March 26, 2019

The Honorable Alan Doane
Chair
Judiciary Committee
Montana House of Representatives
PO Box 200400
Helena, MT 59620-0400

Re: Oppose HB 735 – Don’t Permit Discrimination in Public Institutions of Higher Education

Dear Chair Doane:

On behalf of the Montana chapter, members, and supporters of Americans United for Separation of Church and State, I write to urge you to oppose HB 735. This bill would require public universities and colleges to recognize, register, and fund student groups that discriminate in their membership and leadership. The bill should be rejected.

HB 735 is an attempt to nullify “accept-all-comers” policies. These nondiscrimination policies generally withhold funding and official recognition from any public university student group that is not open to all students. They prevent discrimination on campus, promote equality and fairness, and foster inclusionary practices for on-campus student organizations.

These policies do not target the religious nature of any group—organizations of any political, religious, or ideological stripe can become recognized groups and access funds provided they adhere to the nondiscrimination policy. And if a religious club decides it wants to discriminate anyway, it will not be silenced or driven off campus; instead, it, like any other club, simply cannot receive official recognition and funding. In fact, the Supreme Court upheld an “accept-all-comers” policy in Christian Legal Society v. Martinez against claims that law violated the religious freedom of Christian student groups. The Court explained that the policies do not violate the First Amendment because the denial of benefits is based on the group’s conduct, not their views.

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1 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 Id. at 696-7.
HB 735 would actually sanction discrimination rather than bar it. Instead of treating all groups equally, HB 735 would treat religious groups specially and force schools to support discrimination. But schools have a legitimate interest in preventing discrimination on campus and fostering inclusionary practices for student organizations. All public institutions of higher education 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.

The Montana legislature must not support divisive legislation that fosters discrimination in the state’s public institutions of higher education. Thank you for your consideration on this important matter.

Sincerely,

Nikolas Nartowicz
State Policy Counsel

cc: Members of the House Judiciary Committee