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From the Los Angeles Times

## Christians Sue for Right Not to Tolerate Policies

Many codes intended to protect gays from harassment are illegal, conservatives argue.

By Stephanie Simon  
Times Staff Writer

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ATLANTA — Ruth Malhotra went to court last month for the right to be intolerant.

Malhotra says her Christian faith compels her to speak out against homosexuality. But the Georgia Institute of Technology, where she's a senior, bans speech that puts down others because of their sexual orientation.

Malhotra sees that as an unacceptable infringement on her right to religious expression. So she's demanding that Georgia Tech revoke its tolerance policy.

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### FOR THE RECORD:

**Religious expression: An article in Monday's Section A said Gregory S. Baylor of the Christian Legal Society viewed homosexuality as a lifestyle choice. In fact, he does not have a stance on that issue. As the article noted, he supports policies that protect people from discrimination based on race, gender and other inborn traits. He asserts that antidiscrimination policies regarding homosexuality are different because they protect people based on conduct. Baylor's organization seeks to exempt religious groups from those policies. —**

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With her lawsuit, the 22-year-old student joins a growing campaign to force public schools, state colleges and private workplaces to eliminate policies protecting gays and lesbians from harassment. The religious right aims to overturn a broad range of common tolerance programs: diversity training that promotes acceptance of gays and lesbians, speech codes that ban harsh words against homosexuality, anti-discrimination policies that require college clubs to open their membership to all.

The Rev. Rick Scarborough, a leading evangelical, frames the movement as the civil rights struggle of the 21st century. "Christians," he said, "are going to have to take a stand for the right to be Christian."

In that spirit, the Christian Legal Society, an association of judges and lawyers, has formed a national group to challenge tolerance policies in federal court. Several nonprofit law firms — backed by major ministries such as Focus on the Family and Campus Crusade for Christ — already take on such cases for free.

The legal argument is straightforward: Policies intended to protect gays and lesbians from discrimination end up discriminating against conservative Christians. Evangelicals have been suspended for wearing anti-gay T-shirts to high school, fired for denouncing Gay Pride Month at work, reprimanded for refusing to attend diversity training. When they protest tolerance codes, they're labeled intolerant.

A recent survey by the Anti-Defamation League found that 64% of American adults — including 80% of evangelical Christians — agreed with the statement "Religion is under attack in this country."

"The message is, you're free to worship as you like, but don't you dare talk about it outside the four walls of your church," said Stephen Crampton, chief counsel for the American Family Assn. Center for Law and Policy, which represents Christians who feel harassed.

Critics dismiss such talk as a right-wing fundraising ploy. "They're trying to develop a persecution complex," said Jeremy Gunn, director of the American Civil Liberties Union's Program on Freedom of Religion and Belief.

Others fear the banner of religious liberty could be used to justify all manner of harassment.

"What if a person felt their religious view was that African Americans shouldn't mingle with Caucasians, or that women shouldn't work?" asked Jon Davidson, legal director of the gay rights group Lambda Legal.

Christian activist Gregory S. Baylor responds to such criticism angrily. He says he supports policies that protect people from discrimination based on race and gender. But he draws a distinction that infuriates gay rights activists when he argues that sexual orientation is different — a lifestyle choice, not an inborn trait.

By equating homosexuality with race, Baylor said, tolerance policies put conservative evangelicals in the same category as racists. He predicts the government will one day revoke the tax-exempt status of churches that preach homosexuality is sinful or that refuse to hire gays and lesbians.

"Think how marginalized racists are," said Baylor, who directs the Christian Legal Society's Center for Law and Religious Freedom. "If we don't address this now, it will only get worse."

Christians are fighting back in a case involving Every Nation Campus Ministries at California State University. Student members of the ministry on the Long Beach and San Diego campuses say their mission is to model a virtuous lifestyle for their peers. They will not accept as members gays, lesbians or anyone who considers homosexuality "a natural part of God's created order."

Legal analysts agree that the ministry, as a private organization, has every right to exclude gays; the Supreme Court affirmed that principle in a case involving the Boy Scouts in 2000. At issue is whether the university must grant official recognition to a student group that discriminates.

The students say denying them recognition — and its attendant benefits, such as funding — violates their free-speech rights and discriminates against their conservative theology. Christian groups at public colleges in other states have sued using similar arguments. Several of those lawsuits were settled out of court, with the groups prevailing.

In California, however, the university may have a strong defense in court. The California Supreme Court recently ruled that the city of Berkeley was justified in denying subsidies to the Boy Scouts because of that group's exclusionary policies. Eddie L. Washington, the lawyer representing Cal State, argues the same standard should apply to the university.

"We're certainly not going to fund discrimination," Washington said.

As they step up their legal campaign, conservative Christians face uncertain prospects. The 1st Amendment guarantees Americans "free exercise" of religion. In practice, though, the ground rules shift depending on the situation.

In a 2004 case, for instance, an AT&T Broadband employee won the right to express his religious convictions by refusing to sign a pledge to "respect and value the differences among us." As long as the employee wasn't harassing co-workers, the company had to make accommodations for his faith, a federal judge in Colorado ruled.

That same year, however, a federal judge in Idaho ruled that Hewlett-Packard Co. was justified in firing an employee who posted Bible verses condemning homosexuality on his cubicle. The verses, clearly visible from the hall, harassed gay employees and made it difficult for the company to meet its goal of attracting a diverse workforce, the judge ruled.

In the public schools, an Ohio middle school student last year won the right to wear a T-shirt that proclaimed: "Homosexuality is a sin! Islam is a lie! Abortion is murder!" But a teen-ager in Kentucky lost in federal court when he tried to exempt himself from a school program on gay tolerance on the grounds that it violated his religious beliefs.

In their lawsuit against Georgia Tech, Malhotra and her co-plaintiff, a devout Jewish student named Orit Sklar, request unspecified damages. But they say their main goal is to force the university to be more tolerant of religious viewpoints. The lawsuit was filed by the Alliance Defense Fund, a nonprofit law firm that focuses on religious liberty cases.

Malhotra said she had been reprimanded by college deans several times in the last few years for expressing conservative religious and political views. When she protested a campus production of "The Vagina Monologues" with a display condemning feminism, the administration asked her to paint over part of it.

She caused another stir with a letter to the gay activists who organized an event known as Coming Out Week in the fall of 2004. Malhotra sent the letter on behalf of the Georgia Tech College Republicans, which she chairs; she said several members of the executive board helped write it.

The letter referred to the campus gay rights group Pride Alliance as a "sex club ... that can't even manage to be tasteful." It went on to say that it was "ludicrous" for Georgia Tech to help fund the Pride Alliance.

The letter berated students who come out publicly as gay, saying they subject others on campus to "a constant barrage of homosexuality."

"If gays want to be tolerated, they should knock off the political propaganda," the letter said.

The student activist who received the letter, Felix Hu, described it as "rude, unfair, presumptuous" — and disturbing enough that Pride Alliance forwarded it to a college administrator. Soon after, Malhotra said, she was called in to a dean's office. Students can be expelled for intolerant speech, but she said she was only reprimanded.

Still, she said, the incident has left her afraid to speak freely. She's even reluctant to aggressively advertise the campus lectures she arranges on living by the Bible. "Whenever I've spoken out against a certain lifestyle, the first thing I'm told is 'You're being intolerant, you're being negative, you're creating a hostile campus environment,'" Malhotra said.

A Georgia Tech spokeswoman would not comment on the lawsuit or on Malhotra's disciplinary record, but she said the university encouraged students to debate freely, "as long as they're not promoting violence or harassing anyone."

The open question is what constitutes harassment, what's a sincere expression of faith — and what to do when they overlap.

"There really is confusion out there," said Charles C. Haynes, a senior scholar at the First Amendment Center, which is affiliated with Vanderbilt University. "Finding common ground sounds good. But the reality is, a lot of people on all sides have a stake in the fight."

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