Statement in Opposition to HB 735/SB 719 Student Organizations/Rights and Recognitions

The ACLU-NC is a nonpartisan, nonprofit membership organization dedicated to preserving and protecting the individual rights provided for in both the U.S. and North Carolina Constitutions with approximately 12,000 members and supporters in North Carolina. Both HB 735 and SB 719 require community colleges and universities to recognize and grant funding and facilities to students groups that discriminate in selection of leadership, dispute resolution, or possibly membership based on the student group's faith or mission. The ACLU-NC opposes HB 735/SB 719 because it is not necessary to protect the associational rights of students and requires public universities to provide their name and funding to discriminatory student organizations in violation of their First Amendment right to academic freedom.

1. **Public colleges and universities should not be required to lend their name to and fund discriminatory organizations as required by HB 735/SB 719.**

- School groups offer a variety of benefits to members and leaders, including access to class information, study-group opportunities, professional contacts, and alumni associations. Universities and community colleges should have the discretion to decide whether they want to lend their name or provide funding to student organizations that deny these benefits to certain classes of students.
- Proponents of the bill argue that it does not allow student groups to deny membership based on certain characteristics, but is instead limited to leadership positions. However, the bill does require recognition of groups that "order their internal affairs" and "resolve the organization's disputes" according to their faith or mission. This language is unclear, but certainly can be read to allow denial of membership or expulsion of members based on race, sex, religion, sexual orientation, or other immutable characteristics.
- While both bills require universities to recognize and fund organizations that discriminate, the Senate bill does acknowledge the existence of federal and state laws that explicitly prohibit discrimination (e.g., Title IX (prohibiting discrimination based on sex), Title VI (race) or Section 504 (disability)). The House bill does not make this same exception, seemingly flouting federal and state law.

2. **Denial of recognition to discriminatory student organizations does not violate their First Amendment rights.**

- Under the First Amendment, students at public universities have the right to form clubs and organizations that deny membership based on race, sex, religion, national origin, sexual orientation, disability, or any other characteristic. Public universities may not prohibit students from forming such groups or disseminating their messages.
- However, the right to free association does not include the right to government sponsorship or funding of that association, as the Supreme Court explained in *Christian Legal Society v. Martinez*.[1] In that case, the U.S. Supreme Court upheld a law school policy requiring recognized student organizations to accept any student as a member. The school denied recognition to CLS because it had a policy of denying membership to "unrepentant homosexuals" and students who refused to sign the group's statement of

[1] 130 S. Ct. 2971 (2010).

faith. The Supreme Court upheld that policy despite CLS's claim that the law school's policy requiring it to open its membership to all students violated its freedom of association.

- The Court explained that officially recognized student organizations constitute a limited public forum. The university may impose conditions for participation in that forum as long as those conditions are reasonable and viewpoint-neutral. An anti-discrimination policy is reasonable because it ensures that the leadership, educational, and social opportunities afforded by recognized student organizations are available to all students.
- Moreover, an anti-discrimination policy is viewpoint-neutral because it applies only to an organization's conduct, not the views it espouses. Under such a policy, a recognized student group may promote the view that homosexuality is a sin or that Catholicism is the one true faith. It simply may not engage in discriminatory conduct.[2]

3. Prohibiting anti-discrimination policies interferes with public colleges and universities' academic freedom.

- The Supreme Court has recognized the fundamental importance of academic freedom to the survival of a free society. "This means the exclusion of governmental intervention in the intellectual life of a university."[3] "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation."[4]
- Moreover, "[a] college's commission—and its concomitant license to choose among pedagogical approaches—is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process."[5]
- The government should not interfere with a college or university's determination that its mission is best served by recognizing and funding student organizations that meet certain reasonable, viewpoint-neutral criteria, including a requirement that they not discriminate in membership.

Students' rights to form clubs and organizations that deny membership based on whatever criteria they wish is already protected by the First Amendment. The ACLU-NC urges legislators to vote against HB 735/SB 719, which will require public colleges and universities to tacitly endorse clubs with discriminatory policies through funding and use of the school's name.

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[2] In this way, an anti-discrimination policy is entirely different from the policy struck down in *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995), in which a university refused to fund a student newspaper because of its religious ***viewpoint.***

[3] *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957) (Frankfurter, J., concurring).

[4] *Id.* at 263.

[5] *Christian Legal Society*, 130 S.Ct. at 2988-89.