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March 9, 2020

The Honorable Maggie McIntosh
Chair
Appropriations
Maryland House of Delegates
Room 121
House Office Building
Annapolis, Maryland 21401

The Honorable Michael A. Jackson
Vice Chair
Appropriations
Maryland House of Delegates
Room 121
House Office Building
Annapolis, Maryland 21401

Re: Oppose HB 796 – Don’t Permit Discrimination in Public Institutions of Higher Education

Dear Chair McIntosh and Vice Chair Jackson:

On behalf of the Maryland members and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 796. This bill would require public universities and colleges to recognize, register, and fund student groups that discriminate in their membership and leadership. The bill should be rejected.

HB 796 is an attempt to nullify “accept-all-comers” policies. These nondiscrimination policies generally withhold funding¹ and official recognition from any public university student group that is not open to all students. They prevent discrimination on campus, promote equality and fairness, and foster inclusionary practices for on-campus student organizations.

These policies do not target the religious nature of any group—organizations of any political, religious, or ideological stripe can become recognized groups and access funds provided they adhere to the nondiscrimination policy. And if a religious club decides it wants to discriminate anyway, it will not be silenced or driven off campus; instead, it, like any other club, simply cannot receive official recognition and funding. In fact, the Supreme Court upheld an “accept-all-comers” policy in *Christian Legal Society v. Martinez*² 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*.³

¹ 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.

² See *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

³ *Id.* at 696-7.

HB 796 would actually sanction discrimination rather than bar it. Instead of treating all groups equally, HB 796 would treat religious groups specially and force schools to support discrimination. But schools have a legitimate interest in preventing discrimination on campus and fostering inclusionary practices for student organizations. All public institutions of higher education should have the right to safeguard that the mandatory student activity fees paid by all students only support those groups that are open to all students.

The Maryland legislature must not support divisive legislation that fosters discrimination in the state's public institutions of higher education. I have enclosed with this letter a document outlining further the problems with this bill. Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikolas Nartowicz", with a stylized flourish at the end.

Nikolas Nartowicz
State Policy Counsel

cc: Members of the House Appropriations Committee



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. In 2019, Arkansas, Iowa, Kentucky, North Dakota, and Texas each passed one of these bills. We expect these efforts to continue in 2020 legislative sessions.

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:

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