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InterVarsity Christian Fellowship v. University of Iowa

By Onalee Chappeau*

Background:

In June 2018, the University of Iowa (the “University”) deregistered nearly 40 student organizations for failing to adopt or comply with the University’s updated human rights policy.¹ The University’s human rights policy mirrors the “all-comers” policy at issue in *Christian Legal Society v. Martinez* and requires that organizations permit students with non-conforming views to become members and leaders within the group.² Among the deregistered groups were the Sikh Awareness Group, the Iowa Chapter of the NAACP, the Imam Mahdi Association, the Latter-Day Saints Association, YoungLife, and the Graduate Student Chapter of InterVarsity Christian Fellowship (“IVGCF”).³ After initial deregistration, several groups amended their constitutions to include the human rights policy and regained their recognition by the University. However, after being denied a religious exemption for the selection of leaders within the organization, IVGCF filed a complaint in the US District Court for the Southern District of Iowa.⁴

Filed on August 6, 2018, the complaint alleges unconstitutional and unlawful discrimination by the University of Iowa and harm of loss of equal access to graduate and professional students during orientation events and student organization fairs, as well as a discriminatory stigma.⁵ In its

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¹ Vanessa Miller, *University of Iowa Deregisters Another 38 Groups*, THE GAZETTE (July 20, 2018), <https://www.thegazette.com/subject/news/education/university-of-iowa-deregisters-another-38-groups-20180720>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Complaint for Plaintiff at 1, *InterVarsity Christian Fellowship v. University of Iowa*, (Southern District of Iowa, Eastern Division, August 6, 2018) (3:18-cv-00080-RP-SBJ); Vanessa Miller, *InterVarsity Joins Religious Beliefs Fight Against University of Iowa*, The Gazette (August 7, 2018), <https://www.thegazette.com/subject/news/education/intervarsity-university-of-iowa-student-organization-human-rights-lawsuit-federal-court-business-leaders-in-christ-20180807>.

complaint, IVGCF notes that anyone is welcome to participate in the group's volunteer and religious activities, and all students may join as members.⁶ However leaders, who lead the group in prayer, worship, and religious teaching, are required to hold the same faith that animates and unites the group.⁷ While IVGCF incorporated the university's policy on human rights into its constitution verbatim, IVGCF's constitution also restricts leadership within the organization to those who ascribe to InterVarsity's faith.⁸ Since the filing of the suit, the University of Iowa has temporarily reinstated groups previously deregistered.⁹

Christian Legal Society v. Martinez:

In *Christian Legal Society v. Martinez*, the Supreme Court held that where a public university's policy is viewpoint-neutral and reasonable, it may condition its official recognition of a student group on the organization's agreement to open eligibility for membership and leadership to all students.¹⁰ In *Martinez*, the Court reasoned that the Christian Legal Society, a student group at the University of California Hastings College of the Law, did not seek parity with other organizations, but, rather, sought a preferential exemption from the university's policy.¹¹ The Court found that while the First Amendment shields the university from prohibiting the organization's expression, the organization enjoys no constitutional right to state support of its selectivity via an exemption in the university's policy.¹²

Like many institutions of higher education, Hastings encourages students to form extracurricular associations, recognizes these student groups, and provides recognized groups with benefits, including financial support, use

⁶ Complaint for Plaintiff at 2, *InterVarsity Christian Fellowship v. University of Iowa*, (Southern District of Iowa, Eastern Division, August 6, 2018) (3:18-cv-00080-RP-SBJ).

⁷ *Id.* at 2.

⁸ Complaint for Plaintiff at 17, *InterVarsity Christian Fellowship v. University of Iowa*, (Southern District of Iowa, Eastern Division, August 6, 2018) (3:18-cv-00080-RP-SBJ).

⁹ Press Release, InterVarsity Christian Fellowship, InterVarsity Defends Religious Freedom at Iowa (August 7, 2018), (Available at: <https://intervarsity.org/news/intervarsity-defends-religious-freedom-iowa>).

¹⁰ *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. 661, 668 (2010).

¹¹ *Id.*

¹² *Id.*

of bulletin boards and university space, and participation in an annual Student Organizations Fair.¹³ In order to be recognized by the university, student groups must comply with a Nondiscrimination Policy, which the university interprets to mandate acceptance of all comers – school-approved groups must “allow any student to participate, become a member, or seek leadership positions in the organization, regardless of status or beliefs.”¹⁴ The Christian Legal Society (“CLS”), an association of Christian lawyers and law students with chapters at law schools throughout the country, requires its chapters to adopt bylaws that, inter alia, require members and officers to sign a Statement of Faith and conduct their lives in accord with prescribed principles.¹⁵ Hastings rejected both CLS’ request for recognition by the university and its request for an exemption from the Nondiscrimination Policy because CLS barred students based on religion and sexual orientation.¹⁶ Thus, while CLS was permitted to recruit students, use university facilities to host events, and operate on campus, it did not enjoy the benefit of being an officially-recognized group.¹⁷

In *Martinez*, the Court applied the limited forum test, which allows restrictions on access to a limited public forum, like university recognition for student groups, with a key caveat: any access barrier must be reasonable and viewpoint neutral.¹⁸ The Court reasoned that schools enjoy a significant measure of authority over the type of officially-recognized activities in which their students participate.¹⁹ Further, the Court determined that since the open-access policy ensured that the leadership, educational, and social opportunities afforded by recognized student organizations are available

¹³ *Id.* at 670.

¹⁴ *Id.* at 671.

¹⁵ *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. at 672.

¹⁶ *Id.* at 673.

¹⁷ *Id.*

¹⁸ *Id.* at 679, citing *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). The Court selected this test in part because CLS faced only indirect pressure to modify its membership policies to conform with the Nondiscrimination policy – the Court noted that CLS may exclude any person for any reason if it forgoes the benefits of official recognition. *Id.* at 682. The Court reasoned that the limited public forum analysis better accounted for the fact that Hastings was not compelling the group to include unwanted members, but rather gave CLS the choice to opt out and forgo subsidies. *Id.*

¹⁹ *Id.* at 686.

to all students, the all-comers requirement was justified.²⁰ Additionally, because officially-recognized student groups are eligible to receive funding from the university, the Court noted that the all-comers policy ensured that no student was forced to fund an organization that would reject him or her as a member.²¹ Additionally, the Court noted that the all-comers policy permitted Hastings to police the written terms of its Nondiscrimination Policy without inquiring into an organization's motivation for membership restrictions.²²

A court is likely to apply the limited forum test to IVGCF's complaint against the University of Iowa and find that the University's policy does not limit the First Amendment rights of students. The University of Iowa's all-comers policy affects most student organizations on campus – while there are exemptions for sports groups, fraternities, and sororities, the groups deregistered by the university represent a variety of cultural affinity groups, religious organizations, and political student groups. Thus, a court will likely find the policy “textbook viewpoint neutral” because its requirement draws no distinction between groups based on their message or perspective.²³ Further, while IVGCF argues that this policy would force the group to accept a takeover of the group by students bent on subverting the mission and character of the organization, a court, like the Court in *Martinez*, is likely to view this line of reasoning as a hypothetical issue since there is no stated history or active prospect of recognized student groups being “hijacked” at the University of Iowa.²⁴ Finally, a court is likely to find the University's policy reasonable in light of the policy that student organizations can exist whether or not they are recognized by the University and in the context of the University's goal that no aspect of its programs shall differ in treatment of persons because of, inter alia, race, creed, color, religion, or national origin.²⁵

²⁰ *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. at 688.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 665.

²⁴ *Id.*

²⁵ The University of Iowa, Human Rights Policy, available at: <https://opsmanual.uiowa.edu/community-policies/human-rights>. (Date accessed: September 21, 2018).

Confident Pluralism:

The Court in *Hastings* stated that “a college’s commission...is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process.”²⁶ In the university context, teachers and students have the space not only to express disagreement in more than tweets and sound bites, but also to probe the reasons underlying disagreement.²⁷ The natural pluralism of American society generates three possible responses – chaos, control, or coexistence.²⁸ Within the category of coexistence, confident pluralism argues that it is possible and imperative to live together peaceably in spite of deep and sometimes irresolvable differences over important matters.²⁹ Disallowing religious and cultural student groups to be officially present on a state university campus shuts out important beliefs and practices from the campus environment and limits opportunities for genuine dialogue among students of diverse faith and cultural backgrounds. While a court will likely find that there is no constitutional prohibition on the University of Iowa’s policy, continued enforcement of this policy is unadvisable because it moves the University away from confident pluralism, coexistence, and fair discussion, and instead toward control and polarization.

Conclusion:

The University of Iowa boasts more than 500 officially recognized student groups, and it is a richer, more vibrant place because of the diversity, discourse, and coexistence of these groups. While the Court’s holding in *Martinez* is likely to be upheld in *InterVarsity Christian Fellowship v. the University of Iowa*, this produces an ironic effect, as the excluded student groups are comprised of the very students the human rights policy is designed to protect.

Edited by Carter Gage

²⁶ *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. at 687.

²⁷ See John Inazu, *Law Religion, and the Purpose of the University*, 94 Wash. U. L. Rev. 1493, 1498 (2017).

²⁸ *Id.* at 1496.

²⁹ *Id.* at 1497.

