



Foundation for Individual Rights in Education

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September 21, 2011

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Alan Charles Kors
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Dear Chancellor Zeppos:

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As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, freedom of conscience and religion, and freedom of association on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

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FIRE is gravely concerned by Vanderbilt University's continuing refusal to approve the constitution of the Christian Legal Society student group because of its requirement that officers agree with the religious views of the group and its expectation that officers lead Bible studies for the group's members. This decision pits Vanderbilt against the American tradition of religious pluralism and impairs the freedoms of religion and association of its students.

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This is our understanding of the facts. Please inform us if you believe we are in error.

After many years as a recognized student organization at Vanderbilt, the Vanderbilt chapter of the Christian Legal Society (CLS) was informed by the university's Office of Religious Life in April 2011 that the approval of its constitution for the coming year was being "deferred." Among the reasons cited in that deferral were the fact that CLS's constitution referred to the Biblical passage of Romans 1:21-32 in its "code of character" and that a handwritten note on its yearly submission asked for a partial exemption from the university's nondiscrimination code.

CLS withdrew this constitution and submitted an entirely new constitution over Vanderbilt's summer break. On August 9, 2011, Justin Gunter, the president of the CLS chapter at Vanderbilt, received an email from the Reverend Gretchen Person, Interim Director of the Office of Religious Life. The email listed several of Vanderbilt's objections to the new constitution. In pertinent part, those objections were as follows:

Article III states that, "All officers of this Chapter must subscribe to the Christian Legal Society Statement of Faith." Vanderbilt's policies do not allow any student organization to preclude someone from a leadership position based on religious belief. Only performance-based criteria may be used. This section will need to be rewritten reflecting this policy.

The last paragraph of Section 5.2 states that "Each officer is expected to lead Bible studies, prayer and worship at Chapter meetings as tasked by the President." This would seem to indicate that officers are expected to hold certain beliefs. Again, Vanderbilt policies do not allow this expectation/qualification for officers.

The Rev. Person also noted the following:

[W]e do not have in hand a copy of the revised Officer and Advisor Affirmation Form, as requested in the initial deferral. Specifically, we need a clean document without the handwritten text that seems to be an exclusionary clause advocating for partial exemption from the University's non-discrimination policy. Please forward us a copy of this as well.

While the Rev. Person did not specify what specific Vanderbilt policies were violated by these provisions of CLS's constitution, and Vanderbilt has not responded to CLS's own letter about this issue, it appears to FIRE that Person's objections stem from her interpretation of the nondiscrimination policies promulgated by Vanderbilt. One such policy, found on the Officer and Advisor Affirmation Form and also on the website of Vanderbilt's Equal Opportunity, Affirmative Action, and Disability Services (EAD) office reads, in pertinent part, as follows:

Vanderbilt University does not discriminate against individuals on the basis of their race, sex, religion, color, national or ethnic origin, age, disability, or military service, or genetic information in its administration of educational policies, programs, or activities; admissions policies; scholarship and loan programs; athletic or other University-administered programs; or employment. In addition, the University does not discriminate against individuals on the basis of their sexual orientation, gender identity, or gender expression consistent with the University's nondiscrimination policy.

This policy does not state that it applies to recognized student organizations, which have independently elected leadership, do not officially represent Vanderbilt, and cannot be said to be "administered" by Vanderbilt in the sense invoked by this policy. Nevertheless, the

Officer and Advisor Affirmation Form requires the presidents and faculty advisers of student organizations to sign the form below this statement affirming that they will follow this specific nondiscrimination policy—a policy that, by its own terms, does not seem to apply to them. (Strangely, the form also notes that “ALL Religious/Spiritual organizations must have a printed copy of their registration and constitution accompanying this document and obtain the signature of the Director of Religious Life.” It is not clear why religious organizations alone are to be singled out for special scrutiny at Vanderbilt, nor why the Director of Religious Life’s approval is required.)

A different nondiscrimination policy is found on pages 68–69 of the Vanderbilt faculty manual. In pertinent part, it reads as follows:

Vanderbilt University does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its administration of educational policies, programs, or activities; its admissions policies; scholarship and loan programs; athletic or other University-administered programs; or employment. In addition, the University does not discriminate on the basis of sexual orientation consistent with University nondiscrimination policy.

[...]

Sexual Orientation Nondiscrimination Statement

Vanderbilt University is committed to the principles of nondiscrimination on the basis of being or being perceived as homosexual, heterosexual, or bisexual. In affirming its commitment to this principle, the University does not limit freedom of religious association and does not require adherence to this principle by government agencies or external organizations that associate with but are not controlled by the University. The University extends specified benefits to eligible domestic partners.

The first paragraph of this policy appears to be the same as the policy posted on the EAD office’s website, excepting mention of genetic information, gender identity, or gender expression. This may simply be an oversight in updating the publication.

It is the second paragraph of this policy, however, that bears directly on the issue that has caused the deferral of CLS’s constitution. It emphasizes that despite Vanderbilt’s official commitment not to consider sexual orientation in any decision-making processes, “*the University does not limit freedom of religious association and does not require adherence to this principle by government agencies or external organizations that associate with but are not controlled by the University.*” (Emphasis added.) The Christian Legal Society is exactly such an organization. It is an external organization that associates with Vanderbilt University through having a chapter on Vanderbilt’s campus, but which Vanderbilt does not actually control. The same can most likely be said for all of the other religious organizations and denominations that have a presence on Vanderbilt’s campus.

This policy signifies Vanderbilt's recognition that unlike most of the other categories listed as illegitimate bases for decision-making, religion cannot be argued to be solely an immutable characteristic, one that a person cannot change. Yet, unlike race or national origin, religion is a characteristic that people can and do change. Religion is a matter of both status and belief, and Vanderbilt's failure to make this distinction in the policies it has chosen to apply to CLS has resulted in an unconscionable restraint on Vanderbilt students' freedom of religion.

Of course, with regard to groups that have no expressive purposes or purposes that have nothing to do with religious belief (such as a chess club or soccer team), religion can be said to be a protected status. However, when it comes to religious groups on campus, Vanderbilt's failure to recognize that religion is also a belief compromises those groups' ability to effectively communicate their messages. Part of CLS's expressive purpose is to communicate to other law students what it sees as the Christian message. According to CLS's Community Life Statement, this message includes living in accordance with Christian teachings. This involves renouncing "unbiblical attitudes, including greed; jealousy; false pride; lust; covetousness; an unforgiving spirit; and unjust prejudice such as that based on race, sex, ethnicity, appearance, disability, or socio-economic status," as well as "unbiblical behaviors, including deception, malicious speech, drunkenness, drug abuse, stealing, cheating, and other immoral conduct such as using pornography and engaging in sexual relations other than within a marriage between one man and one woman." Its sincere belief that those who wish to spread the Christian message must believe that these attitudes and behaviors are wrong is hardly unique among Christian organizations.

However, according to the Rev. Person, CLS may make no such demands of its members. To be a recognized student group at Vanderbilt, CLS must surrender its ability to disqualify a person from being a leader for any of these faith-based reasons as long as their "performance" as a leader of CLS is unaffected.

This stipulation, by its very nature, is impossible for religious groups to follow. The leaders of CLS cannot "perform" well as leaders if they are displaying any of the behaviors that CLS sees as unbiblical or sinful. The nature of communicating a religious or expressive message requires that the person communicating that message be a credible messenger. The same goes for political or other ideological messages: Rush Limbaugh would not make a credible spokesperson for the Democratic Party, nor Barack Obama for Republicans. Yet Vanderbilt has ignored this reality by deciding that in order to receive equal treatment on campus, religious or other ideological groups cannot mandate that their leaders follow a statement of principles or code of behavior.

On page 63 of the Faculty Handbook, Vanderbilt states that "[t]he University is also part of the civic community in which it exists. Its members, both faculty and students, are entitled to exercise the rights of citizens and are subject to the responsibilities of citizens." Freedom of worship and freedom of religious association are among the most important rights of American citizens. If Vanderbilt has determined that these rights must be subordinated to ideological commitments newly discovered by its administration, Vanderbilt's faculty, students, alumni, and the public deserve to know the new status of these freedoms on

campus, and Vanderbilt should disclose in its admissions materials that freedom of religion as understood in the United States does not exist for students on its campus.

Further, the Rev. Person's stipulation that CLS may not expect each officer "to lead Bible studies, prayer and worship at Chapter meetings as tasked by the President" because "it would seem to indicate that officers are expected to hold certain beliefs" is absurd. The first of the three stated purposes of the Vanderbilt chapter of CLS is to "[c]ultivate spiritual growth among its members through communal prayer, fellowship, and worship; learning to share one's faith; and devotional study of the Bible and classic Christian works." This is literally impossible if CLS may not expect its leaders to lead these activities, particularly in accordance with the group's beliefs. Indeed, the activities of sharing in and teaching about one's faith are among the core purposes of virtually every religious group both on and off campus. Does Vanderbilt's Office of Religious Life really intend to say that religious groups that conduct such activities do not deserve recognition at Vanderbilt?

Unfortunately, it appears that this may indeed be the ongoing attitude of Vanderbilt's Office of Religious Life towards religious students. In a *Vanderbilt Hustler* article dated November 4, 2010, former Director of Religious Life Gary White was quoted as saying of the Beta Upsilon Chi Christian fraternity, "They can have a statement of faith and conduct of behavior, and this in itself is not discriminatory. But they would not be able to deny or remove any member based on their Code of Conduct ... They can have a statement of faith as long as they don't act on it." This, of course, makes any statement of faith pointless.

Further, while not explicitly stated in the Rev. Person's email, it is clear from the April deferral of CLS's constitution that Vanderbilt's concern is that CLS's behavioral standards contained in the now-abandoned "Code of Conduct" and currently in the national organization's "Statement of Faith" contradict Vanderbilt's own policies on nondiscrimination based on sexual orientation. Indeed, in April, White even went so far as to challenge the organization on a matter of Biblical interpretation, asking CLS how it could reconcile its reference to Romans 1:21-32 with Vanderbilt's own nondiscrimination rules about sexual orientation. It is bizarre that Vanderbilt, a secular university that has had no ties to any church since 1914, would choose to engage in debates over Biblical exegesis with a student group.

The message here is clear: Vanderbilt believes that its institutional ideological beliefs should take precedence over students' own beliefs or consciences, particularly when it comes to its students' attitudes towards sexual activity. Vanderbilt, as a private university, has the right to demand that its students pledge allegiance to its institutional beliefs and prefer them over their own religious beliefs, and even to demand the modification of student groups' religious and ideological beliefs to fit those of Vanderbilt administrators. But by doing so, 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."

FIRE asks that Vanderbilt recognize the distinction between status and belief when it comes to the principles upon which religious and other student groups with an expressive purpose are organized, and recognize CLS and any other student groups whose constitutions have been deferred because they require that their members or leaders share the belief system of the group. We request a response by October 3, 2011.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Shibley". The signature is written in a cursive style with a large, stylized initial 'R'.

Robert L. Shibley
Senior Vice President

cc:

The Rev. Gretchen Person, Interim Director, Office of Religious Life, Vanderbilt University
Mark Bandas, Associate Provost and Dean of Students, Vanderbilt University
Steve Caldwell, Associate Dean of Students, Vanderbilt University