

Equality vs. Freedom: Anti-Discrimination Policies and Conservative Christian Student Organizations

Kevin Singer
North Carolina State University

Abstract

Over the last two decades, many colleges and universities strived to make their campuses more inclusive to the LGBTQ+ community. Many institutions incorporated sexual orientation into their anti-discrimination statements and policies, placing sexual identity in the same category as racial or gender identity as a protected class. Additionally, some institutions adopted all comers' policies under which all students are eligible for membership in registered student organizations and all members in good standing within those organizations are eligible to compete for leadership positions. As these policies became more robust, some colleges and universities scuffled with student organizations who, on the basis of their ideology, excluded some students from becoming members or serving in leadership roles. The most prevalent instances included public universities and evangelical Christian student organizations. In these cases, the institution moved to derecognize the evangelical group on the basis of their anti-discrimination or all comers' policy. Some of the barred groups pursued litigation, arguing that their First Amendment rights to free speech, religion, or association were violated. This paper will examine the policies prompting the derecognition of evangelical Christian student organizations, and the arguments used by these groups to defend themselves. In addition to investigating what these policies have in common, arguments for and against these policies will be presented. Finally, implications for policy, practice, and future research will be presented.

Introduction

Over the last two decades, many colleges and universities in America strived to make their campuses more welcoming and inclusive to minority student populations (Grubbs, 2006). This includes groups with significantly more exposure and advocacy over the last several decades, such as the LGBTQ+ community (Hong, Woodford, Long, & Renn, 2015; Pitcher, Camacho, Renn, & Woodford, 2016; Taylor, Dockendorff, & Inselman, 2017). As colleges and universities worked to accommodate the needs of sexual minority students, they also began to incorporate these identities into their anti-discrimination statements and policies (Affolter, 2013; Paulson, 2014; Pitcher et. al, 2016; Woodford, Kulick, Garvey, Sinco, & Hong, 2018; Stotzer, 2010). In doing so, they effectively placed sexual orientation in the same category as racial or gender identity as a protected class under Title VII and Title IX (Ringenberg, 2016). An "all comers policy" is an increasingly common anti-discrimination measure in higher education under which all students are eligible for membership in registered student organizations, and all members in good standing within those organizations are eligible to compete for leadership positions (Banks, 2012; Nondiscrimination FAQ, n.d.).

As anti-discrimination policies became more robust, some colleges and universities scuffled with student organizations who exclude certain groups from becoming members or

serving in leadership roles. Mostly, this pertains to the exclusion of sexual minorities (Crouch, 2003, McMurtrie, 2000; Ringenberg, 2016; Whitford, 2018). The most prevalent instances of this included public colleges and universities and evangelical Christian student organizations such as Christian Legal Society (CLS), Business Leaders in Christ (BLIC), InterVarsity, and CRU, formerly known as Campus Crusade for Christ. With anti-discrimination policies in-hand, some institutions attempted to and succeeded in stripping these groups of their status as recognized student organizations, along with their privileges to reserve campus space, request funding, and advertise on campus (Choate-Nielsen, 2012; Paulson, 2014; Sanders, 2004; Stetzer, 2014). In a number of these instances, the group that lost recognition and privileges pursued litigation against their institution with varying degrees of success, arguing that their First Amendment rights to free speech, religion, or association were violated in some way (Miller, 2018; Shellnut, 2018; Shibley, 2012).

A recent highly publicized iteration of these events occurred at the University of Iowa. In March 2016, a student who expressed interest in becoming vice president of the student group Business Leaders in Christ (BLIC) was told by the sitting president that he was ineligible to become a leader because of his decision to pursue romantic same-sex relationships. The student filed a complaint requesting that the university either obligate the group to abide by their anti-discrimination policy or revoke their status as a recognized student organization. When the university determined that BLFC violated their human rights policy and moved to withdrawal recognition, the group sued the university. They also cited that hundreds of other groups were also in violation of the policy by failing to include the full and correct human rights clause in their constitutions. Hence, they argued that the university seemed to be specifically targeting BLIC rather than seeking to apply their policy in a viewpoint neutral manner as required by law.

Following the incident, the university moved to derecognize 31 additional groups that required student leaders to conform to their beliefs including InterVarsity Graduate Christian Fellowship, who pursued additional litigation against the university (InterVarsity Christian Fellowship, n.d.). This move to derecognize additional groups, the university hoped, would demonstrate that they did not intend to single out BLFC, but intended to apply their human rights policy in a viewpoint neutral manner. Nonetheless, a federal district court agreed with BLFC's complaint and subsequently ordered that all 32 groups' status as student organizations be maintained while litigation was pending (Miller, 2018; Whitford, 2018). On February 6, 2019, a federal court ruled in favor of BLIC, paving the way for their permanent recognition as an official student organization on-campus (Cimmino, 2019). The case between InterVarsity and the University of Iowa will likely be decided in late 2019.

The purpose of this paper is to examine the anti-discrimination policies that prompted colleges and universities to seek the derecognition of conservative Christian student organizations, and the arguments that these organizations used to defend themselves against these maneuvers. In addition to investigating what these anti-discrimination policies have in common, arguments for and against these policies will be presented. Finally, implications for policy, practice, and future research will be presented.

Literature Review

Christian campus ministries have been a staple in American higher education since just after World War II, beginning with the Young Men's Christian Association (YMCA) and Young

Women's Christian Association (YWCA) movements and followed soon after by mainline Christian groups like Methodists, Lutherans, and Presbyterians (Alleman & Finnegan, 2009; Cawthon & Jones, 2004; Schmalzbauer, 2013; Schmalzbauer, 2018). For some time, these groups enjoyed a privileged status on their respective campuses; for example, college and university chaplains were oftentimes selected from these groups (Schmalzbauer, 2013; Xia, 2017).

Eventually, the YMCA and YWCA movements began to fade in their prominence, and mainline Christian groups began to lose their institutional influence (Schmalzbauer, 2007; Stone, 2017). Historically, mainline Christian groups maintained their influence on campus through the presence of chaplains who provided oversight for campus religious life, including the campus chapel (Schmalzbauer, 2013). However, the rise of religious diversity in higher education disrupted this common arrangement. Chaplains representing other religious and nonreligious faith traditions were hired, and institutions began to make interfaith engagement a priority in their chapel programming. At times, institutions altered their chapel's physical space to be more hospitable to minority religious practices (Karlin-Neumann & Sanders, 2013; Lohr Sapp, 2013). At the same time, the slow tide of secularization destabilized the centrality of any faith tradition on many campuses, forcing mainline Protestant chaplains to operate from "outposts" on the fringes of campus (Kazanjian & Laurence, 2007, p. 3). Schmalzbauer (2013) described how the decentralization of Protestant Christianity altered the scene at many elite universities: "The Gothic Revival chapel at the center of campus sits empty except for Sunday morning services that attract a handful of worshippers. Once overflowing with young Methodists and Presbyterians, Wesley and Westminster Foundations face tighter budgets and lower student participation" (p. 115). The once sure grip that Protestantism maintained in American higher education was loosened significantly by the 1960s, followed by a steady decline in numbers and influence after 1970 (Portaro & Peluso, 1993).

Beginning in the 1960s with Bill Bright and his ministry of Campus Crusade for Christ (now CRU), evangelical Christian groups began to grow and expand at a rapid pace (Grubbs, 2006; Mahoney, Schmalzbauer, & Youni, 2001). In 2013, it was estimated that at least 250,000 students participated in evangelical student groups (Schmalzbauer, 2013). In 2018, CRU had 5,300 campus chapters worldwide (CRU, 2018) and InterVarsity Christian Fellowship had more than 1,000 chapters at over 650 college campuses across the United States (InterVarsity, 2018).

Traditionally, Evangelical student groups share a few core values. These include (1) *biblicism*, or a strong emphasis on obedience to the Bible, (2) *crucicentrism*, a centrality on the sacrifice of Jesus Christ as necessary to redeem humanity, and (3) *conversionism*, the belief that God's gift of redemption through Jesus Christ can transform lives if people choose to accept it (Moran Craft, Lang, & Oliver, 2007). In addition, these groups traditionally share a conservative moral stance on homosexual practice, which they hold to be averse to God's intended purposes for sexuality (Todd, McConnell, Odahl-Ruan, & Houston-Kolnick, 2017; Shea, 2014; Shellnut, 2016). To maintain ideological and theological clarity on these matters, they require staff and student leaders to adopt these values and beliefs.

When it comes to their campus experiences, Evangelical student groups occupy a paradoxical space. Though some would say they maintain a significant amount of privilege in relation to other groups and identities, Evangelical students frequently report feeling marginalized on their campuses for their beliefs (Hyers & Hyers, 2008; Larsen, 2010; Mayhew, Bowman, & Rockenbach, 2014; Mayhew et. al, 2017). This was found to be the case at two public universities

in the Midwest, where Moran Craft, Lang, and Oliver (2007) interviewed 25 Evangelical students about their campus experiences. Their findings led them to adopt two terms to describe the experiences of their interviewees: *cultural incongruity* and *social status ambiguity*. Cultural incongruity describes the feeling among some Evangelical students that their intra-group norms do not fit within their campus culture. Whereas, social status ambiguity describes the tension that they navigate as a normative yet increasingly unpopular religious group on campus. These negative outlooks are only further strained when institutions attempt to take away their student organization privileges.

Since the multicultural movement started cutting across American higher education in the late 1990s, many colleges and universities evolved to meet the challenge of creating campus environments that enable students of all identities to persist and graduate (Villalpando, 2002). Additionally, a plethora of research emerged on the importance of diverse campus environments toward helping students develop good academic, social, and civic habits (Gottfredson et. al, 2008; Levine & Stark, 2015; Rockenbach et. al, 2017; Tsuo, 2015). As a result, incremental shifts occurred in admissions decisions, hiring trends, and institutional policies to ensure the realization of a diverse and inclusive campus climate. Student affairs professionals in particular have been catalytic in championing efforts to celebrate of all types of diversity in their campus environments (Parnell, 2016; Sandeen, 2004). Though higher education is frequently critiqued for its capacity to exacerbate inequities in American society (Astin & Oseguera, 2004; Malcom-Piqueux & Bensimon, 2017), many institutions are at least trying to deconstruct institutional norms that are perceived as threats to equality and inclusivity.

Institutions are also reevaluating policies on student organizations and their conduct. Some are facing renewed challenges to their policies that require students of all identities to pay student fees, while these funds go to support student organizations where students of certain identities are not permitted to become leaders (Block, 2014; Wiggin, 1994). Furthermore, institutions must consider how to reconcile the presence of these student organizations with their enhanced messaging of welcome and inclusion (Grubbs, 2006). Therefore, some institutions moved to adopt policies that require student organizations to open up their membership and leadership positions to all students, regardless of their ideology or lifestyle. If student organizations refuse to accommodate the new policy, their status as a recognized student organization is revoked, and on some occasions, they are asked to refrain from organizing or meeting on campus or in campus facilities (Pritchard, 2013; Russell, 2018; Victor & Boomerang, 2017).

Unsurprisingly, these decisions are met by intense scrutiny from the derecognized student organizations. Non-profit entities such as the Foundation for Individual Rights in Education (FIRE), which helps conservative-minded groups retain their rights and privileges in higher education, also challenged these decisions (Ringenberg, 2016). The full gamut of arguments used in support of these organizations will be discussed in greater specificity later in this article, however, the most common critique is that universities that derecognize student organizations on the basis of their ideological exclusivity intrude on students' First Amendment right to freedom of association. Although not explicitly written into the constitution, freedom of association is "well established as an implicit constitutional right" (Knight, 2008, p. 256). Freedom of association encompasses a group's freedom to *expressive association*, or the right to associate with others in pursuit of the political, social, economic, religious, and cultural ends of their choosing.

Policy Context

In higher education, the policy context concerning these matters is the Supreme Court case of *Christian Legal Society v. Martinez* (2010). In a 5-4 vote, the Supreme Court upheld the University of California Hastings Law School's decision to require the Christian Legal Society to give students of homosexual orientations access to leadership roles on the basis of their anti-discrimination policy (Ringenberg, 2016). Soon after this ruling in 2011, the Court refused to hear an appeal on a similar case at San Diego State University (SDSU), which adopted a similar policy to the University of California Hastings Law School (hereafter UC-Hastings). In the related case of *Alpha Delta Chi vs. Reed* (2011), the United States Court of Appeals for the Ninth Circuit ruled that the faith-based sorority Alpha Delta Chi and fraternity Alpha Gamma Omega could not require members to share the groups' Christian faith and retain their status as student organizations under SDSU's non-discrimination policy. This proved to be a significant moment, because the entire California state system (23 colleges and universities) moved to derecognize their InterVarsity chapters in 2014 (Ringenberg, 2016).

At the center of the *CLS vs. Martinez* case was the question of whether or not the Christian Legal Society was actually discriminating against students on the basis of their sexual orientation, or merely on the basis of their belief/ideology (Knight, 2008). This distinction would become very important in future cases and rulings. CLS argued in both cases that they would allow (and did actually allow) students with a homosexual *orientation* to become leaders, as long as these students recognized that to *act* on this orientation would be immoral (Affolter, 2013). What they did not allow was students to become leaders who engaged in homosexual *activity*. In *CLS vs. Walker* (2006), a similar case that preceded *CLS vs. Martinez*, the Seventh Circuit United States Court of Appeals ruled in favor of CLS because they found that they were not discriminating against students on the basis of their sexual orientation. In its decision, the Court argued that CLS "interprets its statement of faith to allow persons 'who may have homosexual inclinations' to become members of CLS as long as they do not engage in or affirm homosexual conduct'" (as cited in Goldberg, 2011, p. 164). To be consistent, CLS would also need to exclude heterosexual students who disagreed that homosexual activity should be forbidden.

In *CLS vs. Martinez*, the United States Supreme Court made the opposite decision, though citing different rationale. The Court decided that "the university's compelling interest in protecting students from discrimination substantially outweighed the hardship that fell upon CLS when it was derecognized as a student organization" (Knight, 2008, p. 252-253). Furthermore, the Court determined that UC-Hastings' policy was not unduly burdensome on CLS' rights because "Hastings still permitted the group to meet on campus and express its views" (Knight, 2008, p. 253). The Christian Legal Society would go on to file similar suits at Pennsylvania State University, Washburn University, Arizona State University, and The Ohio State University. At Florida State University, University of Iowa, University of North Dakota, and University of Oklahoma, CLS was granted exceptions from their anti-discrimination policies and litigation was avoided ("Leaving Religious Students Speechless," 2005).

One particularly important aspect of the Martinez ruling was the Court's note that the intention of CLS to select leadership on the basis of ideology would normally be constitutionally protected in society at large. However, they found the opposite to be true when a student organization utilized university facilities — the rationale being that UC-Hastings' facilities, like the university itself, were partially subsidized by the State of California and student fees. Goldberg

(2011) noted that for the first time, “The Court imported the concept of ‘subsidies’ into a case involving student organizations, affording Hastings unprecedented latitude in its treatment of student organizations” (p. 132). UC-Hastings successfully argued that no student should be compelled to assist in funding a student organization that would reject them as a member/leader. Since *CLS vs. Martinez*, similar policies to that of UC-Hastings were adopted at public and private institutions. The most prevalent policy at a private institution is the all comers policy adopted by Vanderbilt University in 2012, which was inspired by the Martinez ruling. The all comers policy ensured that Vanderbilt’s 14 religious organizations could not exclude any students from becoming leaders and also remain a recognized student organization (Pritchard, 2013; Ringenberg, 2016). Though the Tennessee state legislature attempted to pass legislation that would require Vanderbilt to scale back their policy, it was vetoed by the governor (Sher, 2012).

Most instances of student group derecognition since the Martinez ruling pertained to InterVarsity Christian Fellowship. In 2013, out of their approximately 600 chapters at colleges and universities across America, InterVarsity reported encountering challenges with anti-discrimination policies at 40 of these campuses (Ringenberg, 2016). Some of their noteworthy legal victories occurred at University of Michigan, The Ohio State University, the University of Minnesota, the University of Maryland, Harvard University, and Rutgers University. InterVarsity has experienced greater difficulties at private institutions, such as Vanderbilt, as those were less restricted by the First Amendment (Grubbs, 2006; Tilley, 1996).

Conceptual Frameworks

The conceptual frameworks most commonly applied to cases such as *Christian Legal Society v. Martinez* focus on freedom of association, the parameters of limited public forums, the appropriate application of viewpoint neutrality, and the distinction between speech and conduct with regards to sexual orientation. Varying perspectives on these issues prove to be consequential as institutions consider their course of action on anti-discrimination policies. In this section, each framework will be described insofar as it is relevant to the larger issue of anti-discrimination policies and the status of student organizations with exclusive ideology.

Freedom of association: Freedom of association pertains to one’s right to voluntarily join or leave groups, work collectively toward shared interests, and most importantly in these cases, the right to open and close a group’s membership to people on the basis of certain criteria. When it comes to student organizations on university campuses (and especially public campuses), the question becomes how far that freedom of association extends before there is compelling governmental interest to restrain it (“Leaving Religious Students Speechless,” 2005).

Limited public forums: Student organizations express their freedom of association on public campuses in what are called limited public forums. In these forums, the administration of public universities, as governmental actors, has the right to regulate behavior within the forum, as long as there is a rational basis for its regulations and the regulations are viewpoint neutral (Goldberg, 2011). Allowing governmental actors to regulate limited public forums is important to ensure that an unbridled freedom of expressive association does not give groups leeway under the law to unduly discriminate. However, there remain questions about whether governmental actors at public institutions are leveraging their regulatory powers in the limited public forums they oversee to suppress or silence views that they do not agree with. In addition to the two criteria for legitimate regulation mentioned above (rational basis and viewpoint neutrality), their regulations

should not single out particular viewpoints for unequal treatment (Affolter, 2013).

Viewpoint Neutrality: In the Martinez case, the Supreme Court held that a “viewpoint neutral” regulation is one that applies equally to all: “It is hard to imagine a more viewpoint-neutral policy than one requiring all student groups to accept all comers,” the Court believed (as cited in Pritchard, 2013, p. 291). A counterpoint is that although an all comers policy could appear neutral, it could actually serve to silence certain groups more than others. The majority in *CLS v. Martinez* did not ascribe this counterpoint much consideration, nor did they ascertain that some groups may actually have good reason for their exclusionary practices, according to critics. Critics also argued that when it comes to sexual orientation, there is really only one kind of club — a religious club of a conservative moral persuasion — that would experience the full effect of this supposedly viewpoint neutral anti-discrimination policy. Furthermore, as student fees are utilized to fund the forum, it is possible that the university could abuse those funds as a vehicle to suppress speech that they do not like (“Leaving Religious Students Speechless,” 2005).

Speech vs. conduct: Of central importance is whether universities that derecognize exclusionary student organizations are also levying a substantial burden on their right to free speech. Some would suggest that these anti-discrimination policies are not being enforced as a result of a group’s speech but rather as a result of their conduct, which is perceived as discriminatory. In other words, they are free to hold and speak whatever ideology they wish as long as they do not conduct themselves in a discriminatory manner when selecting members and leaders (ACLU, n.d.).

Arguments and Evidence

Arguments Against Policies that Compel Groups to Accept All Students

A 2005 Harvard Law Review Note entitled “Leaving Religious Students Speechless: Public University anti-discrimination Policies and Religious Student Organizations” detailed some of the prominent arguments against derecognizing student organizations under anti-discrimination policies. First, when anti-discrimination policies are wielded to derecognize student groups, they have real potential to squash free speech where it occurs the most frequently on a typical campus. In contrast to classrooms, where a faculty member exercises “practical control” over any discussion, student organizations facilitate environments where students can be more open about their beliefs and ideas (p. 2885). Therefore, policing these environments would be tantamount to frustrating the freedom of speech where it manifests most transparently on campus.

Second, the Note cited the practical difficulty that student groups would have maintaining their expressive message if they were required to accept students who objected to it. If they are unable to administer their own membership, the Note argues, they will likely struggle to maintain the particularity or consistency of their message. Furthermore, objectors could cause division, strife, and make it very difficult for the group to speak collectively. Even if one does not have these intentions, they could alter the organization’s message on account of their visible presence simply by being a non-adherent. The Note argues that when governmental actors attempt to remedy historical inequalities by obligating some organizations to accept objectors to their message, “what it is really doing is using the state’s coercive power intentionally to privilege one expressive-association message over another” (“Leaving Religious Students Speechless,” 2005, p. 2892). Furthermore, the state privileges two viewpoints over that of the organization: the

viewpoint of inclusion advocated by the state, and the viewpoint of those who object to the organization's message, yet desire to be leaders in the organization, nonetheless.

Finally, the Note recalled that universities, like student organizations, are expressive entities that are afforded the freedom of association. However, to allow the associational rights of the university to supersede that of a student organization would be to amalgamate students' viewpoints with that of the university, when in reality the viewpoints of students and their organizations "are not attributable to the university itself as an expressive entity" ("Leaving Religious Students Speechless," 2005, p. 2896). Furthermore, the viewpoint of a public university cannot trump that of a student organization, as this would undercut the principle that public colleges and universities are to be free and open marketplaces of ideas, not echo-chambers exempt from dissenting opinions.

Goldberg (2011) offered an additional argument that is purely pragmatic: ensuring compliance with these policies would be very difficult to monitor. A university that chooses to administer an all comers policy would be taking on the exceedingly burdensome responsibility of policing all of their student groups, whether they are political, religious, advocacy-based, or campus newspapers, in order to make sure they are not in some way preventing objectors from joining or becoming leaders. This becomes even more complex when organizations find loopholes to make it seem like they are complying with the policy, when in reality they are not. Goldberg employed the example of a libertarian publication that allows all students to join, but never gives non-libertarian students any editing responsibilities. In this case, while non-libertarian students are technically members, they are essentially excluded because they are denied the full benefits of membership.

Arguments in Favor of Policies that Compel Groups to Accept All Students

Knight (2008) offered support for anti-discrimination policies. She argued that when student groups with exclusive leadership requirements are stripped of their student organization status, this does not necessarily infringe on their First Amendment freedoms. The thrust of Knight's argument was that universities are not forcing these groups to admit objectors or to represent them in some way. Furthermore, they are not refusing them the right to speak freely about their beliefs. Rather, they are "simply denying them the 'perks' associated with being a recognized student group" (Knight, 2008, p. 264). Consequently, their constitutional rights are not being violated. On the contrary, this action is necessary so that universities can protect students from invidious discrimination.

Knight offered two reasons why the derecognition of discriminatory student organizations is not unconstitutional. First, it is not the group's speech that compels the university to wield its anti-discrimination policy, but the group's discriminatory conduct. Second, the anti-discrimination policies imposed by entities like UC-Hastings are viewpoint neutral. While some argue that anti-discrimination policies are a slippery slope toward denying freedom of association and freedom of speech, Knight insisted that it is possible for universities to both enforce their anti-discrimination policies and protect the First Amendment rights of the student groups that are being derecognized under those policies.

In Justice Ruth Bader Ginsburg's majority opinion in *CLS v. Martinez*, she emphasized that while CLS was stripped of its status as a recognized student organization, the group was still able to exercise certain privileges on campus. This included the use of some bulletin boards and

chalkboards to promote events, as well as maintaining the same access to off-campus resources like social media platforms to host group communication (Bhagwat, 2011). The burden levied on CLS, therefore, did not outweigh the state's compelling interest to enforce the all comers policy at UC-Hastings on behalf of a protected class (sexual orientation).

In a concurring opinion, Justice Kennedy emphasized the important pedagogical function of UC-Hastings' policy. He cited the Law School's legitimate interest in exposing students to viewpoints and beliefs they do not share; the policy ensured that student organizations like CLS did not become echo-chambers (Bhagwat, 2011). Woodford and Kulick (2014) argued in favor of this point, noting that when spaces exist on campus where heterosexual and sexual minority students can dialogue about topics like heterosexism, campus climate, and allyship, this can contribute to increased awareness about the experiential and psychological climate on campus. In turn, this dialogue can "encourage heterosexual students to stop intentionally or unintentionally perpetuating discriminatory actions, to intervene in response to instances of discrimination, and to engage in behaviors that foster an inclusive climate where students might feel safe to disclose their minority sexuality" (p. 22).

Perhaps the most pressing concern for proponents of anti-discrimination policies is that groups that seek to exclude sexual minorities are doing so because they are homophobic. Even worse, they are able to maintain their negative attitudes and false stereotypes under the guise of the freedom of association. Commenting on a perennial case on the freedom of association, *Boy Scouts of America v. Dale* (2000), Chemerinsky and Fisk argued that the freedom of association could quickly become unwieldy: "Any group that wants to discriminate may do so based on claims of freedom of association," they wrote (2001; p. 596). In *Boy Scouts of America v. Dale*, the Supreme Court concluded that the Boy Scouts' freedom of association prevented the government from forcing the Boy Scouts to accept James Dale, a homosexual and gay rights activist, as an adult leader. Chemerinsky and Fisk passionately disagreed with the decision:

Boy Scouts of America v. Dale is a ruling in favor of discrimination and intolerance that is wrapped in the rhetoric of freedom of association. Those who want to discriminate can always invoke freedom of association; all enforcement of anti-discrimination laws forces some degree of unwanted association. It was not surprising that the five most conservative Justices on the Court favored the Boy Scouts and its condemnation of homosexuality. This, though, does not make it any more right than other decisions throughout history that have upheld bigotry and discrimination. Someday, *Boy Scouts of America v. Dale* will be repudiated by the Court like other rulings that denied equality to victims of discrimination (2001; p. 597).

Experiences of discrimination and perceptions of homophobia can have a negative effect on LGBTQ+ student perceptions of campus climate, persistence in college, and likelihood to report sexual orientation-motivated violence (Rankin, Blumenfeld, Weber, & Frazer, 2010; Blumenfeld, Weber, & Rankin, 2016). On the contrary, research suggests that when sexual orientation is added to anti-discrimination policies, it is accompanied by a rise in campus activism on behalf of sexual minorities, an increase in campus members who came out, an increase in LGBTQ+ centers, and an increase in reports of sexual orientation motivated hate crimes on campus (D'Augelli, 1989, Stotzer, 2010). Zemsky and Sanlo (2005) argued that the greatest

contribution of policies supporting the wellbeing of LGBTQ+ people is their symbolic value: they serve to rekindle an institution's commitment to diversity, inclusivity, and equity.

Given the quantifiable impact that anti-discrimination policies have on campus climate for sexual minorities, proponents feel that the benefit of enforcing these policies for LGBTQ+ people outweighs the burden that some groups must endure as a result of being derecognized under anti-discrimination policies. Woodford and Kulick (2014) emphasized, however, that institutional strategies to welcome and celebrate sexual minorities should not stop at an anti-discrimination policy: "These strategies need to go beyond enacting and enforcing anti-discrimination policies to develop programs that actively affirm sexual minority identities and encourage conversations across difference" (p. 22). For example, institutions could make a better effort to highlight LGBTQ+ campus members' perspectives and contributions to campus, as well as providing opportunities for LGBTQ+ people to lead in positions with real decision-making power.

Proposed Solutions to the Policy Debate

Though instances of universities derecognizing student organizations make for provocative headlines, the reality is that viable ideas for solutions have been offered to satisfy the desires and goals of both parties. Affolter (2013) suggested allowing student organizations to request exceptions from anti-discrimination policies. Some might say that fielding exemption requests is too large a burden for universities to bear. However, Affolter argued that we "expect state institutions in the wider public sphere to temper their nondiscrimination policies in order to accommodate citizens' First Amendment rights," so it would not be outlandish to expect the same from public colleges and universities (p. 258). Furthermore, such a caveat would give student groups an opportunity to state their case for why the anti-discrimination policy would inhibit their ability to promote their particular ideology and maintain a unified group message. This process could work to expose groups who lack good reason for requesting an exception. It would also force groups seeking an exception to publicize their rationale for review by the university, while also pressing the university to provide legitimate reasons for not granting an exemption. Affolter argued that this process "would raise costs for both insincere student organizations and biased or insincere university officials," and would be preferable to "giving a blank check to either side in these conflicts" (p. 259).

Knight (2008) argued that universities that derecognize exclusive student groups should also provide an "alternative forum with minimal university involvement and sufficient opportunity for First Amendment expression" (p. 271). Knight suggested that the Equal Access Act could serve as a model, a law that Congress passed in 1984 to ensure that all student groups and extracurricular activities have access to facilities at secondary schools that receive federal funding. By providing a "sub-level forum" where derecognized groups can exercise their First Amendment rights, universities would not be compelled to subsidize groups that discriminate on the basis of sexual orientation (p. 274). On the other hand, exclusionary groups would not be compelled to include students who endorse homosexual practice, which could inhibit them from preserving or promoting their message (p. 274).

Implications for Policy, Practice, and Future Research

Reflecting on the current status of American higher education's relationship with

spirituality, Ringenberg (2016) made this striking observation:

The same environment that is producing a greater interest in spirituality in general and religious discourse in the secular universities in particular is also leading to a declining interest in protecting religious freedom in general and religious privilege in particular—especially for the historically dominant Christian faith (p. 205).

This perspective is not uncommon for Christian conservatives, who worry that their worldview and perspectives will be preyed upon by public university officials in the name of “tolerance” and progressive ideals. Their fears are not totally unsupported; in some cases, universities conducted themselves in ways that appeared predatory, at least on the surface. This was the apex of Business Leaders in Christ’s complaint against the University of Iowa in 2017; that they were singled out by the university despite other student groups failing to abide fully by their anti-discrimination policy. However, exclusionary groups should be cautious about accusing universities of intentionally seeking to undermine their First Amendment rights. It is possible that their intentions are good, but they just fail to consider all of the ramifications of their actions. After all, “This concept of having an open melting pot of change and diversity has at times blurred the issues of whose values and rights a school should promote and protect” (Grubbs, 2006, p. 4).

Maintaining a commitment to equality and inclusion while seeking to preserve the freedoms of groups with exclusionary ideology is a difficult balance. Laurence Tribe has called it “the ancient paradox of liberalism” (as cited in Affolter, 2013). Therefore, one implication of this study is that one should not expect for this “ancient paradox” to be fully resolved in American higher education anytime soon, or perhaps to be resolved to everyone’s satisfaction at all. The philosopher John Rawls recognized that our society includes “a plurality of conflicting, and indeed incommensurable, conceptions of the meaning, value, and purpose of human life,” which he called “the fact of pluralism” (Rawls, 1987, p. 4). In his book *Confident Pluralism: Surviving and Thriving through Deep Difference* (2018), John Inazu wrote:

We should not underestimate the significance of [our] differences. We lack agreement about the purpose of our country, the nature of the common good, and the meaning of human flourishing. On these questions, Americans are—and perhaps always have been—a deeply divided people (p. 15).

Nevertheless, universities and their exclusive student groups should work to find common ground that serves to benefit them both.

There are several ways that universities can benefit from the sustained presence of student groups with exclusive ideology. First, these groups help to maintain the presence of viewpoint diversity on campus through the presence of differences that are real as opposed to superficial. In turn, the presence of viewpoint diversity ensures a true marketplace of ideas on campus, and gives universities the opportunity to show students how to address deep worldview differences in positive and productive ways.

Some might argue that real viewpoint diversity can do as much harm as it can good. Students could be exposed to discriminatory ideas and behaviors and choose to mimic them, which could potentially engender a polarized campus climate. Snider (2004), however, noted that

for most public universities, left-leaning thought is pervasive while conservative-leaning groups with exclusive ideology are very small in comparison. As a result, proponents of these groups argue that their existence does little to engender discriminatory beliefs in the minds of students, and occasional exposure to these groups rarely results in a segregated campus community.

Still, opponents argue that universities have a responsibility to teach students that discriminatory behaviors and ideas, even if they are necessary to preserve a group's ideology, will only serve to exacerbate the societal inequalities that have plagued minority communities for generations. Therefore, anti-discrimination policies are needed to protect these historically marginalized groups from "the artificial division of people [that] fosters stereotypes about what goals, abilities, and interests' certain types of people hold" (Snider, 2004, p. 876). Society suffers as a whole when certain populations are impeded from contributing their talents to groups that they are historically excluded from.

In some ways, this debate centers around what is best for the health of American democracy, which public universities are theoretically tasked to protect and celebrate. Though discriminatory groups themselves may not foster democratic ideals, their presence plays a role in furthering the spirit of democracy on their respective campuses. By their presence as a collective voice, other students, staff, and faculty have the opportunity to be exposed to their ideology. In order for that ideology to be communicated with any integrity, however, it seems the group would need to be able to preserve a common message and determine who can or cannot speak on their behalf.

In their enactment of anti-discrimination measures, universities send a message that will have many intended and unintended consequences. They should exercise great caution in their decisions with respect to student groups with exclusive ideology. In an effort to constitute a welcome and inclusive campus environment, they could be undermining students' constitutional provisions, which could invite costly lawsuits and disputes that threaten their public image. A university should make a decision with great consideration for what the policy will communicate about First Amendment rights, the aims and goals of democracy, the power of the government, the historical legacy of discrimination toward marginalized groups in American society, and the purpose of a public university.

Further research on this policy debate is needed to investigate the impact that anti-discrimination policies have on the colleges and universities that institute them. Scholarship on this intersection in higher education is slim to none. Vanderbilt recently revised the language of their all comer's policy, after it was determined that not all students and student organizations fully understood it, especially as it related to sexual orientation (Nondiscrimination FAQ, n.d.). This raises the question of whether or not Vanderbilt's policy (and others like it) realize their intended purposes, or if they simply create a headache for the universities attempting to monitor them and the student groups trying to honor them.

An additional limitation of this project is that a majority of the reflection and scholarship on these policies is confined to law briefs. Though law briefs serve as a critical guide to understanding the makeup and legal ramifications of these policies, they are not designed to measure the quantitative or qualitative effect of these policies on student experiences, outcomes, and perspectives. Additional research is needed to provide a clearer picture of how these policies are affecting students, educators, and their campuses.

Conclusion

Since the 1960s, Christian student organizations of a conservative persuasion have steadily increased in size and number in American higher education (Schmalzbauer, 2007, 2018). Today, these groups maintain a robust presence on many colleges and universities campuses, but their ideology has increasingly become unorthodox as Christian traditions and underpinnings faded from institutional legacies. They are running up against new anti-discrimination policies that threaten their ability to self-constitute and self-govern, as they are being asked to open up their membership and leadership to students whose beliefs or behaviors do not align with their ideology. From the perspective of universities, these policies are enabling them to fight the good fight on behalf of historically marginalized groups in American society.

The debate is still going on today, and it incorporates questions that concern the heart of American democracy, constitutional rights, and our responsibility to right societal wrongs. As long as there are worldviews represented in higher education that involve ideological exclusion, one should not expect this debate to remain fully settled on any campus indefinitely. In all areas of social and political life, freedom and equality will always struggle to co-exist.

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