

An Approach to Dealing with Controversial Student Organizations

James J. Faught

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

James J. Faught, *An Approach to Dealing with Controversial Student Organizations*, 78 Marq. L. Rev. 313 (1995).
Available at: <http://scholarship.law.marquette.edu/mulr/vol78/iss2/7>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

AN APPROACH TO DEALING WITH CONTROVERSIAL STUDENT ORGANIZATIONS

ASSOC. DEAN JAMES J. FAUGHT*

I'm a late replacement for our dean, Nina Appel, who is unable to be here today. She sends her best wishes to all of you. I was unable to be here yesterday, and I'm sorry about that, because I know that I've missed a lot. I fear that some of what I might say today is repetitive of what was said yesterday, but such is the fate, I suppose, of the speaker who speaks last, particularly if he wasn't at the first day of the program.

I'm from Loyola University of Chicago. Loyola is a medium-sized law school within a large urban Jesuit university. At the outset I must tell you that I'm a humble administrator. My duties range from ceremonial to janitorial. I am not a theologian. Put simply, I'm not at all confident that I can adequately address all aspects of the subject of student organizations that should be addressed. I cannot pretend to give you an overview of the subject.

On Jesuit college campuses it has become apparent that the registration and recognition of some controversial student organizations has become more than just a student affairs problem. The issue of whether or not to register a gay or lesbian or pro-choice group frequently ends up on the president's desk, elicits strong reactions from parents and alumni, and can involve the courts. In addition, the normal procedures for the registration or recognition of student organizations are not sufficient to deal with the registration requests of controversial student groups. Like so many aspects of law school life, student organizations have come to demand more and more of our attention, and I speak not only of student affairs professionals, but of everyone involved in the educational enterprise. Student organizations provide some of the greatest challenges that educators are called upon to face. They also provide opportunities for growth and learning within the entire college community. However, beyond that, a serious debate among legal educators continues, particularly among those of us with a religious affiliation or purpose, regarding the issues raised by such student groups.

I will speak from my own insular experience at Loyola. I'll talk about how we have struggled to do what we think is right, knowing that

* Associate Dean for Student Affairs at Loyola University Chicago School of Law.

there are other models. I invite you to share your own thoughts and experiences about these difficult issues. I realize that in the time we have, we can only scratch the surface of this discussion.

As with so much of what we do, there is no one way to deal with these issues. Controversial student groups have challenged us at Loyola to examine and revise our registration policies. We learned that our policies were written many years ago and that they may need to be updated. In preparing for this presentation, I've been informed on the issues largely through a working paper that was prepared in August 1991 by the Jesuit Association of Student Personnel Administrators. The paper was entitled *A Working Paper on Registration of Controversial Student Organizations on Jesuit Campuses*.¹ The paper itself, which I suspect is familiar to many of you, is controversial. Its effect has been dormant for some while, but I was reminded that it is indeed just a working paper, a starting point for discussion, and it is certainly not policy.

Times have changed. Jesuit colleges and universities have changed radically. They are more complex institutions that function in an environment in which the student population is no longer predominantly white, male, eighteen to twenty-two years old, and Catholic. While the undergraduate populations are still predominantly Catholic, the graduate students, faculties, and staff now represent a broad religious pluralism. Faculty and administration at Jesuit colleges and universities are now composed largely of lay persons with diverse religious beliefs. Any doubt that you may have about how the number and diversity of student organizations has grown in recent years will be resolved by a quick perusal through your own catalogs from just a few years ago. In 1981, Loyola's catalog listed five organizations: the Student Bar Association, the International Law Society, the Black American Law Students' Association, the Committee on Women's Issues, and Phi Alpha Delta, the legal fraternity. We now have twenty-six registered law student organizations at Loyola Chicago, including the Black Law Students' Association, the Hispanic American Law Students' Association, the Asian American Law Students' Association, the Catholic Lawyers' Guild, the Christian Legal Society, the Decalogue Society, the Jewish Law Students' Association, the Women's Law Society, the Reproductive Issues Society, the Pro-Life Society, and the Law Students for Life, to which I'll refer in just a minute.

1. A WORKING PAPER ON REGISTRATION OF CONTROVERSIAL STUDENT ORGANIZATIONS ON JESUIT CAMPUSES, JESUIT ASSOCIATION OF STUDENT PERSONNEL ADMINISTRATORS (1991) [hereinafter WORKING PAPER].

Whether or not to accept certain groups, gay and lesbian or pro-choice groups, for example, is a question that in today's circumstances is answered differently from campus to campus. Different groups raise different sets of questions for the university; indeed, among Catholic and even among Jesuit colleges and universities these matters will be handled differently. Father O'Hare at Fordham reminds us that those who expect Catholic colleges and universities to have one clear norm governing the kind of student clubs that will be registered will invariably be disappointed.

It's been my experience that, for the most part, the pressure to register the so-called controversial student groups is felt most at the general university level, as distinguished from the law school level. I suspect, but I don't know for sure, that this can be said about most campuses. Jobs, the unspoken pressure to conform, the lack of time to devote to anything but law studies—whatever the cause—there has actually been little controversial student activity at our law school. It is possible that the general university organization has eliminated the need for a corresponding law student organization. Maybe a Catholic and Jesuit tradition creates a chilling effect upon those who might seek to organize such a group. This is not to say, however, that there will not be activity in the future. It is inevitable.

At the law school, we have been informed primarily through the general university experience. We have had no requests to register a gay and lesbian law student group, although the university has registered such a group. A few years ago we were taken to task by a local reporter for not having a pro-choice group in the law school. The reporter was apparently out to expose what she believed to be the repressive nature of Catholic education, when we informed her that among the reasons we didn't have such a group was that no one had ever asked to have one.

I'd like to talk about student organizations in the context of two of the most controversial student groups: the gay and lesbian organizations and the pro-choice organizations. Different challenges are posed by each group. The *Working Paper* tells us that Catholic colleges have responded to the needs of gay and lesbian students in different ways. One simple response is not to offer any services by stating that a homosexual lifestyle is not in accordance with Judeo-Christian values. Another response adopted by many Catholic campuses is to provide a gay and lesbian support group within campus ministry. The primary focus here is pastoral care. Some colleges see this as a positive and sufficient response to the needs of gay and lesbian students. Others merely tolerate such support groups and keep them in the background. Many colleges now

sponsor programs on homophobia and homosexuality, especially in the residence hall staff and training programs. Some conduct codes contain provisions against gay bashing. A few Jesuit colleges, including Loyola of Chicago, have officially registered a gay and lesbian student organization.

I quote now from the *Working Paper*:

As Jesuit institutions struggle (it usually is a struggle!) with ways of responding to the needs of gay and lesbian students, the deliberations often include making distinctions between the following: advocacy and dialogue, a dogmatic response and a pastoral response, sexual orientation and sexual activity, [and finally] the needs of undergraduates and those of graduate students.²

Often, the requests to form these groups come from graduate students. "When Jesuit campuses respond more publicly to the needs of lesbian and gay students," the *Working Paper* goes on to say, "some persons interpret the response as endorsing a homosexual lifestyle, and thus violating church teaching, while others applaud the response as one motivated by the Gospel and justice."³

The situation is complex and controversial, and there are no easy answers. As we educate our students to live in an increasingly multicultural and pluralistic society, we at Loyola have taken the position that we will acknowledge and respond to the presence and needs of gay and lesbian students, as well as faculty and staff on our campuses.

To assist administrators, the *Working Paper* presented a list of arguments both for and against the registration of a gay and lesbian organization. They acknowledge that registration was not an easy or trouble-free response, since on the one hand registration can connote an implicit endorsement by the law school of the homosexual lifestyle, which is prohibited by the church. On the other hand, not permitting registration can be an implicit endorsement of homophobia and may ignore the rights of lesbians and gays as human beings.

At Loyola, student organizations from all departments, even the law school, must be "registered" through the central university offices of Student Life. I use the word "register" as a term of art. Loyola does not recognize, accept, support, or sanction its student groups. Like so many other institutions, we use the neutral term "register" as a way of identifying those groups that are eligible for facilities and funding. In order to

2. WORKING PAPER, *supra* note 1, at 6.

3. *Id.*

register, a student group must fill out forms, develop a constitution, and secure an advisor from among the full-time faculty or staff.

In 1990, Loyola of Chicago registered a gay and lesbian student organization. The organization, by the terms of its constitution, is dedicated to education concerning the sensitive complex issues of homosexuality and to a supportive environment for its members.⁴ The university, after a review of the constitution, found that the organization had no intention of promoting its aims or actions that are in conflict with the values of the university. The constitution emphasized the following purposes: to provide a supportive environment for gays and lesbians, to provide a forum for the discussion of issues of particular interest to gays and lesbians, and to sensitize and educate the university community on issues of concern to gay and lesbian students. In announcing the registration of the group, the university stated the following:

In registering the new organization, the university applies the Jesuit principle of *cura personalis*, which underscores care and concern for the individual person. The university acknowledges that there is a great deal of pain in being isolated, or the victim of discrimination and prejudices for any reason including one's sexual orientation. Loyola's decision draws on principles articulated in *To Teach As Jesus Christ* prepared by the National Conference of Catholic Bishops in 1976, which states: "homosexuals, like everyone else, should not suffer from prejudice against their basic human rights. They have a right to respect, friendship and justice. They should have an active role in the Christian community."⁵

The registration of the group, the statement went on to say, "in no way implies that Loyola University endorses or condones homosexual lifestyle."⁶ The key for Loyola, as it apparently has been for other universities, was that the purpose of the organization was support, discussion, and education, and it was not advocacy of a lifestyle that is in conflict with church teachings.

Pro-choice groups present different sets of issues related to free speech and academic freedom. Registration of pro-choice groups on Catholic campuses is more complicated than registration of gay and lesbian groups. The different sides of the abortion debate have become polarized. Both pro-life and pro-choice groups are seen as advocacy and

4. LOY. U. CHI. GAY & LESBIAN STUDENT ORG. CONST. art. II.

5. Loy U. Chi., statement upon registration of Gay & Lesbian Student Organization (Oct. 2, 1990).

6. *Id.*

lobbying groups. Both sides, tend to be more reactive in nature than informative. The position of the Church is clear.

Father O'Hare at Fordham reflects the approach taken by many, if not most Catholic colleges:

As the issue of pro-choice clubs on Catholic campuses has been debated over the last several years, more and more institutions have come to the conclusion that a refusal to provide official status for pro-choice clubs, in particular to deny facilities and funding, is an appropriate expression of the institutional commitment to the Church's teaching on abortion, and such a decision need not curtail freedom of speech and dissenting views.⁷

Most Jesuit campuses seem to have little problem registering pro-life groups. The Catholic Church's position in support of the life of the fetus is clear. Pro-choice groups pose more of a challenging problem. Since the groups rarely label themselves as pro-abortion, it becomes difficult to reject a registration request on the basis that the group's purpose opposes Church teachings. The issue then raised is one of freedom of expression. To reject registration of a pro-choice group is to risk being identified publicly as being in opposition to freedom of speech, freedom of expression, and freedom of choice. As with the registration of gay and lesbian groups, the *Working Paper* suggests that the traditional Jesuit value of *cura personalis*—concern for the individual—be the foundation of all interactions with both pro-choice and pro-life groups.⁸ Concern for the students' views and struggles must form the basis of the conversation.

At Catholic colleges and universities, it is likely that a controversial student group whose purpose is centered on advocacy rather than education, will not become registered. The burden of proof is on the group. There must be a declaration in the group's constitution that the group does not express support for abortion. The *Working Paper* states that the key questions are: (1) Will a registered pro-choice student organization positively contribute to the dialogue on the abortion issue? (2) Will a registered pro-choice student organization refrain from advocacy of abortion, and focus on open, intelligent, and informed discussion?⁹

At Loyola in 1992, an undergraduate student group named Students for Choice requested official university registration. University representatives met with the students to discuss the group's constitution and

7. Father Joseph A. O'Hare, Address at Foundation and Donors Interested in Catholic Activities (FADICA) (June 25-26, 1992).

8. WORKING PAPER, *supra* note 1, at 11.

9. *Id.* at 26.

its goals. After much discussion the university decided not to register the group, stating that the university will not register a group whose primary purpose is the support of abortion as a morally acceptable choice. Representatives of the administration noted that the issue of abortion has been debated on campus by student organizations and individuals at the university for some time. There have been several discussions, meetings, speakers, forums, and demonstrations at which pro-choice views were presented. The university, in addition, had registered a Women's Center in 1990, which has as one of its purposes the full exploration of matters of concern to women, including reproductive choice. The university, in its statement denying registration, concluded with this statement:

Within the Loyola community, there are individual faculty, staff and students whose views represent the full spectrum of divergent positions present in the American society. The encouragement of open discussion among faculty, staff and students, however, does not preclude the university from espousing its own set of human values or from guiding its institutional actions in the light of moral principles it espouses.¹⁰

The specific circumstances of this matter were very important at Loyola. In the case of Students for Choice, the following considerations were important to the university's decision: (1) On the issue of freedom of speech, the university argued that the students were free to discuss whatever they want. A registered group already existed—the Women's Center—for the discussion of the issues that Students for Choice wished to raise. In addition, the issue of abortion is freely discussed in classrooms. The university stressed the importance of critical inquiry, exploration, debate, and dialogue throughout the university so that students and others can make sound ethical decisions in their personal lives. (2) Students for Choice stated in its constitution and informed the administration that it intended to go beyond discussion and debate to support abortion as a morally acceptable choice. Their stated intent was to go beyond education and awareness. (3) This was not considered to be a matter that involved academic freedom, a tradition that applies to a faculty member's ability to pursue research and intellectual inquiry, uninhibited by the university administration. The concept of academic freedom does not apply to student groups. The university reiterated its policy "to encourage free discussion of moral issues as part of the educa-

10. Loy. U. Chi., statement upon denial of Students for Choice registration (Mar. 18, 1992).

tional process. Organized advocacy of a position violating the university's Catholic tradition is not supported or funded by the university."¹¹

The following year the university did register a law student group called the Reproductive Issues Society. Its constitution stated that its purpose was to provide a "forum for the discussion and debate of any social or legal issue pertaining to reproduction, sexuality and family law."¹² The group did not seek to advocate abortion as a morally acceptable choice. In the discussions that led to the group's registration, the law school was characterized as a special and unique environment. The students and supporting faculty pointed to the special need for lawyers to discuss and debate moral issues that are also legal issues. They argued that within the law school it is especially important for students, faculty, and staff to teach, learn, and discuss the broadest possible spectrum of ideas and opinions in order to prepare students to counter or advance the best legal arguments. The central mission of a law school, they argued, is to instruct students in the process of client representation and to master the analytical and advocacy skills such representation involves. That task cannot be accomplished if only one side of an issue is on the table.

Students are funny. Law students are funny. Now, just two years after winning the battle to become registered, the Reproductive Issues Society is all but defunct. They have not sponsored a program. They have not asked for funding. I don't think they've ever even met. The only program we've had on abortion in the last two years was sponsored by the Pro-Life Society. That group has been in existence for about three years, but they got off to a rocky start as well. The group has had to change its name. The Pro-Life Society was started by a group of first year students at the end of their first year of law school, three years ago. The following fall the students returned and urgently sought an appointment with me. They informed me that they needed to change their name because they thought it may be hurting their chances of attracting members. I agreed with them. At that time they were known as Law Students for Life. Who wants to be a law student for life?

There are other potential registration requests from other controversial student groups. We at Loyola School of Law have not yet had experience with the religious groups organized in cult-like fashions. These groups may challenge the right to the free exercise of religion. Apparently these groups have surfaced on some campuses. Some of these

11. *Id.*

12. LOY. U. CHI. REPROD. ISSUES SOC'Y CONST. art. I.

groups may operate within the Catholic-Christian tradition and represent themselves as the sole interpreters and defenders of religious orthodoxy. Some schools have had experience with students involved in devil worship or witchcraft. The Young Pagans is not a rock group. A number of schools have seen the emergence of groups that claim to exist for the promotion of white culture and racial pride. Apparently, these groups frequently take the constitutions of the African American or Hispanic American law students and simply change the ethnic reference to white or caucasian, and say that they have the same mission as those groups.

The *Working Paper* states that we at Jesuit colleges should be prepared to deal with charges of reverse discrimination. The appearance of such organizations presents a teachable moment to deal not only with racism but also the fear, misunderstanding, and anxiety, which often underlie such expressions among students who have hitherto been a majority culture. Administrators should be guided by the question: "Will such an organization result, in the long run, in the creation of a climate of more genuine tolerance and respect for individual differences on campus?" For all of these groups it is important that a school carefully define the reasons for its action, particularly, if registration is denied.

Finally, the *Working Paper* suggests some general principles upon which to base decisions in the future. Above all, it exhorts those involved in the registration process to listen carefully during each encounter with students, and to view each occasion as an invitation for a response of love or an action for justice. It suggests specific principles that might guide the registration process of student groups:

1. The process of registration of controversial student groups should be related to the institution's efforts to bring the campus community to a greater appreciation and respect for the diversity of others.
2. The process of deciding to register or not register a student organization should be guided by the Ignatian principles of reflection and discernment, *cura personalis*, faith to the promotion of justice and adaption to time, place, and person.
3. Clarify how the institution views the nature of a Catholic college or university, especially in relation to freedom of expression.
4. Acknowledge that the Catholic college environment is an excellent place to explore controversial issues in a spirit of respect and community.
5. Take efforts to understand more deeply and to promote more open dialogue about contemporary Church teaching on homosexuality and abortion.

6. Take efforts to better understand the needs and characteristics of gay and lesbian persons.
7. Registration is not a Student Affairs concern, but must involve others, both in the on-campus community and off-campus community.
8. Look upon registration requests and the registration process as opportunities for dialogue and teachable moments, rather than trying to "kill the request."
9. Clearly explain to the campus community the reasons for a decision to register or not to register a student organization.
10. State clearly that the registration of a student organization is not an endorsement of the group's views, nor the views of individual members. An individual disclaimer statement for every controversial student organization or an overall generic disclaimer statement should be considered.
11. The registration process should be consistent and equitable in its application - which may mean clarifying and revising some registration policies and procedures. Work closely with student government in revising these policies.
12. Ultimately the administration has responsibility for the registration decision with the final decision being subject to review by the president and perhaps the board of trustees.
13. No matter how clearly and how often the college states that it does not endorse the views of the student group, accept the fact that some persons will see an implicit endorsement in registration and that different constituencies will have different views on controversial issues.
14. Student Affairs staff should take a pro-active approach and be very involved in helping a student organization draft its constitution and prepare its registration request, in working closely with the student organization after the registration is granted, and in helping the campus community understand the rationale for the registration of a controversial student organization.
15. A faculty advisor should be chosen who is sensitive to the needs of student organizations and to the mission of the college. The advisor should be willing to devote a considerable amount of time in this role.
16. Student Affairs should work closely with the institution's president in dealing with controversial groups since the president in most cases has become the spokesperson in explaining the registration of a controversial student organization.

17. In revising registration policies and procedures, also review related policies.¹³

I will conclude by wishing you well in your dealings with all students and by referring back to our dean, Nina Appel, who is fond of reciting an old Chinese blessing. It occurred to me that this could just as easily be an old Chinese curse. The blessing is, "May you live in interesting times."

13. WORKING PAPER, *supra* note 1, at 29-30.

