

# LEGAL ADVISORY

## Office of the General Counsel

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### SUMMARY

The U.S. Supreme Court has upheld a Hastings College of the Law policy that prohibits registered student organizations from excluding students from membership or leadership positions on the basis of their status or beliefs.

If you have any questions about the impact of the *Christian Legal Society* decision on University policies or questions regarding First Amendment issues, please contact:

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*This legal advisory is issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.*

## SUPREME COURT UPHOLDS UNIVERSITY'S ABILITY TO IMPOSE NONDISCRIMINATION REQUIREMENT ON REGISTERED STUDENT ORGANIZATIONS

In *Christian Legal Society v. Martinez* (decided June 28, 2010), the U.S. Supreme Court upheld a Hastings College of the Law policy that prohibits registered student organizations from excluding students from membership or leadership positions on the basis of their status or beliefs. Hastings, like the University of California, maintains a policy that prohibits Registered Student Organizations (RSOs) from discriminating on the basis of race, sex, sexual orientation, religion and other enumerated factors. Student organizations with registered status have access to funding (from student fees), preferential use of school facilities, and use of certain school-provided communication channels. Unrecognized organizations may operate on campus but do not have access to those benefits.

A Christian RSO affiliated with Christian Legal Society (CLS) sought exemption from Hastings' nondiscrimination policy because CLS required that its members subscribe to a statement of religious faith and interpreted CLS bylaws to exclude anyone engaged in "unrepentant homosexual conduct" from membership. After Hastings refused to grant the exemption, CLS sued, claiming that Hastings' policy violated the group's constitutional right to free expression and to associate for the purpose of expressing its beliefs. In the trial court, the parties stipulated that, although the written policy prohibited exclusion only if based on certain factors, Hastings implemented the policy more broadly by prohibiting RSOs from excluding students on the basis of any status or belief, the so-called "all comers" policy.

In a 5-4 majority opinion by Justice Ginsburg, the Court rejected CLS's claim, concluding that Hastings' RSO program is a "limited public forum" in which government-imposed restrictions are permissible if they are reasonable and content neutral. The Court found a variety of reasonable grounds for the "all comers" policy, including that it ensured that the educational opportunities afforded by RSOs are available to all students, that it relieved Hastings from having to inquire into the motives for RSO membership restrictions, and that it encouraged toleration, cooperation and learning by bringing together students of different backgrounds and beliefs. The Court expressed a "decent respect" for educators' policy judgment on such matters. The Court further held that the Hastings policy was viewpoint neutral because it applied equally to all groups and restricted conduct, not speech. The mere fact that the policy might have a disparate impact on groups holding certain beliefs did not render it non-neutral. Finally, the Court emphasized that non-recognition does not prohibit CLS from expressing its beliefs and that it has alternative means to communicate them. Although the Court affirmed the lower courts' rulings, it returned the case to them to address CLS's claim – raised for the first time in the Supreme Court – that the "all comers" policy was a pretext for discrimination against religious groups. The decision makes clear that a policy requiring student organizations to accept "all comers" as a condition of receipt of public University support will withstand constitutional challenge. Although not a party to the case, the University of California joined with other public universities in supporting Hastings' position in a friend of the court brief, which the majority cited in its opinion.