

HB 15-1037: CONCERNING RELIGIOUS FREEDOM FOR STUDENT GROUPS AT STATE INSTITUTIONS OF HIGHER EDUCATION

What does the bill do?

The bill prohibits a state institution of higher education (institution) from denying a religious student group a benefit that the institution provides to a nonreligious student group solely because the religious student group requires its leaders to adhere to the groups sincerely held religious beliefs or standards of conduct. These benefits include recognition, registration, use of institution facilities, use of institution channels of communication, and available institution funding sources.

Why is this necessary?

The bill is necessary to ensure basic religious liberty for religious student groups on campus. It is only natural that a religious group would want its leaders to agree with its religious beliefs, yet they are increasingly being forced off campus simply for requiring that group leaders actually share the group's faith. There persists a growing risk to free association and diversity at our college campuses. HB 1037 would ensure that a religious student group can define its beliefs and leadership criteria without governmental interference. Institutions of higher education in some states are not recognizing religious groups on their campuses because they are classified as discriminatory. As a result groups can no longer have access to meeting rooms or methods of communications. The First Amendment is also a factor that must be considered when reviewing HB 1037. We want religious groups to be treated fairly and they should be able to set criteria for their group's leadership – which is what other non-religious student groups are allowed to do.

Have other states or institutions implemented similar policies?

Yes, North Carolina passed a similar law in 2014 that allows religious and political student groups at the state's public colleges and universities to limit their leadership to students who are committed to the group's mission or faith. In 2013, Idaho, Ohio and Virginia also passed similar laws. The University of Florida has in its Student Organization Handbook, "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." The University of Houston, The University of Minnesota and The University of Texas also have similar policies.

List of People to Testify

- Natalie Decker, Attorney with Alliance Defending Freedom
- Theresa Sidebotham, Attorney with Christian Legal Society
- Joe Cohn, Foundation for Individual Rights in Education
- Real Choices CU Boulder Student Group
- A Denver Student Group Direct for Real Choices
- The three students/staff from St. Thomas Aquanis Center at CU Boulder

Supporting Documents

<http://www.breitbart.com/california/2014/09/11/california-state-university-derecognizes-campus-christian-organization/>

<http://www.thefire.org/north-carolina-governor-signs-bill-protecting-religious-and-political-groups-on-campus/>

<http://www.thefire.org/ny-times-on-lasting-impact-of-cls-v-martinez>

Letter from the Christian Legal Society

Memo from the Civil Rights Committee of the Colorado Bar Association

Bill Of Rights – First Amendment

Congress shall make no law respecting an establishment of religion, ~~or prohibiting the free exercise thereof;~~ or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances

CALIFORNIA STATE UNIVERSITY 'DERECOGNIZES' CAMPUS CHRISTIAN ORGANIZATION

By DR. SUSAN BERRY 11 Sep 2014 www.breitbart.com

InterVarsity Christian Fellowship (IVCF) has been “derecognized” by California State University (CSU) as a campus organization at all of the 23 schools in the state system.

According to Caleb Bonham, writing at [Campus Reform](#), IVCF has been derecognized because the organization requires its leaders to hold Christian beliefs, and, therefore, is viewed as discriminatory. The CSU system, which is the largest university system in the United States with 450,000 students, has reportedly refused to grant an exemption to IVCF from a 2012 anti-discrimination policy that requires all recognized student organizations to open its leadership positions to all students.

On its [website](#), IVCF states its “chapter leaders are required to affirm [InterVarsity’s Doctrinal Basis](#),” which essentially recognizes God as the Creator of all things who exists in three persons, the Father, Son, and Holy Spirit, and the Bible as having been divinely inspired.

“While we applaud inclusivity, we believe that faith-based communities like ours can only be led by people who clearly affirm historic Christian doctrine,” states IVCF. “The policy affects 23 chapters within the California State University system. The policy exempts sororities and fraternities from gender discrimination; we believe there should be a similar provision for creedal communities.”

The Christian group goes on to say that in August of 2013, new chancellor, Timothy White, granted religious groups a one-year exemption for the 2013-2014 school year, but has since affirmed that no further exemption will be made.

CSU’s [policy](#) states:

No campus shall recognize any fraternity, sorority, living group, honor society, or other student organization that discriminates on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability. The prohibition on membership policies that discriminate on the basis of gender does not apply to social fraternities or sororities or other university living groups. Student organizations shall deliver to the vice president for student affairs or his/her designee a statement signed by the president or similar officer of the local student organization attesting that the organization has no rules or policies that discriminate on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability. This statement shall be renewed annually.

However, Ed Stetzer, writing at [Christianity Today](#), observed, “Following the same logic, any group that insists on requiring its leaders to follow an agreed upon set of guiding beliefs is no longer kosher (irony intended) at California’s state universities.”

“This will impact many other faith-based organizations with actual, well, faith-based beliefs,” Stetzer wrote. “Presumably, even People for the Ethical Treatment of Animals would have to allow Oscar Meyer to lead their campus chapters.”

Stetzer states that, of course, the university may argue it is not banning or persecuting Christians.

“People can share their faith,” he writes. “But, now, what we once called ‘equal access’ has taken another hit—people of faith do not have equal access to the university community, like the environmentalist club, the LGBT organization, or the chess club.”

Stetzer said Greg Jao, IVCF National Field Director & Campus Access Coordinator, told him that, specifically, “derecognition” means the group loses free access to university rooms, costing the organization’s chapters \$13,000 to \$30,000 per year to reserve rooms, access to student activities programs and student fairs, and stature when the group engages faculty, students and administrators.

Jao, however, said his organization is rebooting as it develops “a new style of campus ministry” that doesn’t “rely on established campus structures.” A press release on the IVCF website notes: InterVarsity Christian Fellowship is now developing a new style of campus ministry on CSU campuses where we have been banned from participating in campus life as a recognized student organization. In order to maintain a ministry presence with 23 chapters on 19 CSU campuses, InterVarsity is introducing creative new ways to connect with students and share the gospel message—though doing so as an “unrecognized” student group will prove considerably more costly.

Because we are no longer allowed to participate in campus organization fairs, InterVarsity will make contact with students by deploying new tools such as mobile banner stands, interactive displays, social media, and other techniques that don’t rely on established campus structures.

“Our campus access challenges give this generation of students an opportunity to reinvent campus ministry,” said Jao. “Even as we use new tools and techniques, we remind students that effective ministry is ultimately relational. It’s about students inviting other students to follow Jesus.”

IVCF observes that, during the last school year, 40,299 core students and faculty were actively involved with the Christian organization across the country—its highest participation rate ever.

“Approximately 50 percent of students active in our chapters are members of ethnic minority groups, in California the number is closer to 70 percent,” the press release states.

Stetzer, however, observes the big picture.

“The bigger, and ongoing, issue is the continual sanitization of unacceptable religious voices from universities,” writes Stetzer. “It’s ironic—those who champion nondiscrimination, in the name of nondiscrimination, are creating rules that push out those who ‘discriminate’ based on biblical belief statements.”

Photo: IVCF

<http://www.breitbart.com/california/2014/09/11/california-state-university-derecognizes-campus-christian-organization/>

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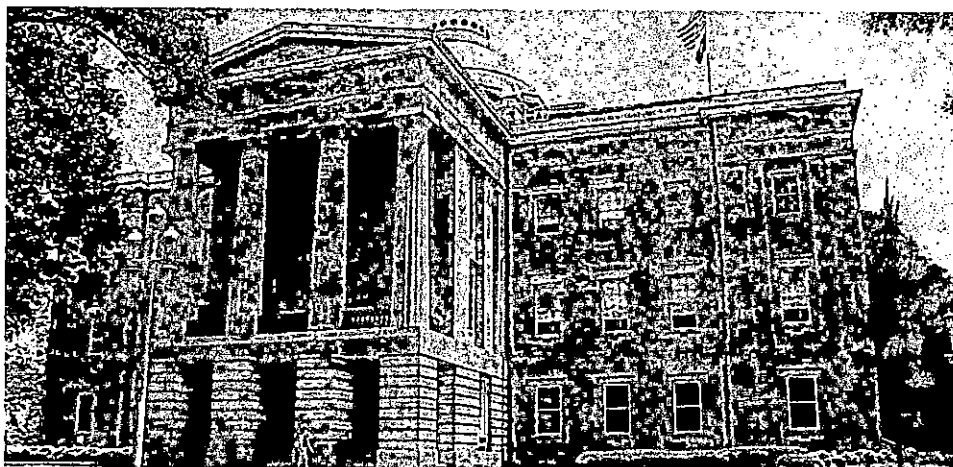
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North Carolina Governor Signs Bill Protecting Religious and Political Groups on Campus

By [Susan Kruth](#) June 27, 2014

On Wednesday, North Carolina Governor Pat McCrory signed into law a bill that will allow religious and political student groups at the state's public colleges and universities to limit their leadership to students who are committed to the group's mission or faith.

The new law (PDF), sponsored by Senator Dan Soucek, provides:

(a) No constituent institution that grants recognition to any student organization shall deny recognition to a student organization or deny to a student organization access to programs, funding, facilities, or other privileges associated with official recognition otherwise available to another student organization, on the basis of the organization's exercise of its rights pursuant to subsection (b) of this section.

(b) To the extent allowed by State and federal law, a religious or political student organization may, in conformity with the organization's established written doctrines expressing the organization's faith or mission, (i) determine that only persons professing the faith or mission of the group, and comporting themselves in conformity with, are qualified to serve as leaders of that organization, (ii) order its internal affairs according to the established written doctrines, and (iii) resolve the organization's disputes according to the established written doctrines.

Another section applies the same rules to the state's community colleges.

~~This is a real victory for the right of students to freely associate around shared beliefs in North Carolina's public institutions.~~ However, the threat to free association persists in much

of the country. Earlier this month, *The Torch* and other media outlets reported on the recent tension between student religious groups and college nondiscrimination policies at Bowdoin College in Maine. The student group Bowdoin Christian Fellowship will no longer be

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recognized by the college because it refused to comply with Bowdoin's policy requiring that groups allow anyone to run for leader of any group, regardless of whether they profess a sincere commitment to the group's mission. Such "all comers" policies have created similar dilemmas for belief-based student groups across the country.

To the detriment of religious and political pluralism on campus, the Supreme Court held in [Christian Legal Society v. Martinez](#) (2010) (PDF) that true all-comers provisions are constitutional (though certainly not required). *Martinez* involved a student group that was denied recognition by the University of California Hastings College of the Law because it wanted to restrict voting membership and leadership in the group to students who committed to act in accordance with the group's Christian beliefs—including limits on sexual activity. FIRE submitted an *amicus curiae* ("friend of the court") brief (PDF) in that case arguing that the college's policy left student groups vulnerable to having their missions watered down or even dismantled by leaders who are uncommitted or hostile to the group's mission.

Since *Martinez*, other states have passed legislation like North Carolina's in order to protect student groups from the dangers created by the Court's decision. For example, in 2013, Idaho and Virginia both passed such laws, and Ohio has one as well.

FIRE commends North Carolina's lawmakers and Governor McCrory for establishing this important protection for students at public institutions across the state. With this law in effect, North Carolina's student groups can more freely associate on campus and maintain the strength of their missions and the clarity of their speech without sacrificing the benefits accorded to other student groups.

Cases: [University of California Hastings College of the Law: Denial of Recognition to Christian Law School Group](#)

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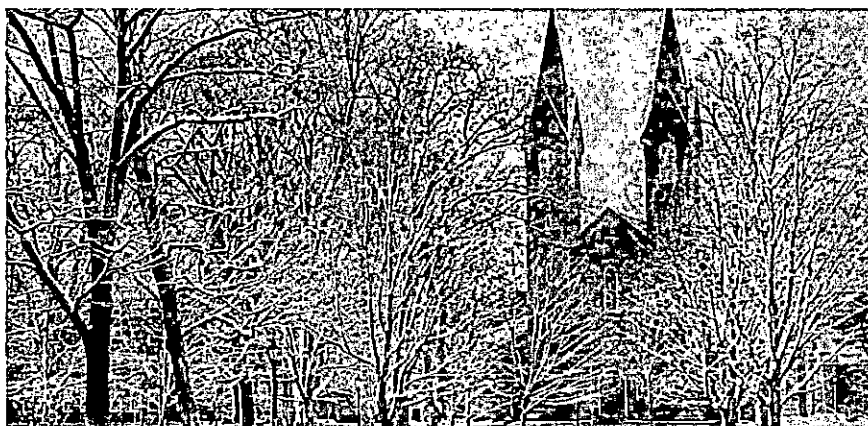
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'NY Times' on Lasting Impact of 'CLS v. Martinez'

By Will Creeley June 10, 2014

The New York Times Michael Paulson reviews the tension between student religious groups and college nondiscrimination policies in an article published today. I'm pleased to see front-page attention being paid to the fact that since the Supreme Court's 2010 decision in Christian Legal Society v. Martinez, student religious groups are increasingly being forced off campus simply for requiring that group leaders actually share the group's faith. As Paulson writes, student groups from Maine to California are being forced to either open their leadership ranks to students who don't believe in the group's tenets, or leave campus:

After this summer, the Bowdoin Christian Fellowship will no longer be recognized by the college. Already, the college has disabled the electronic key cards of the group's longtime volunteer advisers.

In a collision between religious freedom and anti-discrimination policies, the student group, and its advisers, have refused to agree to the college's demand that any student, regardless of his or her religious beliefs, should be able to run for election as a leader of any group, including the Christian association.

[...]

At Cal State, the nation's largest university system with nearly 450,000 students on 23 campuses, the chancellor is preparing this summer to withdraw official recognition from evangelical groups that are refusing to pledge not to discriminate on the basis of religion in the selection of their leaders. And at Vanderbilt, more than a dozen groups, most of them evangelical but one of them Catholic, have already lost their official standing over the same issue; one Christian group balked after a university official asked the students to cut the words "personal commitment to Jesus Christ" from their list of qualifications for leadership.

In our amicus curiae brief to the *Martinez* Court, FIRE warned of precisely this result: <http://www.thefire.org/ny-times-on-lasting-impact-of-clis-v-martinez/>

2/4/2015

'NY Times' on Lasting Impact of 'CLS v. Martinez' | FIRE

status-based exclusion and nondiscrimination policies are supposed to effectuate while simultaneously preserving the expressive and associational rights of religious student groups. And why not? Have non-evangelical students really been "discriminated" against when the campus evangelical group expects them to share their faith before leading Bible study?

As Drum concludes, "It's hard to see the harm."

Schools: [Bowdoin College](#)

Cases: [University of California Hastings College of the Law: Denial of Recognition to Christian Law School Group](#)

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**Comments on House Bill 14-1048
Concerning Religious Freedom for Student Groups
at State Institutions of Higher Education**

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of the Christian Legal Society

America has long valued religious freedom. On January 15, 2014, for Religious Freedom Day, President Obama said:

America proudly stands with people of every nation who seek to think, believe, and practice their faiths as they choose. In the years to come, my Administration will remain committed to promoting religious freedom, both at home and across the globe. We urge every country to recognize religious freedom as both a universal right and a key to a stable, prosperous, and peaceful future.

The Colorado legislature is considering a bill protecting religious freedom for student groups. Why does this matter? Are religious students in need of protection? According to the 2014 Pew Research Center Report,¹ Americans who are religious experience moderate social hostility.

How does this experience translate to campus life? The Institute for Jewish & Community Research did a detailed, in-depth study of higher education faculty in 2007.² To their surprise, authors Tobin and Weinberg found that faculty of higher education feel coldly towards Evangelicals and Mormons. A majority of nonEvangelical faculty have negative feelings about Evangelical Christians. A majority of faculty believes that ethnic or religious minority students are reluctant to express their views. Tobin and Weinberg conclude that their study “raises serious concerns about how Evangelical Christian faculty and students are treated or feel they are treated on campus.”³ They comment, “The prejudice against them stands out prominently in institutions dedicated to liberalism, tolerance, and academic freedom.”⁴

¹ Religious Hostilities Reach Six-Year High, *Pew Research Center*, Jan. 14, 2014.

² Gary Tobin and Aryeh Weinberg, Vol. II: Religious Beliefs and Behavior of College Faculty, *Institute for Jewish & Community Research*, 2007.

³ *Id.*, p. 86.

⁴ *Id.*, p. 87.

These studies indicate that the campus environment is an unfriendly place in some ways for students with strong religious faith. What are the alternatives? Should they be forced to change their beliefs and perspectives? Some might believe so, but that is not the pluralism that made America great. Should they leave? If people of faith do not feel safe on the public university campuses; if parents believe their children will be persecuted and pressured to lose their faith; they will leave the universities. Such a departure would be undesirable in many ways. Religious people also pay taxes and should be able to participate freely in public education. True liberalism and diversity would suffer—with reduced exchange of ideas on campus and a restricted marketplace of ideas.

On a typical university campus, hundreds of student groups meet. As recognized student groups, they can reserve meeting space and communicate with other students. Without recognition, it is virtually impossible to exist on campus. But 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.

Is it constitutional to allow religious groups to set their own standards? The Supreme Court acknowledged the importance of recognition in its landmark 1972 decision, *Healy v. James*.⁵ 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*,⁶ 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 for denying recognition. 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 as well as other minority groups, not prohibit them from campus. Many prominent universities—including the University of Florida, University of Texas, and University of Minnesota—have strong

⁵ 408 U.S. 169 (1972).

⁶ 454 U.S. 263 (1981).

nondiscrimination policies that simultaneously respect the religious groups' religious liberty.⁷

We want to briefly discuss three recent Supreme Court decisions. The Supreme Court heard a case about one particular kind of policy in *Christian Legal Society v. Martinez*,⁸ in 2009. This "all-comers" policy took the very odd and unworkable position that no group could discriminate in its membership on any basis at all—each group must accept all comers. This meant that there could be no women's chorale, no ethnic societies, no selection of any kind. The Court upheld this all-comers policy, but hinted strongly that a nondiscrimination policy cannot be constitutionally applied to religious groups' choice of leaders and members.⁹

And in 2012, a unanimous Supreme Court decided *Hosanna-Tabor v. EEOC*,¹⁰ and held 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." This holding would apply equally to student groups, such as the Catholic Newman Center.

Another recent Supreme Court case is also relevant: *Agency for International Development v. Alliance for Open Society, International, Inc.*¹¹ This case, about the unconstitutional conditions doctrine, examined what conditions the government could impose as a requirement for receiving government funds. The Court held that the government could not require grant recipients to adopt a particular belief as a condition of funding.

These cases indicate that the government should not force religious groups to surrender their beliefs or religious autonomy rights in exchange for funding or benefits. And by making litigation of this issue in Colorado unnecessary, this law will save taxpayer money and conserve public universities' scarce financial resources.

HB 14-1048 makes sense in the context of current law. It states that a religious student group may not be denied benefits if it chooses to require that its leaders adhere to the group's sincerely held religious beliefs or standards of conduct. The bill doesn't even say that all members can be required to hold certain beliefs—only the leaders. Just as a Republican group's leaders can be Republican, and an environmental group's leaders should be committed to recycling, so a Christian group's leaders can be required to adhere to the group's religious beliefs.

⁷ These model policies are attached to this testimony.

⁸ 130 S.Ct. 2971 (2010).

⁹ 130 S.Ct. at 3009-13 (2010) (Alito, J., dissenting, joined by Roberts, C.J., Scalia, J., and Thomas, J.).

¹⁰ 132 S.Ct. 694 (2012).

¹¹ 133 S. Ct. 2321 (2013).

We do have one change that we would recommend to the language. The bill provides that a religious student group shall not be denied a benefit "solely" because of its leadership requirement. Based on that single word, a university administrator might try to circumvent the statute by arguing that a religious group could be denied protection if the administrator came up with a second reason to deny a religious group a benefit. We would request that the word "solely" be removed.

Religious students already feel somewhat ostracized as a disfavored minority, so religious student groups are important. Without these groups, students may feel forced to lose their identity or may leave campus. These options are detrimental to religious students, but also harm diversity and pluralism on our campuses.

Religious student groups may not always be popular, such as when they have a different definition of sexual morality than the majority of students. 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 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.

About the Christian Legal Society:

The Christian Legal Society (CLS) believes that the pluralism essential to a free society prospers only when the First Amendment Rights of all Americans are protected, regardless of whether their speech is popular or not. CLS was instrumental in the passage of the Equal Access Act of 1984,¹² which protects the rights of students to meet on public secondary school campuses. The EAA has protected primarily religious and homosexual student groups, both of whose speech is disfavored in different times and places.

CLS's Center for Law and Religious Freedom protects freedom of speech and religious liberty for all Americans. A graduate of Harvard Law School and the University of Illinois, Center Director Kim Colby has testified before the U.S. Commission on Civil Rights on the compatibility of nondiscrimination policies and religious liberty when religious conscience is respected.

About Theresa Lynn Sidebotham:

Theresa grew up in a multicultural environment, and has lived in a number of countries. She attended law school at the University of Denver and Wheaton College, and practices constitutional and religious liberties law.

¹² 20 U.S.C. §§ 4071-4074 (2013).



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 _____	Date _____
Staff Signature _____	

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~~

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.

~~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.

Memorandum

February 4, 2015

To: Legislative Policy Committee of the Colorado Bar Association

From: Barry K. Arrington
On behalf of the Civil Rights Committee of the Colorado Bar Association

Re: House Bill 15-1037

1. Introduction

On Tuesday, February 3, 2015 the Civil Rights Committee voted to support House Bill 15-1037. The bill is very short and contains a single substantive provision that states:

A STATE INSTITUTION OF HIGHER EDUCATION SHALL NOT TAKE AN ACTION OR ENFORCE A POLICY THAT DENIES A RELIGIOUS STUDENT GROUP A BENEFIT OTHERWISE AVAILABLE TO ANOTHER STUDENT GROUP BASED SOLELY ON THE RELIGIOUS STUDENT GROUP'S REQUIREMENT THAT ITS LEADERS ADHERE TO THE GROUP'S SINCERELY HELD RELIGIOUS BELIEFS OR STANDARDS OF CONDUCT.

2. Discussion

The United States Supreme Court has made it clear that a public university may not exclude religious groups from use of school facilities made available to other groups. *Widmar v. Vincent*, 454 U.S. 263 (1981). See also *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993) (a public school may not deny religious groups access to school facilities to express religious viewpoints when the school allows other groups to use school facilities to express non-religious views).

Further, the U.S. Supreme Court has held that a public university may not deny a religious student group university funding for the group's activities when it provides funding for the activities of non-religious student groups. *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995). In *Rosenberger*, the Court stated that a neutral policy providing university funding for both non-religious and religious student groups respects the critical difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.

This principle was reiterated in *Badger Catholic v. Walsh*, 620 F.3d 775 (7th Cir. 2010), where the Seventh Circuit held that a state university's reimbursement of expenses of a religious student organization's speakers through a program equally available to secular speakers did not violate the Establishment Clause. Having established a public forum, the university could not exclude speakers who wanted to use the forum for worship, and in refusing to fund religious student organization's proposed activities, the university was engaged in impermissible content discrimination.

Thus, the fact that HB 15-1037 ensures university funding for religious student groups when the university funds non-religious groups is not only constitutional, but also it would be unconstitutional for a public university to deny such funds to religious student groups in such circumstances.

~~the bill does not contravene the Court's holding in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010). In *Martinez* the Court's holding was very narrow. It held only that it was not unconstitutional for a public university to condition its official recognition of a student group on the organization's agreement to open eligibility for membership and leadership to all students (a so-called "all-comers" policy).~~

It is important to understand what *Martinez* did not hold. It did not hold that it was unconstitutional for a public university to either recognize or fund religious student groups. In fact, all the Court's holdings on this issue, as noted above, state that a public university is **required** to provide facilities to religious groups on an equal basis with secular groups. Nor did *Martinez* hold that public universities must have an all-comers policy for their student groups. Thus, public universities are free to allow student groups to require that the group's leaders be in agreement with the group's policies. The bill requires Colorado universities to allow student groups to require their leaders to uphold their mission and values. Nothing in *Martinez* prohibits this policy objective.

House Bill 15-1037 protects religious freedom and the right of association, and if this bill were to become law, it would express the State of Colorado's dedication to protecting religious freedom and freedom of expression to an even greater extent than the minimum protections required by the state and federal constitutions.

The bill does not exclude any student from joining a religious group or give religious student groups the right to exclude any student from attendance or membership in such groups. ~~The bill simply protects the right of a student group to choose its own leaders, a right necessary to protect the integrity of the group.~~ For example, it is completely understandable for student Democrats to require their leaders to actually be Democrats. If a student Muslim group wanted to require its leaders to be Muslim, that would be perfectly understandable, acceptable, and legal. If a "Pro-Choice" student group required its leaders be pro-choice, the same principle would apply. The bill protects freedom of association, because if a group may not require its leaders to adhere to the group's principles and beliefs, then all groups are at risk of becoming irrelevant. Again, the Constitution does not require public universities to have an all-comers student group policy.

Finally, this Bill is not unusual. Similar laws have been enacted in at least five other states. See Ariz. Rev. Stat. Sec. 15-1863; Idaho Code Sec. 33-107D; Ohio Rev. Code Sec. 3345.023; Tenn. Code Ann. Sec. 49-7-156; and Va. Code Ann. Sec. 23-9.2:12. None of those laws have even been challenged, let alone held to be unconstitutional.

Because this bill protects the religious liberty and freedom of association rights of public university students, the Civil Rights Committee supports it and requests the Legislative Policy Committee to support it as well

Support HB 1037

Religious Freedom for Higher Education Student Groups

Religious groups' leadership requirements are common sense, NOT discrimination. It is common sense for a religious group to want its leaders to agree with its religious beliefs. Religious freedom means that a religious group can define its beliefs and leadership criteria without governmental interference.

Religious liberty and nondiscrimination policies are compatible in nondiscrimination policies are given a common sense interpretation that respects religious liberty. Nondiscrimination policies serve important purposes but to misuse a nondiscrimination policy that is supposed to *protect* those students off campus is wrong. Such misuse of a nondiscrimination policy is being used to discriminate against religious student groups by excluding them from campus.

Most federal state nondiscrimination laws specifically protect religious groups' choice of their leaders. Title VII of the federal Civil Rights Act, Congress exempts "a religious corporation, association, educational institution, or society" from federal employment discrimination laws and allows religious organizations to hire on the basis of religion. 42 U.S.C § 200e-1(a). Most state and federal nondiscrimination laws explicitly protect the right of religious organizations to have religious requirements for their staff.

Religious groups' leaders lead their Bible study, prayer, and worship. Religious groups want their Bible studies, prayer, and worship led by persons who share the same faith as the group. The leaders represent the group and speak on its behalf to the broader campus community. In its recent unanimous decision upholding the right of the church school to employ only teachers who share its religious beliefs, the Supreme Court stressed the importance of a religious organization being able to select "those who will personify its beliefs." *Hosanna-Tabor Church and School v EEOC*, 132 S. Ct. 694, 706 (2012).

Religious groups contribute to campus diversity and student wellbeing. Religious groups enrich diversity on campus and provide a supportive place for religious students who are away from home. Religious groups sponsor speakers who have a unique perspective on social question not always presented in the classroom or by other student groups.

Religious groups are not seeking special treatment. Other student groups may require their leaders and members to share their political, cultural, or social beliefs. For example, Democrats should not be forced to accept a Republican as their group's chairperson. An environmental group expects its president to recycle. Similar, a religious group wants its leaders to share its religious values. Government officials should not be telling a religious group that it must allow an atheist to lead its Bible study.

Religious groups are not being treated fairly. Many universities allow fraternities and sororities to continue to discriminate on the basis of sex in their selection of leaders and members. The religious groups do not begrudge fraternities and sororities the right to choose their leaders, but they do not understand why a university would allow the Greek groups to discriminate on the basis of sex in selecting leaders members, but would not allow religious groups to choose their leaders based on their religious beliefs.

As leading universities have shown, religious liberty and nondiscrimination policies are completely compatible. Religious liberty and nondiscrimination policies are completely compatible, as is demonstrated by the fact that many universities have nondiscrimination policies that explicitly protect religious groups' right to have religious leadership requirements. The University of Texas, the University of nondiscrimination policies that also respect religious liberty.

Universities do not have to agree with the religious groups' criteria for selecting their leaders, but they should respect the religious groups' right to be religious and allow them to choose their leaders according to their religious beliefs.