



**Foundation for Individual Rights in Education**

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215-717-3473 · Fax: 215-717-3440 · fire@thefire.org · www.thefire.org

Alan Charles Kors  
PRESIDENT

Harvey A. Silverglate  
VICE PRESIDENT & TREASURER

Thor L. Halvorssen  
CHIEF EXECUTIVE OFFICER

Erich Wasserman  
EXECUTIVE DIRECTOR

Greg Lukianoff  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

BOARD OF DIRECTORS

William J. Hume  
Alan Charles Kors  
Joseph Maline  
Michael Meyers  
Marlene Mieske  
Daphne Patai  
Virginia Postrel  
Harvey A. Silverglate  
Ed Snider  
James E. Wiggins  
Kenny J. Williams

BOARD OF ADVISORS

David Brudnoy  
Lloyd Buchanan  
T. Kenneth Cribb, Jr.  
Candace de Russy  
William A. Dunn  
Benjamin F. Hammond  
Nat Hentoff  
Roy Innis  
Wendy Kaminer  
Woody Kaplan  
Leonard Liggio  
Herbert London  
Peter L. Malkin  
Milton Rosenberg  
John R. Searle  
Ricky Silberman  
Christina Hoff Sommers

November 24, 2003

Robert J. Spitzer, S.J., President  
Office of the President  
Gonzaga University  
502 E. Boone Ave.  
Spokane, Washington 99258-0087

*Sent via U.S. Mail and facsimile (509-324-5199)*

Dear Father Spitzer,

Last month, we were pleased by the timely response of your administration in removing a disciplinary letter from the College Republicans' file (they had been accused of "discriminatory" speech for using the word "hate" in a campus flier). The Foundation for Individual Rights in Education (FIRE) appeals again to your sense of fairness. We are gravely concerned by a threat at your university to religious liberty and voluntary association. Specifically, we wish to call to your attention the refusal by the Student Bar Association of Gonzaga Law School to recognize a religious student group, the Gonzaga Pro-Life Law Caucus. We hope for a similarly speedy and just resolution of this matter.

Here is our understanding of the facts in this case, drawn from e-mails and other documents in our possession. Please let us know if you believe we are in error. The Gonzaga Pro-Life Law Caucus (the Caucus) is a Christian group formed by students at Gonzaga University School of Law who are opposed to abortion, euthanasia, and assisted suicide. The group's current constitution states that the basis of the group's objection to these practices is a "belief in Jesus Christ and in the Bible as the infallible word of God." While membership in the group is open to persons of all faiths, leadership of the group requires 1) subscribing to the constitution of the group; 2) commitment to "the promotion and service associated with the pro-life agenda"; and 3) acceptance of a shared set of Christian beliefs. In short, the Caucus is a voluntary religious association.

Ashley Horne, the president of the Caucus, originally submitted the group's constitution and leadership requirements for approval by the School of Law's Student Bar Association (SBA) at a SBA meeting held on September 23, 2003. According to the minutes of the meeting, Albert Guadagno, SBA President, stated

that their application was the best application that he had seen for a club. However, some SBA members objected that the religious beliefs requirement constituted “discrimination” on the basis of religion and urged further discussion of recognition. A special meeting was therefore called for the following week.

According to Ms. Horne, later that week Mr. Guadagno let her know that he had spoken with Daniel Morrissey, the dean of the law school, and Lisa Bradley, the associate dean for student affairs at the law school. She said Mr. Guadagno told her that the deans had advised him to call a special SBA Executive Board meeting to decide whether the Caucus’s leadership requirement was “facially discriminatory.” However, in a September 25 e-mail to Mr. Guadagno, Professor David DeWolf of the law school informed Mr. Guadagno that he had discussed the issue with Dean Morrissey and University Counsel Mike Casey, and that they were of the opinion that “university policy permits restricting a group’s leadership (or even membership) to those committed to the group’s religious purpose.” DeWolf concluded, “The SBA is not free to impose a restriction on student clubs that is based upon the SBA’s disagreement with the views advanced by that group, unless those views conflict with Gonzaga’s identity as a Catholic, Jesuit, and humanistic university.”

Mr. Guadagno called a closed meeting of the SBA that only members of the executive board were allowed to attend. No minutes of the meeting were made public, if indeed any were kept. After the meeting, Ms. Horne received an e-mail from Mr. Guadagno stating that by a “majority vote,” the board had decided that the requirements were discriminatory and that the Caucus therefore could not be recognized by the SBA.

The stated basis for this decision was that the Caucus’s Christian requirement for leadership of the Christian group violated the mission statements of Gonzaga University and the School of Law. The mission statement of the School of Law states that it is “committed to a full and vigorous policy of non-discrimination without regard to race, color, national origin...or religion, both within the Law School as well as throughout Society at large.” The great irony here is that by denying the Caucus the right to be led by Christians, the SBA is engaging in—not preventing—religious discrimination. Freedom of religion is, of course, inseparable from voluntary association around shared religious beliefs. This very principle is the basis of the liberty and voluntary association to which Gonzaga University itself owes its existence.

Indeed, the Gonzaga University Statement on Non-Discrimination found in the law school handbook goes into more detail about the policy, adding these provisions:

All University policies, practices, and procedures are consistent with Gonzaga's Catholic, Jesuit identity and Mission Statement.

As a church-related institution, in conformity with Federal and State law, Gonzaga reserves the right to take religious faith into consideration where it is deemed appropriate.

These statements make it clear that Gonzaga University, itself a religious institution, understands full well that in certain circumstances, discrimination on the basis of religion is essential to maintaining a religious identity. To insist that a religious student organization not discriminate on issues of belief—and on matters of voluntary association that flow from its practice of its belief—is to insist, in essence, that a Christian organization not be Christian. This not only deprives individual members of rights they enjoy under the U.S. Constitution in the larger society, but imposes upon them an ideology alien to their conscience; this violates the most basic principles of justice, tolerance, and fairness.

The Caucus then changed its leadership requirement and constitution to clarify the group's specifically Christian expressive purpose and reason for being. Mr. Guadagno responded by e-mail, stating that he would not permit the Caucus to go before the SBA for a vote on recognition unless the religious group eliminated its religious leadership requirements. It is simply an abuse of power for the SBA to use Gonzaga's nondiscrimination policy to dictate how religious student organizations order their own affairs. If Gonzaga University allows expressive organizations to exist at all, then it must in fairness allow religious organizations to exist, to select their own leaders, and to establish policies and practices in pursuit of their goals.

It shocks both conscience and reason that a Catholic university would deny recognition to a pro-life, Christian student group. The problem of double standards and bias against Catholic and Protestant pro-life groups at secular universities is already a scandal. A religious university is the last place one would expect to find intolerance of a group that seeks to preserve its religious identity. This intolerance is all the more shocking because the Caucus's message is in accord with Catholic beliefs on the issues of abortion, euthanasia, and assisted suicide. The School of Law's SBA both shows contempt for basic freedoms any public university would have to recognize under the constitution of the United States and exhibits fundamental intolerance toward Catholic doctrine itself.

The SBA Executive Board's decision also defies another part Gonzaga University School of Law's Mission Statement, which reads:

As a Catholic and Jesuit institution, Gonzaga Law School is committed to providing interested students with a supportive setting to explore and deepen their Christian faith within our warm and welcoming environment for students of all religious backgrounds or secular moral traditions. We believe that this atmosphere makes our law school refreshingly distinctive in an era when some members of our society and profession do not consider the ideals of morality, service, and belief to be a part of legal education and the practice of law.

We love that mission statement, and it is brutally ironic in light of it that a Christian group wishing to operate with official recognition has been forbidden that status. The denial of recognition to the Caucus suggests that the "distinctiveness" promised by Gonzaga University School of Law has been transformed by the SBA into a distinctive hostility to Christian students. (It should be noted that our information indicates that the Christian Legal Society has also been

denied recognition by the law school on similar grounds.) The actions of the SBA, using the authority delegated to it by the law school administration, have emptied the mission statement of meaning.

Perhaps the most mystifying aspect of this case is that hostility towards religious groups prevails at the law school of a university proud of its Catholic and Jesuit heritage. The Catholic Church strongly opposes abortion, euthanasia, and assisted suicide. These are the very beliefs that the Caucus seeks to advance in the law school. Indeed, according to information on the Gonzaga web site, you personally founded the organization "University Faculty for Life" and have authored articles that take positions against abortion and euthanasia. Certainly, a university president who founded a pro-life faculty organization understands that students who wish to organize under the same principles have the right to do so. Gonzaga's mission statement makes it clear that those who adhere to "secular philosophic and moral principles" are welcome at Gonzaga. Will Gonzaga not also tolerate those who agree with religious principles?

Public colleges and universities are required by the First Amendment to the U.S. Constitution not to discriminate against Christian groups—such as the Caucus—that wish to ensure that their leadership follows Christian beliefs. FIRE has successfully challenged attempts to deny religious students their right to voluntary association on public campuses across the country, including UNC Chapel Hill, Rutgers University, and, most recently, Purdue University. If Gonzaga wishes to discriminate against religious groups in this way it must do so fully recognizing that it is departing from, not complying with, the larger society's conception of basic legal, moral, and human rights.

FIRE has also challenged private colleges and universities to honor their commitments to basic religious and associational freedoms. Last year, when a similar case arose at Washington University (St. Louis) School of Law, FIRE successfully fought to convince the SBA there to recognize a pro-life group rejected as "too narrow." Attached, please find a joint letter from FIRE and the ACLU that highlights many of the most crucial moral and legal reasons why this form of discrimination is utterly incompatible with any institution—especially a law school—that believes in pluralism and basic freedoms.

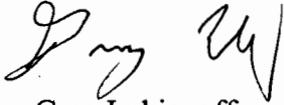
Because of the self-evident contradiction between the law school's mission statement and this SBA decision, we bring this matter first to your rather than to the public's attention in order to give you an opportunity to engage in immediate self-corrective measures. The members of the Gonzaga Pro-Life Law Caucus have been working in good faith since September to gain recognition for their organization, and they deserve to have their rights restored to them as quickly as possible. It is intolerance—not tolerance—to forbid such voluntary associations. With this in mind, we request a response to this letter by December 8, 2003. If we do not hear from you by then, we will assume that you are not willing to correct this injustice, and we will use all of our resources to bring this case to a just conclusion.

FIRE is resolutely committed to an academic world in which universities honor both the letter and spirit of ordered liberty. This issue will not go away, and we will submit it to the court of

national public opinion and to all other appropriate forums if it is not quickly and justly resolved. FIRE requests that you demonstrate to the Gonzaga Pro-Life Law Caucus that those who would deny its rights may not do so on your watch.

We look forward to your response.

Sincerely,



Greg Lukianoff  
Director of Legal and Public Advocacy

cc:

Fr. Bernard J. Coughlin, S.J., Chancellor, Gonzaga University  
Michael Casey, Esq., Corporation Counsel, Gonzaga University  
Fr. Robert V. Lyons, Presiding Officer of the Corporation of Gonzaga University  
Thomas B. Tilford, Chair, Board of Trustees, Gonzaga University  
Gregory A. Hubert, President, Board of Regents, Gonzaga University  
Daniel Morrissey, Dean, Gonzaga University School of Law  
Amy Kelley, Associate Dean for Academic Affairs, Gonzaga University School of Law  
Lisa Bradley, Associate Dean for Student Affairs, Gonzaga University School of Law  
Albert Guadagno, President, Student Bar Association, Gonzaga University School of Law  
Ashley Horne

Encl.



[✉ Email this page](#)

FIRE is a nonprofit educational foundation devoted to free speech, individual liberty, religious freedom, the rights of conscience, legal equality, due process, and academic freedom on our nation's campuses.



# Foundation for Individual Rights in Education

- THE FOUNDATION**
- ▶ Home
- ▶ About FIRE
- ▶ Mission Statement
- ▶ Programs
- ▶ Issues
- ▶ Board of Directors
- ▶ Staff
- ▶ Board of Advisors
- DEFENDING LIBERTY**
- ▶ Cases
- ▶ Submit a Case
- ▶ In the News
- ▶ In the Mailbox
- ▶ Events
- ▶ Newsletter
- GET INVOLVED**
- ▶ Contact Us
- ▶ Support FIRE
- ▶ Legal Network
- ▶ Internships
- ▶ Subscribe
- ▶ Jobs at FIRE

## [An Open Letter from the American Civil Liberties Union of Eastern Missouri and the Foundation for Individual Rights in Education to the Student Bar Association, Washington University School of Law](#)

October 11, 2002

Dear Members of the Student Bar Association,

We were both surprised and profoundly disappointed to learn of your most recent meeting, at which the Student Bar Association (SBA) left unchanged its decision not to recognize Law Students Pro-Life (LSPL) as a legitimate student group at Washington University School of Law (WUSL). We hoped that, with time and further thought, LSPL's right to exist would become as clear to you as it is to all of the individuals and organizations that have opposed your decision. We will try one last time to persuade you to recognize LSPL and to reaffirm your commitment to tolerance, openness, and pluralism.

The right to private conscience is more than a constitutional right and an internationally recognized human right. It is also a moral principle upon which our entire system of liberty depends. By offering to recognize LSPL only if it modified its beliefs to suit principles that you found more to your liking, you were asking your fellow students to betray their deeply held beliefs as a precondition of enjoying the minimal rights of a recognized organization at WUSL. In short, you made their moral right to associate freely as a student group dependent upon their abandonment of their right to private conscience. No school that believes in freedom and human dignity could ask such a thing of its own students.

SBA has contended that LSPL's mission is "too narrow" to allow for recognition. Although the SBA and WUSL routinely recognize associations organized around group-identity and common interests such as golf, you have ruled that issues relating to reproductive rights are "narrow." In fact, issues related to reproductive rights are some of deepest and most divisive issues in our country, desperately in need of the sort of reasoned advocacy that produces significant debate. It is particularly strange for law students to argue that reproductive rights are a "narrow" issue. For example, you have recognized a student group organized around interests in the criminal law. Far more individuals will face reproductive choices than will face the system of criminal justice, and no one would consider issues of criminal justice "narrow." Anyone familiar with constitutional law knows that the debates and battles surrounding reproductive rights have transformed legal notions concerning control of one's body, privacy, protest, freedom of religion, and freedom of speech. There is nothing narrow about LSPL, except your conception of it.

We are pleased that the administration of WUSL at least attempted to convince you that LSPL should be recognized. However, we do not agree that it is appropriate for them to place the autonomy of the SBA over the fundamental rights of LSPL students. Majority votes by agencies of power do not trump constitutional rights (and their moral principles), any more than they undo the moral right to legal equality. Civilized democracy includes rights so essential to liberty, dignity, fairness, and decency that we place them outside the power of elected government to vote them away. Civil liberties reflect, among other things, the moral necessity of restraint upon power.

Simply put, if you do not live up to your obligations to respect the deeply held beliefs and rights of your fellow students, you are acting outside your legitimate powers. The administration of WUSL may not and must not permit such an action to stand.

We hope that you—as law students and as citizens—understand that the ideals enshrined in the Bill of Rights are more than just regulations. They codify moral principles and rights that we, as a people, believe are inalienable. We ask you to act in the spirit of these essential moral principles and to recognize the right of your fellow students to organize in accordance with their own beliefs, even if you disagree with those beliefs. We hope that the SBA will finally make the right choice. It is no weakness to change one's mind when it is appropriate.

Sincerely,

The American Civil Liberties Union of Eastern Missouri  
The Foundation for Individual Rights in Education

Contact Information:

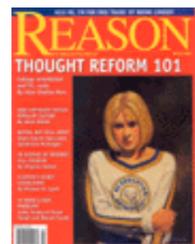
Matt LeMieux, Executive Director, ACLU of Eastern Missouri  
Email: [Matt@aclu-em.org](mailto:Matt@aclu-em.org)  
Phone: 314-361-2111

Greg Lukianoff, Director of Legal and Public Advocacy, FIRE

Email: [greg@thefire.org](mailto:greg@thefire.org)  
Phone: 215-717-3473



Read excerpts from *The Shadow University* by Alan Charles Kors & Harvey A. Silverglate.



Read *Thought Reform 101* by Alan Charles Kors.



Read *Memo to Free Speech Advocates University of Wisconsin-Madison* by Harvey A. Silverglate.

Foundation for Individual Rights in Education, Inc.  
210 West Washington Square  
Suite 303  
Philadelphia, PA 19106  
Phone: (215) 717-3473 (717-FIRE)  
Fax: (215) 717-3440  
Email: [fire@thefire.org](mailto:fire@thefire.org)

FIRE is a charitable and educational, tax-exempt foundation within the meaning of Section 501 (c) (3) of the Internal Revenue Code. [Contributions](#) to FIRE are deductible to the fullest extent provided by tax laws.

**Because Your Liberty is a Precious Thing**