



## ***FACT SHEET: Christian Legal Society v. Martinez***

### ***ABOUT Christian Legal Society v. Martinez***

In *Christian Legal Society v. Martinez*, the United States Supreme Court will decide whether the Constitution permits a public university law school to exclude a religious student organization from a forum for speech solely because the group requires its officers and voting members to share its core religious commitments. The Christian Legal Society welcomes all members of the university community to participate in its activities but was excluded from full participation in student life because it requires its officers and voting members—who speak on its behalf, vote on its policies and programs, and lead its Bible studies—to share and abide by the group’s core beliefs. Hastings concluded at the beginning of the 2004 school year that CLS’s voting membership and office-holder requirements violated the religion and “sexual orientation” provisions of its Policy on Nondiscrimination, denying CLS “Registered Student Organization” (RSO) status. Contradicting the decision of the U.S. Court of Appeals for the Seventh Circuit in a virtually identical case, the Ninth Circuit rejected CLS’s claims that Hastings violated its constitutionally protected rights of free speech, expressive association, free exercise of religion, and equal protection of the laws. The Supreme Court presumably granted review to resolve the “circuit split” between the Seventh and Ninth Circuits. The case will be heard Apr. 19. Lead counsel Michael McConnell will argue before the court on behalf of the CLS chapter.

### ***WHAT IS AT STAKE?***

- The freedom of *all* student groups to choose leaders who share their beliefs, free from undue government pressure and the threat of exclusion from campus life.
- Whether a public law school may exclude a religious student organization from a speech forum solely because the group requires its leaders to share its core religious commitments.
- Students’ First Amendment-protected rights of freedom of expression and freedom of association on campus.
- Whether the state is able to play “free speech favorites” by limiting debate to “approved” views and withholding recognition from groups who have different views.

### ***A CLS WIN MEANS...***

- **The fundamental right of all students to form groups around shared beliefs will be upheld.**
  - As currently applied, the policy forbids student groups from including in leadership only those who identify with and support the group’s mission.
  - The university withholds generally available benefits from student groups who refuse to surrender their rights to free exercise of religion, free speech, and free association.
- **Students won’t be forced to choose between living according to their beliefs and official recognition on campus.**

- Under the existing policy, students are forced to sign away liberties protected under the First Amendment in order to be treated equally on campus.
- **Student groups will no longer live under the threat of invasion by hostile students who intend to disrupt the mission and the message of the group.**
  - Currently, no student group is protected from a hostile takeover by others who do not share basic beliefs and ideas.
  - The constant threat of infiltration is an even greater concern for smaller groups with an unpopular message.
- **The state will no longer be able to play “free speech favorites” by limiting debate to “approved” views and withholding recognition from groups who have different views.**

### ***LITIGATION TIMELINE***

**Sept. 2004:** University of California’s Hastings College of the Law strips the campus chapter of Christian Legal Society of recognition.

- In 2004, approximately 60 RSOs—organized around diverse interests in politics, religion, culture, race, ethnicity, and human sexuality—existed on campus.
  - One group, La Raza, whose by-laws in 2004 explicitly mandated race and/or national origin discrimination, had RSO status.
- The CLS student chapter became the only group ever denied RSO status at Hastings.
  - Originally, Hastings withheld recognition invoking the religion and “sexual orientation” provisions of its written non-discrimination policy. Hastings allowed other groups to organize around secular ideas and exclude individuals who rejected their core principles.
  - CLS correctly argued that this constituted discrimination on the basis of viewpoint, something presumptively unconstitutional. In an apparent acknowledgement of the power of this claim, Hastings subsequently claimed that *no* group could exclude *any* person for *any* reason.

**Oct. 2004:** Christian Legal Society and Alliance Defense Fund attorneys file federal suit in the U.S. District Court for the Northern District of California.

**April 2006:** Federal district court denies the CLS motion for summary judgment; grants opposition summary judgment.

**May 2006:** Appeal filed in the U.S. Court of Appeals for the 9th Circuit.

**March 2009:** The U.S. Court of Appeals for the 9th Circuit affirms the district court opinion.

**May 2009:** Petition for writ of certiorari filed with the U.S. Supreme Court.

**Dec. 2009:** U.S. Supreme Court grants the CLS petition, agrees to hear case.

**April 19, 2010:** Oral argument at the U.S. Supreme Court.

## ***SUPREME COURT PRECEDENTS SUPPORTING CLS'S RECOGNITION CLAIM***

CLS's request for recognition is anchored in Supreme Court case law *stretching over four decades* in three areas:

### **1. Student groups, including religious groups, have free speech and association rights to university recognition.**

- [\*Healy v. James\*](#) (1972): A student chapter of a radical political group could not be denied official recognition by a public college based on its ideology and vague concerns about threats of disruption.
- [\*Widmar v. Vincent\*](#) (1981): The University of Missouri ordered to grant official recognition to a religious student group after denying it access to meeting space because the group engaged in religious activity. The Court specifically held that official recognition did not confer upon the religious group the university's stamp of approval.

### **2. Student activity fees must be allocated in a viewpoint neutral manner.**

- [\*Rosenberger v. University of Virginia\*](#) (1995): University of Virginia ordered to fund a religious student publication after the university denied funding based solely on the publication's religious viewpoint.
- [\*Board of Regents v. Southworth\*](#) (2000): University of Wisconsin's collection of mandatory student activity fees deemed constitutionally permissible only if the fees were allocated to student groups in a viewpoint neutral manner.

### **3. Expressive associations have a First Amendment right to require their leaders and members to agree with the groups' missions and messages.**

- [\*Roberts v. Jaycees\*](#) (1987): The Court upheld application of a Minnesota antidiscrimination law to require the Jaycees to admit women to membership, ruling that it would not affect the business group's message.
- [\*Hurley v. Irish-American Gay, Lesbian & Bisexual Group\*](#) (1995): The Court struck down Massachusetts' application of its antidiscrimination law to require the organizers of a St. Patrick's Day Parade to allow a contingent of individuals to march while carrying a banner proclaiming the group's name. Freedom of speech protected the parade organizers from forced inclusion of someone else's message.
- [\*Boy Scouts v. Dale\*](#) (2000): The Court reversed New Jersey's application of its antidiscrimination law to require the Boy Scouts to admit "an avowed homosexual" as an assistant scoutmaster. According to the Court, the government must normally defer to a group's decision as to whether inclusion of an unwanted leader or member would affect the group's message.

## ***CONTACT***

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## ***ABOUT the Alliance Defense Fund***

[ADF](#) is a legal alliance of Christian attorneys and like-minded organizations defending the right of people to freely live out their faith. Launched in 1994, ADF employs a unique combination of strategy, training, funding, and litigation to protect and preserve religious liberty, the sanctity of life, marriage, and the family.

### ***ABOUT the CLS Center for Law & Religious Freedom***

The CLS Center for Law & Religious Freedom is the advocacy division of the [Christian Legal Society](#), a nationwide association of Christian attorneys, law students, law professors, and judges.

### ***ABOUT Michael McConnell***

Michael W. McConnell is the Richard and Frances Mallery professor and director of the Constitutional Law Center at Stanford Law School. He is also a senior fellow at the Hoover Institution. From 2002 to the summer of 2009, he served as a circuit judge on the U.S. Court of Appeals for the 10th Circuit. He has also taught at Harvard Law School, the University of Chicago, and the University of Utah. He has published widely in the fields of constitutional law and theory, especially church and state, equal protection, and the founding. He is co-editor of three books: *Religion and the Law*, *Christian Perspectives on Legal Thought*, and *The Constitution of the United States*. McConnell has argued 12 cases in the U.S. Supreme Court. In 1996, he was elected a fellow of the American Academy of Arts and Sciences. He served as law clerk to Supreme Court Justice William J. Brennan, Jr.

### ***ABOUT Kimberlee Wood Colby***

Kimberlee Wood Colby is senior counsel for the Christian Legal Society's Center for Law and Religious Freedom. Since graduating from Harvard Law School in 1981, she has served as counsel for numerous religious groups before the U.S. Supreme Court, as well as in the lower federal and state courts. She also assisted in passage of the Equal Access Act, the 1984 federal law that protects the right of secondary school students to pray and discuss the Bible in public schools. She is the author of *Teachers and Religion in Public Schools* and a participant in the drafting of *The Bible and Public Schools: A First Amendment Guide* and *Religion in the Public Schools: A Joint Statement of Current Law*, which was the basis for the U.S. Department of Education guidelines titled *Religious Expression in Public Schools*.

### ***ABOUT Gregory S. Baylor***

Gregory S. Baylor serves as senior legal counsel with the Alliance Defense Fund at its Washington, D.C., office, where he litigates cases to protect the rights of Christian students, faculty, and staff at public colleges and universities across the nation. Baylor earned his J.D. at Duke University School of Law, and prior to joining ADF in 2009, he served as director with the Christian Legal Society Center for Law & Religious Freedom in Springfield, Virginia, where he defended religious liberty since 1994. Practicing law since 1990, Baylor is admitted to the U.S. Supreme Court; the U.S. Court of Appeals for the Fourth, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits; the Supreme Court of Texas; the District of Colorado; the Northern District of Texas; and the Western District of Texas.

### ***ABOUT David French***

David French serves as senior counsel with the Alliance Defense Fund at its Regional Service Center in Columbia, Tennessee, where he heads efforts to restore the marketplace of ideas to university campuses, concentrating his litigation on religious freedom issues. Joining ADF in 2006, French is admitted to the bar in Tennessee and Kentucky. He has practiced law since 1994 and graduated with honors from Harvard Law School, where he earned his J.D. Prior to coming to ADF, French served as president of the Foundation for Individual Rights in Education (FIRE). He has authored several books on religious liberty and has made numerous appearances on televised shows, including *ABC World News Tonight*, *The Fox Report with Shepard Smith*, *Special Report with Brit Hume*, *The O'Reilly Factor with Bill O'Reilly*, and many others.