



Please respond to Franklin, TN address

November 9, 2011

Mark F. Dalton
Chairman
Vanderbilt University Board of Trust
305 Kirkland Hall
Nashville, Tennessee 37240

Chairman Dalton and Members of the Vanderbilt Board of Trust:

I am writing on behalf of a number of Vanderbilt alumni to express grave concerns regarding Vanderbilt's decision to force religious organizations to open their leadership positions to individuals who do not share the group's faith, mission, or purpose. Simply put, such a decision represents a profound step backwards – away from diversity, free expression, and pluralism.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, for example, Pleasant Grove City v. Sumnum*, 129 S. Ct. 1523 (2009); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); and *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987).

On December 8, 2010, Vanderbilt quietly changed its student handbook to eliminate longstanding protections for religious freedom and religious association. Following this revision (and without notifying the larger campus community of the change), the university notified a number of student organizations that they were out of compliance with the university's new policy. Specifically, these organizations were told that they could no longer reserve leadership positions for individuals who shared the group's faith, mission, or purpose.

Specifically, the university told religious student groups: "Vanderbilt policies do not allow any student organization to preclude someone from a leadership position based on religious belief." Indeed, the university went so far as to deny recognition to the Christian Legal Society (CLS) in part because CLS expected its leaders to "lead Bible studies, prayer, and worship at Chapter meetings." The university claimed

to the Christian Legal Society (CLS) in part because CLS expected its leaders to “lead Bible studies, prayer, and worship at Chapter meetings.” The university claimed that such common sense requirements for a religious organization “seemed to indicate that officers are expected to hold certain beliefs.”

The immediate effect of this policy change is that a number of student groups have been denied formal recognition for the current school year (they are on “provisional” status), and all student groups must now open themselves up to the nonsensical possibility of Jewish leadership of Muslim groups or atheist leadership of Christian groups. Further, the campus religious community now considers its presence to be tenuous, at best.

In a letter to Chancellor Zeppos dated October 24, Vandy Catholic, one of the university’s largest student groups (and a group that is currently fully recognized), declared:

The university is proposing unilaterally to decide who is qualified to represent the Catholic faith on campus. According to the proposed interpretation of the non-discrimination policy, the university maintains that any student is qualified to lead Vanderbilt Catholic regardless of religious profession. Religious profession is, however, a rational basis for determining leadership in a religious organization. It is not invidious discrimination. Vanderbilt Catholic cannot bend on this principle. I have consulted Bishop Choby, and he is in agreement. The Catholic Church could not sponsor an organization at Vanderbilt under these conditions. I hope that you will decide to make it possible for the collaboration between faith and reason to continue in an authentically Catholic student organization at Vanderbilt by deciding to apply the non-discrimination policy in a manner that recognizes the reasonable requirement of religious profession for leadership in religious student organizations. Free religious expression is an integral part of the intellectual life.

Nonpartisan civil liberties organizations and prominent commentators across the political spectrum have also found Vanderbilt’s position to be deeply troubling. In a *Tennessean* article dated September 27, Charles Haynes, a Senior Scholar at the First Amendment Center (which has offices on Vanderbilt’s campus) backed the student groups, saying “It would be absurd to say a Jewish group can be led by a Christian.” The *Tennessean* reported that Haynes said “that a fair compromise would require religious groups to open their meetings to everyone while permitting restrictions on who can serve in leadership positions.”

The Foundation for Individual Rights in Education, whose work has been endorsed by, among others, the president of the American Civil Liberties Union and former Attorney General Ed Meese at the Heritage Foundation, wrote Chancellor Zeppos to express its own concern and precisely detailed how Vanderbilt policies previously

protected religious freedom. Further, it noted that Vanderbilt's new policies have a profound detrimental effect on religious practice:

Vanderbilt is effectively creating modified versions of every religion on campus and establishing them as the variant of that religion officially favored by the university. An institution that chooses to take this path can hardly claim to allow its students freedom of religion or association, or to tell students that they "are entitled to exercise the rights of citizens."

In his November 2nd *Washington Post* column (syndicated nationwide), George Will condemned the university's actions, writing:

The question, at Vanderbilt and elsewhere, should not be whether a particular viewpoint is right but whether an expressive association has a right to espouse it. Unfortunately, in the name of tolerance, what is tolerable is being defined ever more narrowly.

More than twenty members of congress, including middle-Tennessee Congresswomen Marsha Blackburn and Diane Black, wrote the Chancellor to express their "deep concern" with Vanderbilt's policies, urging him "to ensure that Vanderbilt University's nondiscrimination policy is not being interpreted in a manner that discriminates against religious groups". Yet Vanderbilt, a recipient of more than \$500 million of annual funding from the federal government, has implemented policies that not only impair the most basic liberties of religious organizations but also impair the rights of every expressive organization on campus.

Finally, on November 8, leaders from the National Association of Evangelicals, the Southern Baptist Ethics and Religious Liberty Commission, and the United States Conference of Catholic Bishops wrote the Board to urge Vanderbilt to "reaffirm its tradition of religious tolerance and, once again, respect religious student groups' ability to choose their leaders according to the groups' sincerely held religious beliefs."

Vanderbilt is decisively out of step with the national higher education community. The religious organizations impacted by Vanderbilt's policy change serve hundreds of campus communities without incident, including all of America's elite research universities. By taking this action, Vanderbilt has decided to step away from the marketplace of ideas, step away from pluralism, and to retreat from intellectual diversity.

There is no legal authority requiring Vanderbilt to take this action. The Supreme Court's recent decision in *CLS v. Martinez* (2010) merely allows public institutions to implement all-comers policies if they choose. No major public research university has chosen to do so, and for good reason. Such policies are difficult to enforce and in

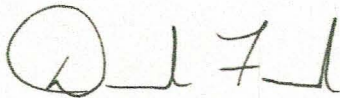
fact require constant, court-mandated policing to ensure they are not abused to disadvantage minority viewpoints. Moreover, as a recipient of vast sums of federal dollars, Vanderbilt is inviting increased congressional scrutiny over its actions.

And to what end? Each of the religious groups impacted by Vanderbilt's policy change throw their doors wide open to all students. Anyone can join these groups and participate in their activities, but to maintain organizational purpose it is vital that religious leaders share their group's faith. Is it truly in Vanderbilt's interests to place the integrity of a religious group's (or any group's) message in the hands of those who may be in conflict with its very purpose?

We request that the Board take immediate action to ensure that religious student groups – indeed, all expressive student groups – have the right to reserve leadership for those individuals who agree with the group's faith, mission, or purpose.

Vanderbilt University has rightfully earned its reputation as one of the nation's most respected institutions of higher education. It has earned that reputation not merely through its groundbreaking research and high-quality instruction but also through its commitment to diversity, pluralism, and the marketplace of ideas. This commitment – and by extension, the university's reputation – now stand in jeopardy and are in your hands.

AMERICAN CENTER FOR LAW & JUSTICE



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