

No. 25-581

In the Supreme Court of the United States

ST. MARY CATHOLIC PARISH, LITTLETON, COLORADO,
ET AL.,
Petitioners,

v.

LISA ROY, IN HER OFFICIAL CAPACITY AS EXECUTIVE
DIRECTOR OF THE COLORADO DEPARTMENT
OF EARLY CHILDHOOD, ET AL.,
Respondents.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE TENTH CIRCUIT*

**BRIEF FOR FELLOWSHIP OF CHRISTIAN
ATHLETES, THE NAVIGATORS, CAMPUS
CRUSADE FOR CHRIST, INC., INTERVARSITY
CHRISTIAN FELLOWSHIP/USA, YOUNG LIFE,
AND CHI ALPHA CAMPUS MINISTRIES AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*

Amici curiae are religious organizations that have served students on thousands of school campuses nationwide for many decades. Unfortunately, public schools discriminate against *amici* all too often. Those schools, like Colorado here, invoke this Court's egregiously wrong decision in *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. 661 (2010). Because Colorado echoes the *Martinez* justifications for discrimination that *amici* regularly face, they have a significant interest in this case. *Amici* share a concern in protecting the ability of religious organizations to follow their beliefs.*

Fellowship of Christian Athletes (FCA) is a global nonprofit sports ministry with a vision to see the world transformed by Jesus Christ through the influence of coaches and athletes. FCA operates sports programming, including camps, leagues and clubs, and on-campus "huddles" at schools ranging from elementary schools to universities. FCA has repeatedly faced exclusion from campus recognition, access to facilities, and participation in student-organization programs because of its religious beliefs, and such policies directly burden FCA's religious exercise and associational rights.

* In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

The Navigators is a Christian discipleship organization that helps people grow in Christ through one-on-one discipleship, Bible study, evangelism, and leadership development. Its collegiate ministry has communities on nearly 200 college campuses around the United States, reaching approximately 25,000 college students each year. Through Bible studies, one-on-one discipleship, retreats, and campus events, the Navigators Collegiate aims to equip students to be lifelong disciplemakers who will make Christ known not only on campus, but wherever they go after graduation.

Campus Crusade for Christ, Inc., operates in the United States under the name “Cru.” Cru has established affiliated chapters—student organizations—on over 2,000 American college campuses and hundreds of high schools, with more than 106,000 students involved. These chapters, like many religious student organizations, require their leaders to articulate Christian beliefs and live a Christian lifestyle. Cru has an interest in upholding the religious, expressive, and associational interests of religious student organizations on college and high school campuses across the nation.

InterVarsity Christian Fellowship/USA is a Christian ministry that establishes and advances witnessing communities of students and faculty who follow Jesus as Savior and Lord on nearly 700 college and university campuses in the United States. Its employees and participants pursue this mission with a commitment to grow in love for God, God’s word, God’s people of every ethnicity and culture, and God’s purposes in the world.

Young Life is a Christian youth ministry organization committed to sharing the Good News of Jesus Christ with adolescents. Through local clubs and destination camps, Young Life desires to provide fun, adventurous, life-changing, and skill-building experiences, preparing kids for a lifelong relationship with Christ and a love for His word, His mission, and the local church. Young Life provides opportunities for thousands of middle school, high school, and college students of all backgrounds and abilities to form student groups on their campuses to encourage personal spiritual development and create communities of fellowship and campus outreach.

Chi Alpha Campus Ministries, Inc. is a pentecostal university outreach affiliated with the General Council of the Assemblies of God. At each of its 272 campus chapters across the country, it strives to reconcile diverse groups of students to Christ and to equip them through Spirit-filled communities of prayer, worship, fellowship, discipleship, service, and missions. Chi Alpha chapters welcome everyone to their meetings, activities, and events. But they could not accomplish their respective missions without ensuring that their leaders embody their core religious beliefs.

SUMMARY OF THE ARGUMENT

Sixteen years ago, this Court “arm[ed] public educational institutions with a handy weapon for suppressing the speech of unpopular groups”—especially religious ones. *Martinez*, 561 U.S. at 707 (Alito, J., dissenting). In *Martinez*, the Court held that colleges could force a religious student group “to accept members who do not share the organization’s core beliefs about religion,” “on pain of relinquishing the advantages of recognition.” *Id.* at 668 (majority op.).

Below, Colorado invoked *Martinez*, saying that decision “made clear that requiring public-funding recipients to comply with certain conditions as a condition of receiving those subsidies does not impermissibly burden expression.” CA10 Answer Br. 65. Colorado quoted one of the worst portions of *Martinez*—that denying recognition supposedly creates “only indirect pressure” on a religious student group “to modify its membership policies.” *Id.* at 66 (quoting *Martinez*, 561 U.S. at 682). And, according to Colorado and *Martinez*, the religious group “may exclude any person for any reason if it forgoes the benefits of official recognition.” *Id.* (quoting *Martinez*, 561 U.S. at 682). The Tenth Circuit relied on *Martinez* for the same point. Pet. 46a.

School officials regularly try to wield *Martinez* to put religious student groups to the same “choice” that this Court has repeatedly rejected in other contexts: “being religious or receiving government benefits,” including simple school recognition. *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 480 (2020); see *Trinity Lutheran Church of Columbia, Inc. v.*

Comer, 582 U.S. 449, 462 (2017). Small wonder, then, that the parties invoking *Martinez* in this Court’s cases are government actors unconstitutionally suppressing the free exercise of religion guaranteed by the First Amendment.¹

Martinez must be overruled. Beyond its plain inconsistency with this Court’s more recent precedents protecting the autonomy and exercise rights of religious organizations, *Martinez* has been a disaster on campuses nationwide. This brief presses three related points.

First, *Martinez* has unleashed a wave of discrimination against religious student groups. Recent scholarship shows that schools are derecognizing far more religious groups than in the past. Most groups lack the resources to sue and simply vanish. Those that fought back tell one story. FCA lost its recognition at Pioneer High School after a teacher publicly denounced its beliefs and the district chartered a Satanic Temple Club to mock it. Business Leaders in Christ and a 25-year-old InterVarsity chapter—along with Sikh, Muslim, Latter-day Saint, and Protestant groups—were purged at the University of Iowa. A 75-year-old InterVarsity chapter was singled out at Wayne State while fraternities, sports teams, and other faith groups kept their own

¹ See, e.g., Brief for Intervenor-Respondents 30, *Fulton v. City of Philadelphia*, No. 19-123, 2020 WL 4820032 (U.S. Aug. 13, 2020); Brief for City Respondents 28, *id.*, 2020 WL 4819956 (U.S. Aug. 13, 2020); Brief for the Federal Respondent 28, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, No. 10-553, 2011 WL 3319555 (U.S. Aug. 2, 2011).

membership rules. And an FCA chapter was shut down at a District of Columbia high school in 2022. In each, the school's defense was *Martinez*. And *Martinez* now reaches well beyond student recognition. Courts have invoked it to let officials subject a Christian counseling student to mandatory sensitivity training, strip a Boy Scouts chapter of city property use, and cancel faith-based youth-mentoring grants. Colorado runs the same playbook here. This is no scattering of outliers—it is a nationwide pattern, and it traces to *Martinez*.

Second, the discrimination fostered by *Martinez* tramples core constitutional rights. It denies religious students and groups the equal terms—including recognition—that secular groups enjoy. *Martinez* collides with the freedoms of speech and association as well. Forcing a faith group to take leaders who reject its faith strips it of any real way to express its views with others. In the same way, *Martinez* contravenes the religious autonomy rights of these organizations to select their ministry leaders.

Third, religious student groups are uniquely exposed to this pressure—which is what makes *Martinez* so destructive. School communities are transient and fragile, their members impressionable, and their officials hold disproportionate power over campus life. Against that backdrop, derecognition inflicts lasting harm. It strips groups of meeting space, advisors, funding, and the means of communicating with the students they must reach to survive. It brands members as bigots and drives them off. The “consequence” for groups “that cannot in good conscience agree . . . that they will admit persons who

do not share their faith” “is marginalization”—or, all too often, outright extinction. *Martinez*, 561 U.S. at 741 (Alito, J., dissenting).

These wounds are *Martinez*’s doing. They will not heal until this Court overrules it. This Court should reverse the decision below and reject any analysis based on *Martinez*—and ideally overrule it.

ARGUMENT

I. *Martinez* has led to blatant discrimination against religious student groups.

Many cases in the lower courts show the harm that *Martinez* has wrought on campuses nationwide. Discrimination resulting in litigation is likely only the tip of the iceberg; most discrimination against religious student groups quickly achieves its goal of stamping such groups out of existence, and no litigation occurs. The egregious facts in the existing litigation, however, underscore the damage *Martinez* has done to campus religious groups—including many affiliated with *amici*.

1. Begin with a Fellowship of Christian Athletes group at Pioneer High School in California’s San Jose Unified School District. In April 2019, Pioneer teacher Peter Glasser began a campaign against FCA’s “objectionable” “moral stances,” including using his classroom whiteboard to confront the group’s statement of faith in front of his class. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 673 (9th Cir. 2023) (en banc) (“*San Jose*”). Glasser was on the school’s “Climate Committee,” a leadership group whose stated purpose was “to discuss

anything negatively impacting the climate or culture on campus.” *Id.* at 691 (citation modified).

Glasser complained that FCA’s views injured “the rights of others in my community to feel safe,” requiring urgent action. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 46 F.4th 1075, 1083 (9th Cir. 2022), *vacated*, 59 F.4th 997 (9th Cir. 2023). He pressured the school principal to remove FCA’s recognized status because he felt that “attacking these views is the only way to make a better campus.” *San Jose*, 82 F.4th at 674. He wrote:

I feel that there’s only one thing to say that will protect our students who are so victimized by religious views that discriminate against them: I am an adult on your campus, and these views are bullshit to me. They have no validity. . . . I’m not willing to be the enabler for this kind of “religious freedom” anymore.

Id. Glasser succeeded. Within a few weeks, FCA became the first student club *ever* to lose official approval in the school district. *Id.* at 675. The principal felt it was “sufficient to deny” recognition because “FCA holds” certain beliefs on sexual purity. *Id.*

Derecognition did not end FCA’s ordeal. Teachers objected to FCA having *any* presence on campus, and urged students to “rally[] against the issue.” *Id.* at 676. Glasser pressed leadership in repeated emails, questioning whether the school could “ban FCA completely from campus” by accusing FCA—led by teenage girls—of “sexual harassment.” *Id.*

Doubling down, the school denied FCA's recognition application for the next school year but granted recognition to a new Satanic Temple Club chapter formed to openly "mock" FCA's beliefs. *Id.* The new club's faculty advisor stated that "evangelicals, like FCA are charlatans and not in the least bit Christian based or they 'conveniently' forget what tolerance means. . . . They choose darkness over knowledge and they perpetuate ignorance." *Id.*

Echoing school officials, students led loud protests right outside Pioneer FCA's meeting, carrying signs disparaging the beliefs of FCA as "HATRED." *Id.* Later, student reporters attended an FCA meeting and took photos within feet of any FCA student who spoke. *Id.* at 677. A teacher present characterized it as "intimidating" and "flat out bullying," and said he had "never seen a club, sports team, or class so targeted." *Id.* The protests continued at every FCA activity. *Id.*

That spring, two FCA students filed suit against the school district. *Id.* In response, the school adopted a new "All-Comers Policy," modeled after the one in *Martinez*, though the policy was riddled with exceptions. *Id.* at 678. Though the students succeeded years later at the Ninth Circuit, the school district made their lives miserable during the litigation.

The district pressed to make the plaintiffs, originally pseudonymous minors, reveal their names. The school's "attorneys turned the discovery process into a grueling ordeal lasting nearly two years, demanding thousands of text messages between [the students] over three years regardless of whether they were related to the litigation and demanding all

communications between FCA-affiliated students and their mentor.”²

They deposed the girls “for multiple days during their freshman years of college, interrogating them about their religious beliefs, their FCA affiliation, and unrelated personal matters, and stretching two hours past the agreed upon time limit to question one plaintiff about her emotional distress and mental anguish.”³ “District attorneys even sought one plaintiff’s counseling records from her freshman year of college,” forcing her “to give up the ability to seek damages related to counseling and any ongoing harm after they graduated high school” in exchange for a stipulation that shielded her private records.⁴

The District’s bullying tactics extended beyond the two plaintiffs to the students keeping the FCA club alive after their graduation.⁵ As soon as the school’s attorneys learned about a new student leader, they tried to depose her.⁶ To protect her from a harassing and invasive deposition, FCA’s attorneys signed a stipulation to ensure that she would not be deposed and agreed to give up its ability to call FCA-affiliated students in exchange for this protection.⁷ Another student at the school initially expressed interest in

² Brief of D.B., Hannah Thompson, and Jacob Estell as *Amici Curiae* in Support of Plaintiffs-Appellants 6, *San Jose*, No. 22-15827 (9th Cir. Feb. 22, 2023) (“D.B. Br.”).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 7.

⁶ *Id.*

⁷ *Id.*

FCA leadership but backed out in intense anxiety after the principal required her to meet with him as a condition of participating in club rush, even though she was only a freshman.⁸

Though FCA eventually prevailed, litigation took years. During that time, the FCA chapter was subject to constant harassment by school officials. Indeed, the harassment could be seen as calculated to stamp out the group entirely—hence the school district’s contentions in court about mootness due to an alleged lack of interest in joining FCA.⁹ And the school’s defense on the merits was *Martinez* all the way down, with the school’s Ninth Circuit brief mentioning *Martinez* about 50 times.¹⁰

2. Next, consider the case of Business Leaders in Christ (BLinC) at the University of Iowa. *Bus. Leaders in Christ v. Univ. of Iowa*, 991 F.3d 969 (8th Cir. 2021) (“*BLinC*”). This small Christian business club at the University of Iowa was founded by students so that “seekers of Christ” could learn “how to continually keep Christ first in the fast-paced business world.” *Id.* at 974.

In spring 2016, one of the club’s members sought a leadership role but stated that he would not abide by the club’s position regarding Christian conduct. *Id.* When refused, he filed a complaint with the university, demanding it “[e]ither force BLinC to

⁸ *Id.*

⁹ Defendants-Appellees’ Answering Brief 20–23, *San Jose*, No. 22-15827, 2022 WL 2898933 (9th Cir. July 18, 2022).

¹⁰ *See generally id.*

comply with the nondiscrimination policy (allow openly LGBTQ members to be leaders) or take away their status of being a student organization.” *Id.* at 975.

The university investigated and told BLinC leaders that the group could refuse leadership candidates based on disagreement with their “religious philosophy” but not “status”—refusing to believe BLinC’s assertion it had done the former. *Id.* Though the university had allowed clubs with statements of faith for years, see *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4th 855, 860 (8th Cir. 2021) (“*Univ. of Iowa*”), it required BLinC to rewrite its constitution. *BLinC*, 991 F.3d at 976. And it *rejected* that constitution because it “facially failed to ‘comply with the University’s Human Right’s policy since its affirmation . . . *would have the effect of disqualifying certain individuals* from leadership positions.” *Id.* (emphasis added).

After the university stripped BLinC of its recognition, funding, and meeting space, BLinC’s student leaders were profiled in the school newspaper and local papers as “bigoted,” making them feel like outsiders and jeopardizing future jobs.¹¹

BLinC was a two-year-old student club with ten members when the university’s discrimination began, and though the club eventually prevailed in litigation, the university’s actions splintered and ultimately

¹¹ D.B. Br., *supra* note 2, at 3.

destroyed the club.¹² Once again, the university urged the courts to “use *Martinez* as [their] guide.”¹³

3. In response to the BLinC litigation, the University of Iowa derecognized 38 other student groups for violating its “Human Rights Policy,” including its 25-year-old InterVarsity Christian Fellowship group—and Sikh, Muslim, and Latter-day Saint groups. Confronting this litigation, the Eighth Circuit said that it was “hard-pressed to find a clearer example of viewpoint discrimination,” and that the university “served” its asserted “compelling interest in preventing discrimination” “by picking and choosing what kind of discrimination was okay.” *Univ. of Iowa*, 5 F.4th at 864–65.

When reviewing groups’ constitutions after BLinC, university officials “were told to ‘look at religious student groups first’ for language that required leaders to affirm certain religious beliefs.” *Id.* at 861. The university derecognized 38 student groups, several for requiring their leaders to affirm statements of faith. *Id.* But it allowed other clubs with statements of faith to remain.

LoveWorks, for example, “was formed by the student who was denied a leadership role in BLinC.” *Id.* at 864. It required “its members and leaders to sign a ‘gay-affirming statement of Christian faith.’” *Id.* “Despite that requirement—which violates the

¹² *Id.* at 4.

¹³ Defendants’ Resistance to Plaintiff’s Motion for Summary Judgment 6, *Bus. Leaders in Christ*, No. 3:17-cv-80, 2018 WL 7377715 (S.D. Iowa Nov. 6, 2018) (citation modified).

[university policy] just as much as InterVarsity’s—the University did nothing.” *Id.*

In talks with the university, InterVarsity offered to change its statement of faith, so it merely “requested” or “strongly encouraged” leaders to subscribe, but the university refused this substitute and derecognized the group. *Id.* at 862.

“Afterwards, InterVarsity struggled with recruiting members, organizing activities, and spent money and other resources in fighting its deregistration.” *Id.* And even after being reinstated following litigation, it had “lost a significant number of members” “out of fear of ‘retaliation from the University.’” *Id.*

Once again, the university’s briefing relied on dozens of *Martinez* citations.¹⁴

4. Moving over to Michigan’s Wayne State University, it derecognized its 75-year-old InterVarsity chapter because its “leadership standards ran afoul of the college’s ‘non-discrimination policy’ in requiring that its faith leaders profess to be faithful.” *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785, 796 (E.D. Mich. 2021).

¹⁴ See Brief of Defendants-Appellants 22–25, *Univ. of Iowa*, No. 19-3389, 2020 WL 279047 (8th Cir. Jan. 10, 2020); Defendants’ Brief in Support of Their Resistance to Plaintiff’s Motion for Partial Summary Judgment 7–10, *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, No. 3:18-cv-80, 2019 WL 10749771 (S.D. Iowa Jan. 15, 2019).

Other groups limited membership and leadership based on categories in the non-discrimination policy during and after InterVarsity's derecognition but were not derecognized. Club sports teams "excluded members who did not fall within their prescribed sex or gender identity categories," and "Greek letter fraternities and sororities excluded members and leaders based on their sex and gender identity." *Id.* at 798. "The Iraqi Student Organization required that its leaders be 'dedicated Iraqi student[s],' and "[t]he Muslim Student Association stated in its student group registration that it would remove leaders for '[v]iolat[ing] an Islamic principle that deems him/her unworthy to serve as a Muslim leader on campus.'" *Id.* at 798–99. Many other religious organizations likewise "limited leadership to those who shared the groups' religious principles," but only InterVarsity was derecognized. *Id.*

After derecognition, at the next major student recruiting event, InterVarsity students "were required to pay a fee, were excluded from a ballroom that hosted the tables of registered student groups, and were relegated to outside vendor status at a table on a different floor near a Starbucks coffee shop." *Id.* at 800. The group was "no longer permitted to hold meetings at low or no cost using spacious and convenient locations on campus," and it "lost the ability to communicate with students through Wayne State's online student organizations platform." *Id.*

Years later, Wayne State lost in court, despite relying heavily on *Martinez*.¹⁵

5. At Jackson-Reed High School in the District of Columbia, an FCA chapter was approved in September 2022, with no complaints. *Fellowship of Christian Athletes v. D.C.*, 2026 WL 275995, at *2 (D.D.C. Feb. 3, 2026) (Friedrich, J.). A couple of weeks later, Paul Legere—a part-time freshman baseball coach—sent local FCA staff a social media message stating that there was “no place for a group like FCA in a public school.” *Id.* He also complained to the principal and lodged a complaint with the DCPS Comprehensive Alternative Resolution and Equity (CARE) team, which ordered FCA to “immediately cease operations” and removed it from the recognized student organization list. *Id.* at *3.

During CARE’s subsequent investigation, it demanded “a list of names of students who participated in the group, who attended the coach’s meeting, what made Jackson Reed want to bring the club back into the school, who used to run the club, and whether any meetings or planning sessions had taken place, and, if so, some names of individuals who attended (coaches and students).” *Id.* (citation modified).

CARE eventually found that FCA’s leadership requirement—that student leaders “agree with FCA’s

¹⁵ Brief in Opposition to Plaintiffs’ Motion for Partial Summary Judgment and a Permanent Injunction, *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, No. 3:19-cv-10375, 2020 WL 13311473 (E.D. Mich. Nov. 19, 2020).

core Christian beliefs”—“violated the D.C. Human Rights Act and DCPS’s Anti-Discrimination Policy.” *Id.* at *1, 3. CARE’s findings led Jackson-Reed to strip FCA of its official status and deny FCA’s appeal. *Id.*

Though the district court granted a preliminary injunction—rejecting the school’s reliance on *Martinez*—litigation continues nearly two years later. *Fellowship of Christian Athletes v. D.C.*, 743 F. Supp. 3d 73, 85, 89–90, 95–96 (D.D.C. 2024).

6. Many other examples can be collected of governments running roughshod over First Amendment rights in reliance on *Martinez*, much like Colorado in this case. One recent study found that “in the fifteen years since *Martinez*, more than twice as many religious student groups have been derecognized than in the twenty years beforehand,” and “more than three times as many student groups have faced intense pressure from their schools because of their religious membership or leadership criteria.” Benjamin A. Fleshman, *How Do You Solve A Problem Like Martinez?*, 29 *Tex. Rev. L. & Pol.* 231, 235 (2025).

And this likely underestimates the problem, as “[m]any (perhaps most) of [the derecognition decisions] go unreported, particularly if the group seeking recognition is doing so for the first time and doesn’t have the resources or connections to do anything more than lament their exclusion.” *Id.* at 240–41. “*Martinez* also ushered in an era of mass-derecognition events, wherein schools have kicked out large swathes of religious student groups all at once,” “caus[ing] significant harm to these students and student groups.” *Id.* at 235; *see id.* at 249 (Vanderbilt

derecognized 14 Catholic and evangelical student groups).

But *Martinez*'s ill-effects go beyond student recognition. The Eleventh Circuit used *Martinez* to let Augusta State University require a Christian graduate student to undergo mandatory GLBTQ sensitivity training after it perceived "deficiencies in her 'ability to be a multiculturally competent counselor, particularly with regard to working with gay, lesbian, bisexual, transgender, and queer/questioning (GLBTQ) populations.'" *Keeton v. Anderson-Wiley*, 664 F.3d 865, 867, 874 (11th Cir. 2011).

The City of Philadelphia relied on *Martinez* to defend its decision to revoke rent-free use of city property to a local Boy Scouts chapter unless it agreed to receive openly homosexual participants into membership. *Cradle of Liberty Council, Inc. v. City of Philadelphia*, 851 F. Supp. 2d 936, 941–43 (E.D. Pa. 2012).

The Eastern District of Pennsylvania extended *Martinez* outside the campus context to approve Philadelphia's move to compel faith-based foster care organizations to place children in homes not in accord with the organizations' religious beliefs on marriage and the family. *Fulton v. City of Philadelphia*, 320 F. Supp. 3d 661, 668, 681 (E.D. Pa. 2018), *aff'd*, 922 F.3d 140 (3d Cir. 2019), *rev'd and remanded*, *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

And Oregon raised *Martinez* to defend its decision to cancel \$410,000 in grant funds to 71Five Ministries, a Christian organization that mentors at-risk youth,

based on its commitment to hiring only those who share its faith commitments. *Youth 71Five Ministries v. Williams*, 2024 WL 3749842, at *1, 3 n.2 (9th Cir. Aug. 8, 2024).

All this shows what *Martinez* has wrought on campuses nationwide: an environment in which small student religious groups are subject to overwhelming official pressure to be led by students who disagree with the groups' faith. Any vindication of the groups' rights comes years later, often after the groups have been harassed into extinction.

II. *Martinez* has led schools to deprive students of many constitutional rights.

These effects of *Martinez* on schools' approach to student religious groups work significant constitutional harm. They result in denials of free exercise, free speech and association, and religious autonomy. The contradiction between *Martinez* and core constitutional rights reinforces the need to overrule *Martinez*.

Beginning with free exercise, depriving religious students of the equal opportunity to gather for fellowship and teaching severely burdens their exercise of religion. This Court has repeatedly held that "disqualifying otherwise eligible recipients from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny." *Espinoza*, 591 U.S. at 475.

Plus, these cases show "a pattern of selective enforcement favoring comparable secular activities," as schools routinely allow student groups to

discriminate in membership or leadership on other purportedly protected grounds like sex and ethnic identity. *San Jose*, 82 F.4th at 689; see *BLinC*, 991 F.3d at 978 (noting that Iowa “approved the constitutions of dozens of organizations that explicitly restrict or control access to leadership or membership based on race, national origin, sex, sexual orientation, gender identity, status as a U.S. veteran, and/or military service”).

Many of these cases also “demonstrate animus by government decision-makers.” *San Jose*, 82 F.4th at 692; see *id.* (“One teacher and Climate Committee member disparaged FCA’s beliefs by calling them ‘bullshit’ and deeming them without ‘validity,’” with another “calling [student members] ‘charlatans.’”). And given the unequal treatment between religious student groups and other groups, these schools cannot satisfy strict scrutiny. See *id.* at 693–94 (noting recognition of Satanic Temple Club); see also *Espinoza*, 591 U.S. at 486; accord *Youth 71Five Ministries*, 2024 WL 3749842, at *3 n.2 (Ninth Circuit noting that *Martinez* “runs headlong into more recent Supreme Court authority”).

Martinez itself brushed away free exercise problems by invoking this Court’s decision in *Employment Div., Dep’t of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878–82 (1990). See 561 U.S. at 697 n.27. This invocation underscores a deep problem with both *Martinez* and *Smith*: when the focus is on the mechanics of the government rule instead of the undisputed damper on religious exercise, governments will twist—and retwist—their rules in pretzels to harass student groups yet avoid liability.

See id. at 737 (Alito, J., dissenting) (noting “[s]hifting policies” in *Martinez* (citation modified)); *see also Univ. of Iowa*, 5 F.4th at 861 (moving goalposts in recognized student group policy).

These schools also violate the freedom of association protected by the First Amendment. “This right is crucial in preventing the majority from imposing its views on groups that would rather express . . . perhaps unpopular[] ideas.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–48 (2000). “The forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.” *Id.* at 648.

Forcing a religious group to accept someone who disagrees with its faith *as a leader* significantly affects its expressive association. “[P]ermitting that to happen would . . . change[] the religious and expressive nature of the organization.” *Wayne State*, 534 F. Supp. 3d at 825. Sometimes, the investigation itself inflicts a chill on associational rights. *See, e.g., D.C.*, 2026 WL 275995, at *2 (noting that “CARE demanded ‘a list of names of students who participated in the group’” and “names of individuals who attended”). And again, schools could not satisfy any strict scrutiny, for “many other student groups [a]re permitted to limit leadership to those who support the groups’ missions.” *Wayne State*, 534 F. Supp. 3d at 825; *see also Univ. of Iowa*, 5 F.4th at 865 (“Basically, some RSOs at the University of Iowa may discriminate in selecting their leaders and members, but others, mostly religious, may not.”).

These schools’ violations of free speech are just as obvious. Indeed, the Eighth Circuit said that “[w]e are hard-pressed to find a clearer example of viewpoint discrimination” than when a school derecognizes a religious organization for adhering to faithful leadership standards, while recognizing other groups with their other leadership standards—like “LoveWorks,” which “requires its members and leaders to sign a ‘gay-affirming statement of Christian faith.’” *Univ. of Iowa*, 5 F.4th at 864. Courts have routinely held that derecognition of religious student groups—while “carving out exemptions and ignoring other violative groups with missions [the schools] presumably supported”—*clearly* violates the Free Speech Clause. *Id.* at 867; *see, e.g., D.C.*, 2026 WL 275995, at *13–14 (collecting cases); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 831 (1995).

But that’s not all. This Court has long recognized that the Religion Clauses prohibit courts from intervening in matters of religious “discipline, or of faith, or ecclesiastical rule, custom, or law.” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1871). This religious autonomy doctrine encompasses the “right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine.” *Id.* at 728–29.

A critical “component of [religious] autonomy is the selection of the individuals who play certain key roles.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020); *cf. Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929) (“[I]t is the function of the church authorities to

determine what the essential qualifications of a chaplain are and whether the candidate possesses them.”). Without that autonomy, a religious group could not “shape its own faith and mission,” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012): “a wayward [leader]’s preaching, teaching, and counseling could contradict the [group’s] tenets and lead the congregation away from the faith.” *Our Lady*, 591 U.S. at 747. School officials’ “interference with [that] internal [religious] decision” necessarily affects the organization’s “faith and mission.” *Hosanna-Tabor*, 565 U.S. at 190; see *D.C.*, 743 F. Supp. 3d at 83.

This list is not exhaustive. For instance, schools that recognize some religious groups and not others violate the Establishment Clause. And state-level Religious Freedom Restoration Acts should protect religious student groups at public institutions. But despite these overlapping protections for the rights of religious students to gather in faithful union, schools keep disregarding these rights and harassing their groups. That is because of *Martinez*.

III. Campus student groups are especially susceptible to official pressure.

Derecognition causes religious groups and their student members significant tangible and intangible harms, especially because of their vulnerability to official pressures on campus. Sustained official pressure threatens these groups’ survival.

By their nature, school communities are transient and often fragile. Schoolchildren are easily impressionable. And schools are characterized by an

“inherent power asymmetry,” as officials control both the policy and the tone of the school environment. *Arizona Students’ Ass’n v. Arizona Bd. of Regents*, 824 F.3d 858, 869 (9th Cir. 2016). Few children would be willing to stand against continual pressure by those in authority. *See Mahmoud v. Taylor*, 606 U.S. 522, 555 (2025) (“Young children . . . are often impressionable and implicitly trust their teachers.” (citation modified)); *id.* at 554–55 (“The State exerts great authority and coercive power through public schools because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” (internal quotation marks omitted) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987))).

Against that vulnerability, official pressure and derecognition cut even deeper. Tangible harms include loss of benefits like school resources, a faculty advisor, means of communication with other students, and funding. Intangible harms include stigma associated with group membership; simply consider the San Jose teacher’s message on his classroom board asserting that FCA’s views injured “the rights of others in my community.” *Supra* p. 8. Closely tied to this stigma is intimidation of existing and prospective members. Lack of school recognition discourages students from joining or taking leadership roles—or starting a group in the first place. The school-sanctioned message to students interested in the religious group is clear: stay away and keep your religious views to yourself. And that message inevitably encourages hostility from others in the school community, including peers. *See supra* pp. 9, 12; *San Jose*, 82 F.4th at 676–77 (“[S]tudents . . . came to the conclusion that [a] protest

was necessary to ‘express [their] dissatisfaction.’”); accord *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009) (“[C]hildren mimic the behavior they observe—or at least the behavior that is presented to them as normal and appropriate.”).

These harms are common when student religious groups try to choose committed leaders in an atmosphere of hostility to that right. For example, at the Ohio State University Moritz College of Law, after a student complained that the Christian Legal Society chapter was requiring that leaders and voting members hold its Christian beliefs, the chapter’s student president faced a hostile education environment in which he was “often the subject of name-calling, gossip, and rumor-mongering,” was “verbally admonished” by classmates for his religious beliefs, and was “warned by upperclassmen not to take courses by certain professors who were not likely to give [him] fair evaluations.”¹⁶

One of the students who co-founded Business Leaders in Christ at the University of Iowa likewise suffered through an article in the school newspaper “portraying her and her club as bigoted.”¹⁷ She and other leaders of the small group “had to spend dozens

¹⁶ *First Amendment Protections on Public College and University Campuses: Hearing Before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary House of Representatives*, 114th Cong. 39–58 (June 2, 2015), Supp. Hrg. Rec. 62–64 (Letter from Michael Berry to Chairman Trent Franks (June 5, 2015)), available at <https://perma.cc/H274-8MFB>.

¹⁷ D.B. Br., *supra* note 2, at 3.

of hours defending their religious beliefs against the University's actions, which distracted them from their studies, affected their grades, and made them feel like outsiders.”¹⁸ They were “especially concerned about how hostile newspaper articles from local press and the school newspaper would affect [their] future career[s].”¹⁹ How many college students want to spend four years being “bull[ied]” by school officials and tagalong students for associating with a “skeletal group desperately trying to operate on a hostile campus”? Fleshman, *supra*, at 302–03.

Unsurprisingly, derecognition often spells the end of student organizations, and the idea of a viable alternative path of existence is a myth. *See Martinez*, 561 U.S. at 716–18 (Alito, J., dissenting). Continuity between graduating classes is much harder to achieve without a recognized organization. Universities are naturally subject to four-year amnesia where institutional knowledge is lost as students graduate. *See* Fleshman, *supra*, at 263 (noting a group that “was unable to last beyond the graduation of its founding members”). And cut off from channels of recruitment and communication, groups struggle to grow or sustain themselves: “If an organization is to remain a viable entity in a campus community in which new students enter on a regular basis, it must possess the means of communicating with these students.” *Martinez*, 561 U.S. at 719 (quoting *Healy v. James*, 408 U.S. 169, 181 (1972)).

¹⁸ *Id.* at 4.

¹⁹ *Id.*

Indeed, the Christian Legal Society at Hastings College of Law died out soon after *Martinez*, “unable to continue as an unrecognized group on campus.” Fleshman, *supra*, at 261. “Even today, there is no CLS chapter” at the school. *Id.* Business Leaders in Christ at Iowa met the same fate after being “locked out of several crucial university resources”: it “could not participate in student fairs (a primary recruitment opportunity),” “wasn’t listed on the University’s student organization website,” “couldn’t use the University communication system,” and couldn’t “meet on campus without paying to reserve rooms—a difficult ask considering BLinC also lost all of its access to funding.” *Id.* at 268. And InterVarsity at Iowa “lost nearly one-half of its membership.” *Id.* at 270.

Of note, BLinC and InterVarsity suffered these fates even though they eventually prevailed after costly and time-consuming litigation. And bringing litigation is not an option for many groups, particularly those “lack[ing] the connections and resources to challenge the schools’ actions.” *Id.* at 302. “This is a particular burden for minority religious groups, who may face campus antagonism on other fronts and may not want to drum up further opposition.” *Id.* at 303.

* * *

In sum, “[t]o force religious organizations to [select] messengers and other personnel who do not share their religious views would undermine not only the autonomy of many religious organizations but also their continued viability.” *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito,

J., respecting the denial of certiorari). “Driving such organizations from the public square would not just infringe on their rights to freely exercise religion”—and speak and associate—“but would greatly impoverish our Nation’s civic and religious life.” *Id.* *Martinez* must be overruled.

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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