March 14, 2013

Governor Bob McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, VA 23219

Dear Governor McDonnell:

On behalf of its Virginia members, Americans United for Separation of Church and State urges you to veto HB 1617/ SB 1074, a bill that would prohibit colleges and universities from denying recognition, privileges, and benefits to student groups based on the religious content of their speech or the manner in which the group determines its organizational affairs. This bill mischaracterizes this issue as one of religious freedom, and in so doing, provides religious student groups with an unprecedented exemption at public universities.

This bill is an attempt to abrogate "accept-all-comers" policies, which the Supreme Court recently held constitutional.[1] These non-discrimination policies withhold funding[2] and official recognition from any student group that is not open to all students. In *Christian Legal Society v. Martinez*, the Supreme Court held that this policy did not implicate First Amendment limitations because compliance is a reasonable, viewpoint-neutral condition on access to the school's forum and funding.[3]

Under the First Amendment, once a public school has opened a limited public forum, it is precluded from denying access to that forum based on a group's viewpoints.[4] The school can, however, condition official recognition—which includes funding—based on reasonable, viewpoint-neutral conditions.[5] Under an "accept-all-comers" policy, this means religious groups *can* discriminate within the school's forum, but *cannot* receive funding if they do so. In other words, religious groups still have unburdened free exercise and speech rights. They also have the same access rights as all other student groups. They do not, however, have the right to force a public university to subsidize their discriminatory policies—and neither does any other student group. Such a policy does not target the religious nature of any group—organizations of any political, religious, or ideological stripe can become recognized groups provided they adhere to the nondiscrimination policy.

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[1] *See Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010).
[2] The revenue stream for such funding, which is common at universities throughout the country, is created by a mandatory student activity fee imposed on students.
[3] *See Christian Legal Society*, 130 S. Ct. at 2995.
[4] *See Id.* at 2978.
[5] *Id.*

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This bill's language is misleading—it calls for groups to be treated equally; but, in fact, this bill is designed to treat religious groups specially, and to force public schools to fund discriminatory speech and conduct. Under "accept-all-comers" policies, all groups are treated equally, and subject to the same regulatory policies. Thus, any efforts by legislators to tout this bill as a protection of students' religious rights are misguided. Religious groups are allowed to control their organizational structure and management based on their beliefs or any other reason. An "accept-all-comers" policy does not change this framework; it merely states that the government will not subsidize discrimination.

Although it is generally accepted that these groups may make discriminatory decisions with their own funds, they should not be permitted to do so with public funds, or they effectually transform such a scheme into student-funded discrimination. Moreover, public colleges and universities should have the right to safeguard that the mandatory student activity fees paid by all students only support those groups that are open to all students. Even just the authorized use of a public college or university's name—in the public's eye—ties a group to the school. At a minimum, schools have a legitimate interest in avoiding the appearance of facilitating discrimination.

Accordingly, we urge you to veto HB 1617/ SB 1074. Thank you for your consideration of our views on this important issue.

Sincerely,

Don Fruhwald
President, Americans United for Separation of Church and State
Greater Richmond/Central Virginia Chapter

David Hamilton
Chairman, Americans United for Separation of Church and State
Virginia Chapter