



**Testimony for the House Appropriations Committee  
March 10, 2020**

**HB 796 – Higher Education – Freedom of Speech on Campus –  
Protection  
(Forming Open and Robust University Minds (Forum) Act)**

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**OPPOSE**

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The ACLU of Maryland opposes HB 796, which would prevent public colleges and universities from enforcing non-discrimination policies against student organizations who exclude students based on the organization’s “sincerely held beliefs.” Public schools of higher education would be required to provide the same recognition, funding, and other benefits to such organizations regardless of compliance with the school’s non-discrimination policies.

This bill attempts to circumvent *Christian Legal Society v. Martinez*,<sup>1</sup> in which the Supreme Court held that schools may refuse funding to student groups engaged in discriminatory conduct. Since then, state legislatures across the country have introduced bills requiring colleges and universities to recognize and provide taxpayer funding to student groups that discriminate against members based on sexual orientation and identity and religion. Although the bill may seem to propose equal rights for student groups to express sincerely held beliefs, it will give religious campus organizations a privilege to discriminate, enabling a harmful university culture.

Academic freedom is fundamentally important to a free society. “This means the exclusion of governmental intervention in the intellectual life of a university.”<sup>2</sup> Prohibiting non-discrimination policies interferes with this freedom. Government should not restrict a school’s decision that its mission is best served by requiring student organizations to meet viewpoint-neutral criteria, including not discriminating in choosing their members.

Furthermore, denying recognition to discriminatory organizations does not violate students’ First Amendment rights. Students have the right to form organizations that deny membership based on religion, sexual orientation, or other characteristics. However, this right does not include government recognition and funding for such activities. Non-discrimination policies are viewpoint-neutral, because they only apply to an organization’s conduct, not

<sup>1</sup> 561 U.S. 661 (2010).

<sup>2</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957).



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their beliefs. There is no question whether student organizations have the freedom to believe and associate however they want. However, there is no right to be publicly funded and recognized while engaging in discriminatory conduct.

Public colleges and universities must ensure that all students have equitable access to the leadership, educational, social, and professional opportunities that student organizations provide. When schools are prevented from enforcing non-discrimination policies, it enables an exclusionary, discriminatory, and dangerous environment that harms students and the campus community.

For the foregoing reasons, we urge an unfavorable report on HB 796.