



Nikolas Nartowicz  
State Policy Counsel

(202) 466-3234  
(202) 898-0955 (fax)  
americansunited@au.org

1310 L Street NW  
Suite 200  
Washington, DC 20005

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The Honorable Donald Schaible  
Chair  
Education Committee  
North Dakota Senate  
600 East Boulevard  
Bismarck, ND 58505

The Honorable Jay Elkin  
Vice Chair  
Education Committee  
North Dakota Senate  
600 East Boulevard  
Bismarck, ND 58505

**Re: Oppose HB 1503 – Don’t Permit Discrimination in Public Institutions of Higher Education**

Dear Chair Schaible and Vice Chair Elkin:

On behalf of the North Dakota members and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 1503 insofar as it could exempt religious student organizations and other student groups from nondiscrimination policies at public universities and colleges. The bill should be rejected because it is unnecessary and could sanction discrimination.

Student organizations are an important part of campus life. Research shows that they contribute to overall student satisfaction and success. Having robust non-discrimination policies in place ensures that all students are able to access various organizations and explore different ideas and identities. To prevent discrimination on campus, promote equality and fairness, and foster inclusionary practices for student organizations, many public colleges and universities have “accept-all-comers” policies. These nondiscrimination policies generally withhold funding<sup>1</sup> and official recognition from student groups that are not open to all students. This bill, in contrast, would undermine these policies.

This bill isn’t even necessary—federal law already exempts religious student clubs from “accept-all-comers” policies. Recently adopted federal regulations state that public colleges and universities that receive federal funding may not deny a religious club “any right, benefit, or privilege . . . because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards.”<sup>2</sup> As a result, religious student clubs can escape the nondiscrimination provisions that apply to all other officially recognized and funded student clubs.

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<sup>1</sup> The revenue stream for such funding, which is common at universities throughout the country, is created by a mandatory student activity fee imposed on students.

<sup>2</sup> 34 C.F.R. § 75.500; 34 C.F.R. § 76.500.

Neither the federal law nor HB 1503 create the level playing field they promise. Instead, they actually allow clubs to discriminate. For example, a Christian student group could turn away a student because he is gay or she is a single mom. This bill could even allow a white supremacist group to demand university funding and recognition.

The provision in the bill is not required by the First Amendment. Any student club can become a recognized group and access funds if it adheres to its school's nondiscrimination policy. And if a club decides it wants to impose requirements for membership and leadership that conflict with the school policy, it will not be silenced or driven off campus; instead, it, like any other club, simply will not receive official recognition and funding. In fact, the Supreme Court upheld an "accept-all-comers" policy in *Christian Legal Society v. Martinez*<sup>3</sup> against claims that it violated the religious freedom of Christian student groups. The Court explained that the policies do not violate the First Amendment because the denial of benefits is based on the group's *conduct*, not their *views*.<sup>4</sup>

The North Dakota legislature should not support divisive legislation that fosters discrimination in the state's public institutions of higher education. It should not undermine the power of public institutions of higher education to safeguard their students from discrimination and mandate that student activity fees paid by all students only support those groups that are open to all students. I have enclosed with this letter a document that has more information on the problems with this bill. Thank you for your consideration on this important matter.

Sincerely,



Nikolas Nartowicz  
State Policy Counsel

cc: Members of the Senate Education Committee

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<sup>3</sup> See *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

<sup>4</sup> *Id.* at 696-7.



# Discrimination by Student Groups at Public Colleges and Universities

The opportunity to both join and lead student groups is an essential part of the educational experience. Student groups contribute to the breadth and quality of collegiate life and allow students to build their experience and their resumes. To ensure all students can participate, colleges and universities often have nondiscrimination policies that require officially recognized student groups to allow any student to join, participate in, and seek leadership in those groups. These policies, also known as “all-comers” policies, are important because they prevent student groups from discriminating, including on the basis of religion or sexual orientation.

State legislators, with the support of special interest groups, have pushed bills that would prohibit schools from enforcing all-comers policies. Instead of upholding the fundamental American values of equality and nondiscrimination, these bills would create special exemptions for religious clubs.

## **All-comers policies promote equality by ensuring that public colleges and universities do not subsidize discrimination with tax dollars and tuition fees.**

Funding for student groups comes from taxpayer dollars and, often, mandatory student activity fees paid by students. All-comers policies guarantee that students are not forced to fund a group that would reject them as members.

## **All-comers policies treat religious student groups the same as all other student groups.**

Organizations of any political, religious, or ideological stripe can become recognized groups and access funds provided they adhere to the nondiscrimination policy.

## **All-comers policies protect religious freedom, which gives us all the right to believe or not as we see fit.**

Religious freedom does not include a right to use religion to discriminate—especially not while using taxpayer dollars or using the tuition fees of the very students who are being excluded.

## **Bills to overturn all-comers policies would actually sanction discrimination, not bar it.**

Supporters of these bills argue that all-comers policies discriminate against religious groups. But instead of treating all groups equally, the bills would treat religious groups specially and force schools to support discrimination.

**The Supreme Court has held that all-comers policies are constitutional.**

In the 2010 case *Christian Legal Society v. Martinez*, the Court explained that the policies do not violate the First Amendment. Religious student groups still have free exercise rights and can continue to meet on campus. They do not, however, have the right to force a public university to subsidize their discriminatory policies—and neither does any other student group.

**Public universities have a strong interest in preventing discrimination on campus and fostering inclusionary practices for on-campus student organizations.**

Student groups are an essential part of the educational experience. Therefore, all public institutions of higher education should have the right to ensure that the mandatory student activity fees paid by all students only support those groups that are open to all students.

**For more information, please contact:**

**Nik Nartowicz**

**nartowicz@au.org | 202-898-2135**

