



## Foundation for Individual Rights in Education

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Chancellor Holden Thorp  
University of North Carolina at Chapel Hill  
103 South Building  
Campus Box 9100  
Chapel Hill, North Carolina 27599-9100

Dear Chancellor Thorp:

As you may know, the U.S. Supreme Court issued a 5-4 decision this June permitting a public law school to deny official recognition to a Christian student group. The law school relied on an “all-comers” policy that requires all recognized organizations to allow any student to become a voting member or leader, whether or not they agree with the ideology of the group. The case, *Christian Legal Society v. Martinez*, has been remanded to the lower court to determine whether the school unequally enforced its policy against the Christian group.

FIRE disagrees with the Court’s ruling and believes it will actually lead to *increased* discrimination against viewpoints unpopular on campus. To prevent this illiberal result, it is crucial to recognize that the Court’s decision was very limited in scope and to properly understand what the opinion does and does not say. Importantly, the majority opinion:

- Does not require that colleges and universities adopt “all-comers” policies. To the contrary, the ruling emphasized that maintaining such a policy, if evenly enforced, is an action a university *may* choose to take, not one it *must* or even *should* take.
- Does make clear that if a school adopts an “all-comers” policy, it must be evenly applied across the board to all groups. Any school allowing some groups, but not others, to choose members on the basis of belief will violate the First Amendment.

**For many reasons, adopting an “all-comers” policy is highly inadvisable.**

For one, an “all-comers” policy renders colleges powerless to stop members of rival or opposing student groups from joining, spying on, taking over, or simply diluting the messages espoused by other groups. For example, under an “all-comers” policy, atheists cannot be prevented from joining a Muslim group, voting themselves into leadership positions, and then voting to disband the group. In the

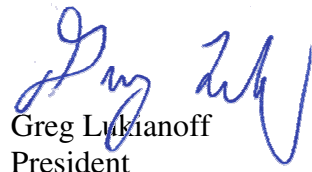
coming election season, members of the College Democrats would be unable to stop College Republicans (and vice versa) from listening in on strategy meetings or even casting critical votes about strategic decisions. Actions like these would obviously lead to increased bitterness and rancor among groups on campus, yet they would be almost unavoidable under an “all-comers” policy.

Further, an “all-comers” policy would be nearly impossible to fairly enforce. Any college adopting such a policy must prevent La Raza from excluding students who are hostile to Mexican immigration and an environmentalist student group from denying voting membership to global warming skeptics. Meanwhile, conservative and progressive newspapers alike will be attacked by their critics, who will bring into question whether such time-honored publications have a right to exist at all under an “all-comers” policy. Unless a college is absolutely confident that it has addressed every such requirement in every recognized student group, it risks legal liability for violating *CLS v. Martinez*’s mandate that enforcement of an “all-comers” policy be evenhanded.

Perhaps most importantly, an “all-comers” policy ultimately subjects freedom of association to the limits of tolerance among campus majorities, impairing the intellectual and cultural diversity among groups that is vital on college campuses. A liberal education progresses in great measure through learning from different groups with distinct identities and opinions as those groups express their unique messages on campus. Diluting those messages through an “all-comers” policy contracts rather than expands the marketplace of ideas across campus. As John Stuart Mill wrote about censorship in *On Liberty*: “If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”

Imposing an “all-comers” policy on your campus will lead to increased hostility among student groups, increased chaos within those groups, and a greatly increased need to police groups for compliance—all while increasing, not decreasing, the likelihood of a lawsuit. The way to maintain harmony and genuine diversity among student groups on campus is to continue to allow student groups to form around shared beliefs in order to maintain their ideological, religious, or political identities.

Sincerely,



Greg Lukianoff  
President

cc:

Leslie C. Strohm, University Counsel