

Ruling Against Religious Freedom?

Some say a recent Supreme Court ruling could put new limits on religious liberties

Legal experts see no immediate fallout from a recent U.S. Supreme Court ruling that denied recognition to a Christian Legal Society (CLS) chapter at the University of California-San Francisco. But some believe the case could open the door to infringements on Christian organizations' hiring rights.

The court ruled 5-4 that the university's Hastings College of Law was within its rights to deny CLS's request for recognition and funding because it would not accept members who were engaged in homosexual relationships. The ruling states that campus groups cannot bar any student who wishes to become a member or move into a leadership position, even if that person does not share the group's beliefs.

Some believe the case could serve as a lever for legal or legislative action to extend anti-discrimination policies to hiring. Federal and state exemptions have long allowed Christian organizations to consider faith in such decisions.

However, Steve McFarland of World Vision says the ruling didn't touch on any federal statutes regarding hiring. He noted that Justice Anthony Kennedy indicated his vote would have been different if the school's purpose had been to stifle free speech. "That's why I think the CLS case does not have the ability to be bad precedent," says McFarland, the ministry's vice president and chief legal officer.

CLS board member Stuart Lark agrees. He said the decision didn't create law reliable enough to craft a nondiscrimination hiring policy that could withstand a constitutional challenge. But he wasn't pleased with the ruling. "We were hoping the

decision would be helpful in future cases involving religious hiring rights," he says. "We got nothing from the court."

There were other negatives to the court's action, said Dan Busby, president of the Evangelical Council for Financial Accountability. "I think Justice [Samuel] Alito may have said it best when he wrote that the ruling is a serious setback for freedom of expression," Busby says.

An attorney with the Alliance Defense Fund (ADF) who handled elements of the CLS case said while the ruling doesn't eliminate religious freedom, it forces Christians to be vigilant. "To be sure, there are enemies of religious freedom and theologically conservative religion that will attempt to over-interpret this decision and argue it has [hiring] consequences," said Gregory S. Baylor, ADF's senior legal counsel. "I don't think those arguments are plausible."

That doesn't mean anti-Christian forces won't try, said Mathew Staver, founder of Liberty Counsel. He said the ruling can have far-reaching implications, such as the court's finding that CLS can't discriminate on the basis of a person's conduct rather than status.

Ultimately, that has the potential to wipe out hiring exemptions because it could void the right of Christian employers to require adherence to certain beliefs and conduct. "It sets the groundwork for removing exemptions," Staver says. "There's no question that I think there's a battle coming."

One potential fight concerns H.R. 5466, a bill co-sponsored by outgoing Rep. Patrick Kennedy. The legislation to reauthorize federal drug treatment programs includes language banning faith-based providers who receive federal grants from considering religion in their hiring practices.

McFarland says the proposed law would affect such groups as Teen Challenge and the Salvation Army. He also notes that the bill's hiring prohibition applies to any other provision of

federal law, including exemptions otherwise applicable to a religious group.

World Vision has a particular interest in hiring rights after it dismissed three employees in 2006 for failing to adhere to its faith statement. A federal court tossed out the lawsuit, but an appeal was pending at press time.