vanderbilt.edu>

Dear Justin,

Thank you for submitting your new Constitution for the Christian Legal Society. In reviewing it, there are some parts of it that are in violation of Vanderbilt University's policies regarding student organizations; they will need to be addressed before the Office of Religious Life can endorse CLS's approval.

Article III states that, "All officers of this Chapter must subscribe to the Christian Legal Society Statement of Faith." Vanderbilt's policies do not allow any student organization to preclude someone from a leadership position based on religious belief. Only performance-based criteria may be used. This section will need to be rewritten reflecting this policy.

The last paragraph of Section 5.2 states that "Each officer is expected to lead Bible studies, prayer and worship at Chapter meetings as tasked by the President." This would seem to indicate that officers are expected to hold certain beliefs. Again, Vanderbilt policies do not allow this expectation/qualification for officers.

Section 9.1 regarding Amendments to the Constitution should include language stating that any amendment must also be in keeping with Vanderbilt University's policies on student organizations and must be approved by the University before taking effect.

Please make these few changes and submit a copy of the amended Constitution to me so we can proceed with the approval process.

Also, we do not have in hand a copy of the revised Officer and Advisor Affirmation Form, as requested in the initial deferral. Specifically, we need a clean document without the handwritten text that seems to be an exclusionary clause advocating for partial exemption from the University's non-discrimination policy. Please forward us a copy of this as well.

Thank you. Please let me know of any questions you may have.

Best,

Gretchen

Rev. Gretchen Person
Interim Director
Office of Religious Life
Vanderbilt University

----- Forwarded message -----

From: vanderbiltcollegiatelink

<noreply@collegiatelink.net<mailto:noreply@collegiatelink.net><mailto:noreply@collegiatelink.net<mailto:noreply@collegiatelink.net>>>

Date: Tue, Apr 17, 2012 at 11:53 AM

Subject: Registration Status Update: [redacted name of Christian student group]

To: [redacted name of student]

The registration application that you submitted on behalf of [redacted name of Christian student group] <[https://vanderbilt.collegiatelink.net/organization/\[redacted\]](https://vanderbilt.collegiatelink.net/organization/[redacted])> has not been approved and may require further action on your part. Please see the reviewer's comments below or access your submission now<[https://vanderbilt.collegiatelink.net/organization/\[redacted\]/register/Review/650475](https://vanderbilt.collegiatelink.net/organization/[redacted]/register/Review/650475)>.

Thank you for submitting your registration application. Vanderbilt appreciates the value of its student organizations. Your submission was incomplete or requires changes, thus we are not able to approve your application at this time. Please re-submit your application including the following items or changes: - Please change the following statement in your constitution:

"Article IV. OFFICERS

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, **personal commitment to Jesus Christ**, commitment to the organization, and demonstrated leadership ability."

CHANGE TO:

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, commitment to the organization, and demonstrated leadership ability.

We are committed to a timely review of every complete application received and to letting you know the status of your application as soon as possible.



New Student Organization Registration Application

Submit completed forms to Student Activities, along with required \$10 non-refundable fee.

A student organization that wishes to use university facilities must be registered with Student Activities. A group of three (3) or more enrolled students is eligible under the university's *Institutional Rules*, Section 6-202, if:

- 1) its membership is limited to enrolled students, staff and faculty of The University of Texas at Austin;
- 2) it does not deny membership on the basis of race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, gender identity or gender expression, except that **a) an organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith;** and **b) an organization may restrict membership based on the provisions of Title IX of the Education Amendments of 1972;**
- 3) it is not under disciplinary penalty prohibiting registration; and
- 4) it conducts its affairs in accordance with the Regents' *Rules and Regulations*, university regulations and administrative rules.

Please Note: If the registered student organization is approved, the following information (1-6) will be posted on the Student Activities Web site.

1. Name of proposed registered student organization _____

- 2. Type of organization:** Political Educational/Departmental Honorary
 (Check **one** only) Student Governance Professional Social
 Recreational Religious Service
 International/Cultural Special Interest

3. State the registered student organization's official purpose _____

4. Indicate any membership requirements* beyond those stated in the *Institutional Rules* above _____

* Does your registered student organization intend to limit membership to a single gender? Yes No

For Office Use Only

Receipt Number _____

Staff Signature _____ Date _____

ORGANIZATIONS POLICY

1. General Statement of Purpose

The University recognizes:

1. the importance of organized student activities as an integral part of the total educational program of the University;
2. that college learning experiences are enriched by student organizational activity; and
3. that organizations provide a framework for students within which they may develop their own special talents and interests.

Inherent in the relationship between the University and organized student groups is the understanding that the purposes and activities of such groups should be consistent with the main objectives of the University.

All student organizations must register annually with the Department of Campus Activities and must then comply with the procedures and policies regarding registration as set forth.

The Dean of Students Office recognizes the role of Greek Coordinating Councils in establishing and upholding policies for member groups. However, membership in said councils does not exempt fraternities and sororities from judicial referrals to the Dean of Students Office for violations of Student Life Policies, including Organizations Policies.

The University Hearing Board, with the approval of the Dean of Students, delegates to Greek coordinating councils general supervision over those chapters of social sororities and fraternities which choose to be members of these councils.

The term "general supervision" shall include all the duties, powers and responsibilities exercised by the Greek coordinating council prior to the adoption of this policy, with the provision that membership in the Greek coordinating councils is optional with the local chapter.

It is understood that the Greek coordinating councils and their member groups will operate under the provisions of the Student Life Policies, including the Organizations Policy.

2. Procedure for Registration of New Organizations

2.1 Permanent Organizations

- a. The group will file its name, statement of purpose, constitution or statement regarding its method of operation, faculty/staff advisor (if applicable), and the names of its officers or contact persons with the Department of Campus Activities.
- b. In cases where a potential faculty/staff advisor is unknown to the group, the Campus Activities staff will assist in identifying a university faculty or staff member who may wish to serve as an advisor. Organizations are encouraged to have a faculty/staff advisor.
- c. Should the group not have elected its officers or completed other work connected with its formation at the time they initially see the Campus Activities staff, the Campus Activities staff shall make arrangements for them to use university facilities for organizational purposes on a meeting-to-meeting basis until the organizational process is completed and the required information can be filed.
- d. At the time of filing, three officers or contact persons for the organization will sign a statement indicating that they are familiar with and will abide by the aforementioned responsibilities of student organizations. They will also sign the standard hazing and discrimination

disclaimer required of all student organizations.

- e. Having ascertained that the group's purpose is lawful and within university regulations and that the group has filed the required forms and disclaimers, the Director of Campus Activities, or designate, will sign the application. Appropriate university personnel are notified by Campus Activities that the group is then eligible for all of the rights of student organizations.
 - f. Should the staff feel that the organization does not meet the requirements for registration, a written copy of the decision and reasons will be furnished to the applying organization. The group may appeal the decision to the Dean of Students.
 - g. The Campus Activities staff shall make arrangements for the group to use university facilities on a meeting-to-meeting basis until the appeals process is completed.
 - h. Decisions of the University Hearing Board may be appealed to the Dean of Students.
- #### 2.2 Registration for a Limited Purpose: Temporary Status
- In some cases, groups will organize with some short-term (one which can be accomplished in less than one academic year) goal in mind such as the passage of some particular piece of legislation or the holding of some particular event. The organization's structure will expire on the date indicated on the registration form. Requests for extension of Temporary Status may be made to the Director of Campus Activities.

2.3 Membership Regulations

- a. Registered student organizations have freedom of choice in the selection of members, provided that there is no discrimination on the basis of race, color, religion, national origin, sex, age, disability, veteran status, or sexual orientation.
- b. Membership in registered student organizations is restricted to currently enrolled University of Houston students, faculty, staff and alumni.
- c. Hazing-type activities of any kind are prohibited.

2.4 Officers Regulations

- a. Student organizations are free to set qualifications and procedures for election and holding office, with the following provisions:
 1. All officers must be regular members of the organization.
 2. There is no discrimination on the basis of race, color, religion, national origin, sex, age, disability, veteran status, or sexual orientation except where such discrimination is allowed by law.
 3. Religious student organizations may limit officers to those members who subscribe to the religious tenets of the organization where the organization's activities center on a set of core beliefs.
- b. Persons not currently enrolled at the University of Houston may not hold office or direct organizational activities.

2.5 Records

All registered student organizations must maintain the following records in the Campus Activities Office:

- a. An organizational information form listing the current officers and faculty/staff advisor (if applicable) is due at the beginning of each school year. Any changes during the year, other than membership, are to be recorded within 10 days with the Department of Campus Activities.

University of Florida's Policy (<https://www.union.ufl.edu/involvement/index.asp>)

Student Organization Registration Policy Update

The University of Florida has modified its policies relating to the registration of religious student groups as Registered Student Organizations (RSOs). The modification was made to accommodate any student group whose religious mission requires its membership to share the organization's religious beliefs, while at the same time continuing to protect the University's nondiscriminatory educational program.

More than 760 student organizations covering a wide variety of interests are registered at the University. UF has always welcomed registration of religious organizations. More than 60 religious student organizations, of which about 48 are Christian, are registered as RSOs at UF.

The University considers participation in registered student organizations to be an important educational opportunity for all of our students. The University applies its nondiscrimination in membership policy to registered student organizations to ensure that these important learning opportunities are not denied to any student due to discrimination based on race, sex, religion or certain other prohibited bases.

A small number of religious student groups have expressed a religious need to ensure that all of their members share the religious beliefs of the organization.

To the greatest extent possible-while fulfilling our nondiscriminatory educational mission and complying with the law-the University wants to be sure that a full range of religious student organizations feel just as free to register as any other type of student organization. This ensures that all of our students will find meaningful educational opportunities to participate in registered student organizations.

As we are committed to serving all of our students well, the University has carefully considered how to address the concerns expressed by some religious student groups and individuals without compromising our educational program. After doing so, the University has made the decision to modify its nondiscrimination policy as follows:

"Student organizations that wish to register with the Center for Student Activities and Involvement (CSAI) must agree that they will not discriminate on the basis of race, creed, color, religion, age, disability, sex, sexual orientation, marital status, national origin, political opinions or affiliations, or veteran status as protected under the Vietnam Era Veterans' Readjustment Assistance Act.

A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or

leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy."

This modification of the University's registration policy recognizes a meaningful distinction between sincerely held current religious beliefs (which may be considered in selecting members or leaders of religious RSOs)-and religious or other status (e.g., religion of birth or historical affiliation). The modification takes effect immediately and is now reflected in the CSAI's Handbook of Student Activities as well as its registration and constitution guidelines and Web site. A letter has been sent to each religious student group that has recently sought and not received registration to ensure that it is aware of the modification and to invite its registration.

University of Minnesota's "Constitution and By-Laws Instructions" in *Student Groups Official Handbook*, available at <http://sua.umn.edu/groups/handbook/constitution.php> (last visited December 7, 2012)

3. University of Minnesota Policy: Student groups must comply with all University policies and procedures, as well as local, state, and federal laws and regulations. This includes, but is not limited to, the Board of Regents Policy on Diversity, Equal Opportunity and Affirmative Action as they relate to group membership and access to programs. Religious student groups may require their voting membership and officers to adhere to the group's statement of faith and its rules of conduct. Your constitution needs to include a statement about your group's responsibility to operate in accordance with these policies.