

Supreme Court Missed the Mark on Religious Freedom

✖ It is a decision that is both disappointing and troubling. By a vote of 5-4, the Supreme Court dealt a damaging blow to First Amendment law for religious organizations in the case of *Christian Legal Society v. Martinez*.

The Supreme Court was presented with the following question: “May a public law school condition its official recognition of a student group-and the attendant use of school funds and facilities-on the organization’s agreement to open eligibility for membership and leadership to all students?”

By a one-vote margin, the high court upheld the University of California-Hastings College of Law’s application of its policy withholding recognized student organization status from any group that excludes members on the basis of religion or sexual orientation (among other things) to the Christian Legal Society (CLS).

CLS sought to ensure that its members and leaders would adhere to a statement of faith and code of conduct, including the belief that sexual activity should not occur outside of a marriage between one man and one woman.

CLS said it could not abide by the school's non-discrimination policy. That policy forbids student groups from discriminating on the basis of, among other things, "religion." CLS says its religious beliefs prevent non-Christians from exercising control over the group by becoming voting members or serving in leadership positions. By a one-vote margin, the Supreme Court upheld a decision by the U.S. Court of Appeals for the Ninth Circuit and rejected CLS's position.

This decision significantly limits the constitutional rights of religious organizations. The court missed the mark in understanding that it is fundamental to religious freedom and the freedom of speech that religious groups are free to define their own mission, select their own leaders and determine their own membership criteria. By permitting a problematic decision by the federal appeals court to stand, the Supreme Court decision represents, as Justice Samuel Alito correctly concluded in the dissent, "a serious setback for freedom of expression in this country."

We have argued that the First Amendment prohibits a public law school from denying recognition to a religious student group because the group requires leaders and members to agree with its core religious viewpoints.

We

filed an amicus brief with the Supreme Court in the case representing more than a dozen Christian leaders and organizations active on college and university campuses-including

Fellowship of Christian Athletes, Campus Crusade for Christ, InterVarsity

Christian Fellowship, Young Life, the Navigators and the Fellowship of Catholic

University Students.

In our

amicus brief, we spelled out very clearly our belief that religious groups are constitutionally protected in following their religious beliefs.

“Religious

groups by their nature embrace religious principles and, as a matter of

organizational identity and coherence, will normally require adherence to such

principles as a criterion for membership and certainly for leadership,”

the brief asserted.

“This

is not ‘discrimination’ but rather part and parcel of what defines them as

religious groups,” it continued. “Wooden application of religious ‘non-discrimination’

policies therefore forces religious groups to choose between their religious

identity and access to the forum. That ‘choice’ is an unconstitutional one

between yielding to government intermeddling and no access at all. Far from a

permissible condition on benefits, this is a choice that the

government, under the Religion Clauses, has no business imposing on religious groups.”

In the majority opinion written by Justice Ruth Bader Ginsburg, the court concluded that CLS, in order to be recognized as a student organization, must accept all students who wanted to join the group.

“CLS, it bears emphasis, seeks not parity with other organizations, but a preferential exemption from Hastings’ policy,” she wrote. “Compliance with Hastings’ all-comers policy, we conclude, is a reasonable, viewpoint-neutral condition on access to the student-organization forum.”

But in a well-written and sound dissent, Justice Samuel Alito, joined by Chief Justice Roberts, and Justices Antonin Scalia and Clarence Thomas rejected the court’s analysis, calling the decision “a serious setback for freedom of expression in this country.”

As Justice Alito wrote: “Our First Amendment reflects a ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’ *New York Times Co. v. Sullivan*, 376 U. S. 254, 270 (1964). Even if the United States is the only Nation that shares this commitment to the same extent, I would not change our law to conform to the international norm.

“I fear
that the Court’s decision marks a turn in that direction. Even
those who find
CLS’s views objectionable should be concerned about the way
the group has been
treated-by Hastings, the Court of Appeals, and now this Court.
I can only hope
that this decision will turn out to be an aberration.”

Justice
Alito disagreed with the court’s characterization of the
school’s policy as a
neutral “accept-all-comers” policy, noting the existence of
numerous
recognized organizations at the university that could be
harmd by such a
policy, including political, pro-life, pro-choice, religious,
ethnic identity,
feminist and animal-rights groups.

The impact
of the high court’s flawed analysis raises further concern.
Justice Alito
compared the Hastings policy to a hypothetical state law,
stating: “The
State of California surely could not demand that all Christian
groups admit
members who believe that Jesus was merely human. 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.”

Given the court’s
rejection of Justice Alito’s analysis, however, one could make
the argument
that a student Jewish Anti-Defamation League organization

could be forced to admit Muslims, or that a black student organization would have to admit white supremacists to its organization.

What will happen going forward on college and university campuses? What will Christian organizations face? Will other public colleges and universities modify their anti-discrimination policies to mirror the “accept-all-comers” policy that the court based its decision on? Will those outside of the educational system seek to apply this decision to limit equal access to their facilities for religious groups?

Yes, this decision raises a host of questions. But the fact is that it is simply too early to tell. The majority opinion does not decide the issue. However, one thing is clear: There will be more litigation-more challenges-as a result of this decision.

It is our hope, like Justice Alito, that this decision will be an aberration and not a shift in First Amendment jurisprudence.

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