

Duquesne University

Duquesne Scholarship Collection

Hallowed Secularism

The Collective Works of Bruce Ledewitz, Adrian
Van Kaam C.S.Sp. Endowed Chair in Scholarly
Excellence and Professor of Law

7-1-2010

July 1, 2010: Justice Antonin Scalia is Responsible for the Christian Legal Society Case

Bruce Ledewitz

Duquesne University, ledewitz@duq.edu

Follow this and additional works at: <https://dsc.duq.edu/ledewitz-hallowedsecularism>



Part of the [Constitutional Law Commons](#), and the [Law and Philosophy Commons](#)

Repository Citation

Ledewitz, B. (2010). July 1, 2010: Justice Antonin Scalia is Responsible for the Christian Legal Society Case. Retrieved from <https://dsc.duq.edu/ledewitz-hallowedsecularism/438>

This Article is brought to you for free and open access by the The Collective Works of Bruce Ledewitz, Adrian Van Kaam C.S.Sp. Endowed Chair in Scholarly Excellence and Professor of Law at Duquesne Scholarship Collection. It has been accepted for inclusion in Hallowed Secularism by an authorized administrator of Duquesne Scholarship Collection. For more information, please contact beharyr@duq.edu.

Title: Justice Antonin Scalia is Responsible for the Christian Legal Society Case

Date: 2010-07-01T11:32:00.002-04:00

7/1/2010—On Monday, June 28, the United States Supreme Court decided *Christian Legal Society [of Hastings Law School] v. Martinez*, holding 5-4 that a law school could refuse recognition of the CLS on the ground that the organization does not comply with the school's nondiscrimination policy. As reported in the media, the CLS does not allow gay to join. This is true but is not quite the holding of the case. The fact is, CLS does not allow nonChristians to join. It is true that the CLS defines for itself whom it considers a Christian and that in its view you cannot be a Christian and engage in homosexual conduct (or any extramarital sexual conduct), but the actual holding of the case does not seem to involve any such requirement by CLS. As I read the case, CLS would not be permitted by the law school to exclude nonChristians however defined. It might seem to the average person quite ridiculous to say that the Christian Legal Society cannot exclude Jews, Hindus, Muslims, Buddhists and Atheists. I hope it seems ridiculous. This case should obviously have been decided on free exercise of religion grounds. This policy fundamentally interferes with the right to practice religion. The reason not one Justice would have decided the case on free exercise grounds is that in 1990, in an opinion written by Justice Scalia (of all people), *Employment Division v. Smith*, the Court decided that generally applicable laws that do not specify religion cannot violate the Free Exercise Clause. It was an absurd decision and now we see its consequence—a government requirement that a religious organization must admit nonbelievers does not violate the Free Exercise Clause. There were free speech issues in the CLS case and maybe the majority was right in part in the particular posture the case was in. But the real point is, what happened to free exercise?