

# BLUEPRINT FOR REFORM

THE JAMES G.  
MARTIN  
CENTER  
FOR ACADEMIC  
RENEWAL

## Ensuring Freedom of Association on Campus

*"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."*

- Justice John Marshall Harlan II, NAACP v. Alabama (1958)

### Why freedom of association?

Freedom of association is a fundamental right guaranteed by the first amendment. This encompasses the right of individuals to voluntarily join and leave groups, as well as the right of individuals to form groups to pursue common interests.

This right makes it possible for people with diverse opinions to live peacefully in pluralistic communities and to come together with others who share their values, practices, culture, and beliefs. It protects students' rights to hold beliefs that may diverge from the school or the majority of students. It also means that people are free to associate and organize with others for a common cause.<sup>1</sup> Protecting freedom of association on campuses ensures that students and student organizations can thrive.

1. "Bye-bye blacklist: Harvard ends attack on single-sex groups," June 30, 2020.

Public colleges and universities are bound by the constitution as well as state laws, which provide equal facilities to all organizations and even religious groups.<sup>2</sup> However, at universities across the country, it is very common to find conflict between universities' nondiscrimination or diversity policies and First Amendment rights protecting free speech, freedom of association, and free exercise of religion. And the legal precedent set by *Christian Legal Society v. Martinez* (2010)<sup>3</sup> failed to adequately protect the rights of belief-based student organizations. In that case, the court ruled that schools can force religious and political student organizations to accept members and leaders who do not share the group's values. Therefore, states and universities must adopt their own policies that ensure students' freedom of association.<sup>4</sup>

2. For a database, see FIRE's "[Freedom of Association on Campus Project](#)."

3. For the *USSC decision*, see *CLS v. Martinez* 2010

4. For more, see Robinson, J.A. "[The First Amendment Applies to Students, Too](#)," February 21 2014, James G. Martin Center; and Dent, A. "[Deconstructing Free Assembly](#)" February, 5, 2012, James G Martin Center.

## Recommendations

**The Martin Center recommends** that legislatures, university boards, and faculty governing committees take steps to protect freedom of association on campus.

### Universities should:

- Maintain viewpoint neutrality in university funding and recognition decisions for student activities and organizations. Apply criteria used to evaluate funding proposals and recognition requests in the same manner to all organizations;
- Presumptively recognize all student organizations unless their purpose is to engage in or incite criminal activities and/or activities that threaten the physical safety of others;
- Presumptively fund all student organizations that received funding in the prior year;
- Provide written explanations to student organizations that do not receive recognition and/or funding;
- Create an appellate process for student organizations to appeal recognition and funding decisions;
- Allow student organizations to create their own rules for determining standards and requirements for membership or leadership in the organization; and
- Protect students and student groups from disciplinary action because of their lawful expression, including belief-based organizations.

### Model University Policies

[Policy on Recognition of Student Organizations](#), University of Wisconsin.

University of North Carolina at Chapel Hill's [Non-Discrimination Policy for Student Organizations](#).

[Allocating Student Fees](#) (Foundation for Individual Rights in Education model policy)

### Policymakers should:

- Ban discrimination against students and student organizations based on the content or viewpoint of their expressive activity; and
- Protect ideological, political, and religious student organizations by allowing them to require that leaders or members of the organization affirm and adhere to the organization's sincerely held beliefs, comply with the organization's standards of conduct, or further the organization's mission or purpose, as defined by the organization.

### Model Legislation

[Forming Open and Robust University Minds \(FORUM\) Act](#) (American Legislative Exchange Council model legislation)

[College Student Free Speech and Association Act](#) (Foundation for Individual Rights in Education model legislation)

[Denial of benefits to religious student group prohibited](#). Oh. Revised Code § 33-3345-023 (2011)

[An Act to provide that student organizations at constituent institutions and community colleges may determine the organization's core functions and resolve any disputes of the organization and to prohibit constituent institutions and community colleges from denying recognition to organizations for exercising these rights](#). NC Session Law 2014-28 (2014)

## **Further Reading**

"Higher Education Bill Requires Notice on Free Speech Policies" - *Wall Street Journal*

"Don't Limit Students' Freedom of Association" - *New York Times*

Alliance Defense Fund legislation: [Campus Association in the States](#)

Foundation for Individual Rights in Education: [Ongoing Legislation](#)

## **For More Information**

For supplemental data or additional research on this topic, please contact the Martin Center by phone or email. You can reach us at 919-828-1400 or [info@jamesgmartin.center](mailto:info@jamesgmartin.center).

## **About the Martin Center**

The James G. Martin Center for Academic Renewal is a private nonprofit institute dedicated to improving higher education policy. Our mission is to renew and fulfill the promise of higher education in North Carolina and across the country.

We advocate responsible governance, viewpoint diversity, academic quality, cost-effective education solutions, and innovative market-based reform. We do that by studying and reporting on critical issues in higher education and recommending policies that can create change—especially at the state and local level.

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