



GENERAL COUNSEL

**Summary of the U.S. Supreme Court Decision in  
*Christian Legal Society Chapter of the University of California, Hastings  
College of the Law v. Martinez***

On June 28, 2010, the Supreme Court in *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez*, No. 08-1371, rejected a student group's First Amendment challenge to a public law school's policy of conditioning official recognition of student organizations on an organization's agreement to open eligibility for membership and leadership to all students. Voting 5-4, the Court held that compliance with such an "all comers policy" is "a reasonable, viewpoint-neutral condition on access to the student-organization forum." Justice Ginsburg wrote the opinion of the Court, which was joined by Justices Stevens, Kennedy, Breyer, and Sotomayor. Justice Alito authored a dissenting opinion joined by Chief Justice Roberts and Justices Scalia and Thomas.

Like many institutions, Hastings College of the Law offers official recognition to student groups through its Registered Student Organization program. Benefits of RSO status at Hastings include eligibility to seek financial assistance from the law school and access to school-sponsored channels of communication with students, such as a weekly newsletter, bulletin boards, and a student organization fair. In exchange for these benefits, Hastings requires RSOs to abide by certain conditions, including compliance with Hastings' nondiscrimination policy. Hastings interpreted that policy to require RSOs to allow any student to become a member or seek a leadership position. Although under the policy RSOs could impose "neutral and generally applicable membership requirements" (for example, paying dues, attending meetings, or passing a writing competition), an RSO could not impose any membership requirements related to "status or beliefs."

The Hastings' chapter of the Christian Legal Society requires its members and officers to sign and abide by a Christian "Statement of Faith" and excludes anyone who engages in "unrepentant homosexual conduct." Hastings denied CLS' application for RSO status on the ground that CLS did not comply with the law school's nondiscrimination policy because CLS excluded students based on religion and sexual orientation. Hastings also denied CLS' request for an exemption from the policy. Yet Hastings informed CLS that it could operate independently of the RSO program and would be allowed to use law school facilities for its meetings and to access chalkboards and generally available campus bulletin boards. CLS filed suit against Hastings and alleged that the law school's refusal to grant it RSO status violated its First Amendment rights of free speech, expressive association, and free exercise of religion.

The Supreme Court rejected CLS' challenge to Hastings' "all comers" policy. The Court analyzed Hastings' policy as a condition on access to a limited public forum and upheld the policy on the ground that it was both reasonable and viewpoint neutral.

*This memorandum was prepared by H. Christopher Bartolomucci of Hogan Lovells US LLP (July 2010).*

Addressing the reasonableness of the policy, the Court observed that “extracurricular programs are, today, essential parts of the educational process,” and it found that Hastings’ “all comers” policy ensures that the leadership, educational, and social opportunities afforded by RSOs are available to all students. The Court also found it “hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers.”

The Court noted that burden on CLS from the denial of RSO status was limited. It observed that “CLS, in seeking what is effect a state subsidy, faces only indirect pressure to modify its membership policies; CLS may exclude any person for any reason if it foregoes the benefits of official recognition.” And while the denial of RSO status denied CLS access to certain school-sponsored channels of communications, the Court stated that “the advent of electronic media and social-networking sites reduces the importance of those channels.”

The Court’s decision did not entirely resolve CLS’ challenge. Although the Court expressly held that Hastings’ “all comers” policy was constitutional, it did not address CLS’ argument that Hastings had selectively enforced that policy against CLS. The Supreme Court remanded the case to the Ninth Circuit Court of Appeals to consider that argument.

Public institutions of higher education may wish to review their student organization recognition policies in light of the Supreme Court’s decision. The Court has made clear that “all comers” policies are constitutionally permissible. It did not, however, suggest that institutions are required to have such policies.

**July 2010**