

March 24, 2023

**Via Federal eRulemaking Portal**

Nasser Paydar  
Assistant Secretary, Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

**Re: EPPC Scholars Comment Opposing ED's Proposed Rule "Direct Grant Programs, State-Administered Formula Grant Programs," RIN 1840-AD72, Docket ID ED-2022-OPE-0157**

Dear Assistant Secretary Paydar:

We are scholars at the Ethics and Public Policy Center (EPPC), and we write in opposition to the Department of Education's (ED) proposed rule, "Direct Grant Programs, State-Administered Formula Grant Programs,"<sup>1</sup> which would rescind two provisions relating to equal campus access protections for religious student groups.

Rachel N. Morrison is an EPPC Fellow, director of EPPC's HHS Accountability Project, and former attorney at the Equal Employment Opportunity Commission. Natalie Dodson is a Legislative and Regulatory Affairs Associate and a member of the HHS Accountability Project.

The proposed rescission gratuitously targets religious student groups. The provisions', which mandate that public colleges and universities give religious student groups equal campus access, falls squarely within the demands of the First Amendment and recent Supreme Court rulings, and provide benefits to religious student groups and college and university administrators. Yet, ED proposed rescinding those provisions, and just those two provisions. The Department claims it "has not observed that [the provisions] have meaningfully increased protections of First Amendment rights for religious student organizations," yet it has failed to do its due diligence of researching and crediting the effectiveness of the provisions.<sup>2</sup> ED provides unspecified claims that the provisions cause confusion, but fails to acknowledge that rescinding the provisions will actually cause confusion and harm religious student groups, colleges and universities, and campus communities. ED fails to explain why rescission is needed, making its proposal unreasonable, arbitrary, and capricious. The Department should withdraw the proposed rule and protect equal campus access for religious student groups of all faiths.

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<sup>1</sup> 88 Fed. Reg. 10857.

<sup>2</sup> *Id.* at 10861.

**I. The proposed rule targets religious students by gratuitously rescinding two provisions protecting equal campus access for religious student groups.**

In 2020, ED issued the “Religious Freedom and Free Inquiry Rule” to add material conditions relating to First Amendment freedoms and free inquiry to department grants for direct grant programs and state administered grant programs. As a material condition of receiving the grants, public institutions of higher education (IHEs) are required to comply with the First Amendment, and private institutions are required follow their stated institutional policies on freedom of speech, including academic freedom. The 2020 Rule promulgated two nearly identical provisions respecting equal campus access for religious student groups: one for public institution grantees and the other for states or subgrantees that are public institutions. “As a material condition of the Department’s grant,” the two provisions require that each grantee:

shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.<sup>3</sup>

As discussed more below, these provisions provide commonsense protection for religious student groups that have faced discrimination at public IHEs for decades. The equal campus access provisions provide protection for students of all faiths, including those of religious minorities, and help ensure religious diversity and inclusion of students of all faiths on public campuses.

Despite the benefits of the provisions, ED’s sole proposal in the proposed rule is to completely rescind both provisions. ED’s single proposal to the much broader underlying 2020 Religious Liberty and Free Inquiry Rule targets religious students on public campuses and no one else. Rescinding the equal campus access provisions would send a message to students of faith that religious student groups are not welcome on public campuses and that religious rights are subject to second-class treatment.

In support of the proposed rescission, ED identifies three main points: (1) the provisions do not add any material protections and are not necessary to protect First Amendment rights; (2) the provisions created confusion; and (3) it would be burdensome for ED to investigate complaints.<sup>4</sup> ED claims the “provisions’ costs outweigh any potential benefits” and that rescinding the provisions “would not have costs for students or campus communities.”<sup>5</sup> In short, ED believes rescinding the provisions would “eliminate the confusion caused by the 2020 final rule and leave adjudication of these complex and important constitutional questions to the

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<sup>3</sup> 34 CFR §§ 75.500(d), 76.500(d).

<sup>4</sup> 88 Fed. Reg. at 10863.

<sup>5</sup> *Id.* at 10863.

institutions themselves, their communities, and the judiciary.”<sup>6</sup> We address these points in turn below.

## **II. The two provisions help ensure religious student groups’ First Amendment rights to equal campus access are protected.**

Quoting the Department’s 2021 blogpost, the proposed rule emphasized “[p]rotecting First Amendment freedoms on public university and college campuses is essential.”<sup>7</sup> Repeatedly, the proposed rule claims to care for the “protect[ion]” of “First Amendment freedoms,” yet ED simultaneously proposes removing these very protections for religious student groups.<sup>8</sup> According to the proposed rule, the two equal campus access provisions do not add “material additional protections for student groups whose stated mission is religious in nature at public IHEs” and “are not necessary to protect the First Amendment right to free speech and free exercise of religion.”<sup>9</sup> As we explain below, these provisions have helped ensure religious student groups’ First Amendment rights are protected, and they have provided meaningful benefits to students, public IHEs, and campus communities.

**The provisions in the 2020 Rule were a response to the discrimination many religious student groups faced at public IHEs.** Prior to the 2020 Religious Liberty and Free Inquiry Rule, numerous religious student groups experienced discrimination and animus from administrations of public IHEs. Indeed, in promulgating the 2020 Rule, ED justified the need for the provisions by identifying widespread discrimination against religious student groups “at hundreds of schools across the country” over the course of “decades.”<sup>10</sup>

In violation of the First Amendment, public IHEs singled out religious student groups that wanted to freely choose their leadership while allowing other secular groups, such as sororities and fraternities, to freely choose and control their group leadership. For example, Vanderbilt University discriminated against religious student groups in 2012 when the University “derecognized ... almost a dozen campus ministries.”<sup>11</sup> Similarly, in 2014, Bowdoin College discriminated against a religious student group when it disallowed the group from gathering on campus because the group required the its leaders to believe the tenets of their faith.<sup>12</sup> In 2017 and 2018, several religious student groups, including those affiliated with minority religions, at the University of Iowa were kicked off campus for requiring their student group leaders share their specific faith tenets.<sup>13</sup> In 2017, Wayne State University refused to

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<sup>6</sup> *Id.* at 10861, 10862.

<sup>7</sup> *Id.* at 10859.

<sup>8</sup> *Id.* at 10858, 10869 and 10861.

<sup>9</sup> *Id.* at 10857.

<sup>10</sup> 85 Fed. Reg. 59944.

<sup>11</sup> Govier Gordon, *Campus Ministry at Vanderbilt: Seven Years After Derecognition*, InterVarsity (Apr. 8, 2019), <https://intervarsity.org/news/campus-ministry-vanderbilt-seven-years-after-derecognition>.

<sup>12</sup> Paulson Michael, *Colleges and Evangelicals Collide on Bias Policy*, N.Y. Times (June 9, 2014), [https://www.nytimes.com/2014/06/10/us/colleges-and-evangelicals-collide-on-bias-policy.html?\\_r=0](https://www.nytimes.com/2014/06/10/us/colleges-and-evangelicals-collide-on-bias-policy.html?_r=0).

<sup>13</sup> Russell Nicole, *Christian Group Kicked Off Campus for Requiring its Leaders to be Christian*, Wash. Examiner (Aug. 9, 2018), <https://www.washingtonexaminer.com/opinion/christian-group-kicked-off-campus-for-requiring-its-leaders-to-be-christian> (describing how the university kicked off the InterVarsity Christian Fellowship, Business Leaders in Christ (BLinC), Sikh Awareness Club, the Chinese Student Christian Fellowship, the Imam Mahdi Organization, and the Latter-day Saint Student Association).

renew a religious student group's student organization status citing the group's requirement that its leaders embrace its faith, leading to a lawsuit and a legal victory for the group.<sup>14</sup> In some cases, the First Amendment violations and discrimination have been so blatant that courts have waived public IHE officials' qualified immunity and imposed massive attorney fee awards.<sup>15</sup>

The 2020 Rule addressed the public IHEs' unlawful and discriminatory actions and policies by providing a written explanation of religious student groups' First Amendment rights and giving notice to college and university administrators of their specific constitutional obligations in the context of equal campus access and religious student group leadership requirements.

**The provisions provide necessary clarification of First Amendment protections for religious student groups and the constitutional obligations of public IHEs.** ED's suggestion that the provisions are not needed because they do not add any material protections under the First Amendment is arbitrary and capricious. While the provisions do not go beyond what is required under the First Amendment, they provide useful and necessary clarification. The text of the First Amendment, "Congress shall make no law ... prohibiting the free exercise [of religion]," does not provide an adequate explanation to religious student groups or college and university administrators—who are generally not well versed in First Amendment caselaw—of what the First Amendment requires in the context of religious student groups at public IHEs. Notably, ED does not propose rescinding the free speech regulations promulgated by the 2020 Rule that elaborate on the First Amendment's free speech guarantee. Under ED's rationale for rescinding the equal campus access provisions, the free speech regulations likewise do not add any material protections under the First Amendment and are not necessary to protect First Amendment rights. Yet ED does not extend this rationale to the free speech regulations, demonstrating that its proposal is based on religious animus and undercutting the alleged need for rescission.

**The provisions provide actual benefits to religious student groups.** Since the 2020 Rule was published, religious student groups on public campuses have relied on the provisions to successfully secure their First Amendment rights. The provisions provide a written explanation of religious student groups' constitutional rights that students can point to when challenging discriminatory and unlawful actions by public IHEs.

For instance, the Christian Legal Society (CLS) chapter at the University of Wisconsin-Madison, which has been recognized by the University for decades, was denied "re-registration"

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<sup>14</sup> *InterVarsity Christian Fellowship v Wayne State University*, Becket Law, <https://www.becketlaw.org/case/intervarsity-christian-fellowship-v-wayne-state-university/>.

<sup>15</sup> See, e.g., *Business Leaders In Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (denying qualified immunity to university officials for their alleged conduct in revoking a religious student group's status as a registered student organization for failure to comply with university's nondiscrimination policy based on the group's refusal to permit student that did not agree with group's religious beliefs to hold a leadership position, but not revoking the registered status of non-religious student groups that restricted access based on race, gender, or other characteristics protected by the policy); *Ratio Christi at the University of Colorado, Colorado Springs v. Sharkey*, Case No. 1:18-CV-02928 (D. Co. Nov. 14, 2018) (case settled where university denied recognition to a Christian student group that required its leaders to share its beliefs by requiring the university to change its policy and pay attorneys' fees).

for the 2022-2023 academic year because its “leadership requirements [were] in conflict with the UW- System non-discrimination policy.”<sup>16</sup> CLS submitted a letter on September 9, 2022, to the administration appealing the University’s denial of “re-registration” and citing to the equal campus access provisions.<sup>17</sup> On September 26, 2022, CLS sent a second letter to the administration again citing the provisions, “[f]ederal regulation prohibits a public university that receives a United States Department of Education grant, either directly or through the State or a subgrantee, from denying recognition and funding to a student organization “because of the religious student organization’s beliefs, practices, policies, speech, membership standards or leadership standards.”<sup>18</sup> The University subsequently granted the CLS Chapter “provisional” recognition for the 2022-2023 academic year.

Similarly, in 2022, when the University of New Hampshire’s Student Body Association refused to grant recognition to the University’s CLS chapter because of their religious beliefs and leadership standards, the student group sent a letter citing the equal campus access provisions and requesting equal treatment.<sup>19</sup> The University of New Hampshire subsequently agreed to recognize the CLS Chapter.

In another instance, the University of Idaho College of Law refused to recognize the CLS chapter in 2021 and “subjected its student leaders to an unseemly inquisition regarding their religious beliefs, including religious standards for leaders.”<sup>20</sup> In response, CLS sent a letter to the administration on November 8, 2021, citing ED’s enforcement of the provisions as an impetus for the University to recognize CLS’s First Amendment rights. The letter stated, “the federal regulations clearly establish that University of Idaho administrators have a duty to recognize the CLS chapter and grant it any benefits otherwise received by other student groups, or risk the loss of Department of Education grants.”<sup>21</sup> The University of Idaho granted recognition to the CLS Chapter, over objections by the student government, in accordance with their First Amendment obligations as explained in the equal campus access provisions.

In yet another instance, in 2020, the University of Virginia (UVA) required the CLS chapter on campus to submit an “Inclusive Identity Disclosure Form.”<sup>22</sup> Filling out the form was a condition of participating in the Fall Activities Fairs where student groups recruit student members. CLS viewed the form as an attempt to trick the religious student group into “admitting” that they “discriminated” in leadership and membership and believed any student leaders who gave “wrong” answers on the form would be subject to UVA honor code violations. CLS sent a letter to the administration on February 18, 2020, citing the equal campus access provisions. After UVA received the letter, the student government stopped using the form.

In addition to these examples, attached are two letters, dated November 2021 and November 2022 respectively, from religious student groups at University of Kansas and SUNY

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<sup>16</sup> Attachment A.

<sup>17</sup> *Id.* (citing “34 C.F.R. §§ 75.500(d) & 76.500(d)”).

<sup>18</sup> Attachment B.

<sup>19</sup> Attachments C and D.

<sup>20</sup> Attachment E.

<sup>21</sup> *Id.*

<sup>22</sup> Attachments F and G.

Cortland that also rely on the equal campus access provisions to vindicate their First Amendment rights without the need to resort to legal actions.<sup>23</sup>

**Litigation does not provide an adequate alternative to the provisions.** ED suggests that the provisions are unnecessary because when there are First Amendment violations, religious student groups “can and do seek relief in Federal and State courts.”<sup>24</sup> But litigation does not provide an adequate solution for religious student groups that face unlawful discrimination by their college or university.

In practice, most students lack the knowledge, support, and funding to pursue a legal remedy for religious discrimination. Further, many religious student groups attempting to organize on campus are not part of a national organization. Even if student groups do know about their rights and have the resources or connections to engage in litigation, most students are on campus for a few years and are not eager to spend that short time in a prolonged legal battle, especially when they may graduate before any resolution. Further, religious student groups would face social pressure and stigma from the college or university administration and other students if they chose to pursue litigation. For these reasons and more, litigation is not a sufficient alternative to the provisions which provide the tangible benefit to both students and college and university administrations by reducing the need for litigation and any related expenses.

**Rescinding the provisions will cause harms for religious student groups, IHEs, and campus communities.** In practice, rescinding the provisions will chill the First Amendment rights of religious student groups on campuses across the country. As the Supreme Court has made clear, the loss of First Amendment rights—even for short periods of time—constitutes irreparable harm.<sup>25</sup> As discussed more fully below, rescinding the provisions will increase confusion for public IHEs over their obligations to provide equal campus access to religious student groups, leading to more discrimination. Without the provisions for religious student groups to rely on, many instances of discrimination will be left unremedied due to the barriers discussed above to religious student groups to vindicate their rights through litigation.

When religious student groups are kicked off campus, students lose the benefits of being part of the community and the support the groups provide. With the onslaught and growth of mental health issues in young people,<sup>26</sup> supporting students through community and faith is integral to their wellbeing.<sup>27</sup> In fact, “students whose religion was ‘very important’ in their lives had a lower rate of depression compared with those who placed less importance on religion.”<sup>28</sup> The American Psychiatric Association explained, “religion and spirituality often play a vital role

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<sup>23</sup> Attachments H and I.

<sup>24</sup> 88 Fed. Reg. at 10861.

<sup>25</sup> *Elrod v Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

<sup>26</sup> Abrams Zara, *Student Mental Health is in Crisis. Campuses are Rethinking their Approach*, American Psychological Association, October 1, 2022, <https://www.apa.org/monitor/2022/10/mental-health-campus-care>.

<sup>27</sup> MentalHealth.gov, <https://www.mentalhealth.gov/talk/faith-community-leaders>.

<sup>28</sup> See, e.g., Sweta L. Ghodasara et al., *Assessing Student Mental Health at the Vanderbilt University School of Medicine*, 86 Academic Medicine 116 (Jan. 2011), DOI: 10.1097/ACM.0b013e3181ffb056.

in healing, people experiencing mental health concerns often turn first to a faith leader.”<sup>29</sup> One study found that students with active religious lives—“those who attend religious services, pray on a regular basis, feel close to God, and emphasize the role of faith in their daily lives”—earn “significantly better grades” than “those [who] believe that a God exists but avoid religious involvement and broader issues of the relevance of religion for their life.”<sup>30</sup>

ED should be looking for ways to encourage more religious student groups on campus rather than going out of its way to single them out for disfavored treatment.

### **III. ED fails to demonstrate that the two provisions cause confusion and ignore how rescinding the provisions will cause actual confusion.**

**Vague and unspecified claims of confusion by certain stakeholders do not support a need for rulemaking.** The second point ED makes in support of its proposed rescission is that the provisions allegedly “created confusion among institutions.”<sup>31</sup> The proposed rule is deliberately ambiguous in describing the supposed confusion with the existing rule, and the public has not been given sufficient information to fully respond to these concerns. The proposed rule also fails to explain how rescinding the provisions would, in practice, diminish the alleged confusion. It is inappropriate for ED to vaguely cite to alleged “confusion” without adequately demonstrating whether such confusion exists, whether it is reasonable, and whether the proposed rescission will remedy the alleged confusion.

The proposed rule cites to “stakeholders” that told ED they were confused about the interplay between the provisions and other nondiscrimination requirements and whether the provisions “allow religious student groups to discriminate against vulnerable and marginalized students.”<sup>32</sup> The ED fails to provide any actual specifics or examples of situations where this alleged confusion arose.

For example, the proposed rule fails to identify how many public IHEs have claimed confusion over the Department’s current policy or whether the confusion is reasonable. The fact that a handful of institutions may be confused because they misunderstand the law as applied by the courts is not a rational basis for rescinding the provisions. ED also failed to point to any specific policy or instance where the application of the provisions, in fact, caused confusion and led to religious student groups “discriminat[ing] against vulnerable and marginalized students.”<sup>33</sup> Presumably, if such confusion were commonplace there would be specific examples of where the provisions were misunderstood or applied in expansive ways not supported by the First Amendment. The failure of ED to point to any specific example undercuts its claim that the provisions are harmful and should be rescinded.

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<sup>29</sup> *Mental Health, A Guide for Faith Leaders*, American Psychiatric Association (2018), <https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/faith-mentalhealth-guide.pdf>.

<sup>30</sup> Carrie Spector, *Religiously Engaged Adolescents Demonstrate Habits that Help them Get Better Grades*, *Stanford Scholar Finds*, Stanford Graduate Sch. of Edu. (Apr. 15, 2018), <https://ed.stanford.edu/news/religiously-engaged-adolescents-demonstrate-habits-help-them-get-better-grades-stanford-scholar>.

<sup>31</sup> 88 Fed. Reg. at 10857.

<sup>32</sup> *Id.* at 10859.

<sup>33</sup> *Id.*



The proposed rule also mentions stakeholders ED consulted with in response to an August 2021 blog post.<sup>34</sup> We ask ED to clarify the number and types of organizations with which it communicated and whether they include religious student groups that have experienced discrimination at public IHEs.

**Concerns over confusion raised in some comments to the 2020 Rule does not support a need for rulemaking.** The proposed rule cites concerns raised by several commentators to the 2020 Rule that the provisions “could be read to require IHEs to afford preferential treatment to religious student groups and would prohibit IHEs from applying neutral, generally-applicable nondiscrimination policies that would otherwise be compliant with the First Amendment.”<sup>35</sup> These cursory claims of confusion in comments to the 2020 Rule were already addressed and refuted when the 2020 Rule was finalized.

For example, in the 2020 Rule, the Department expressly rejected public comments expressing concern that the provisions would give religious organizations “preferential treatment” by allowing them to ignore nondiscrimination policies such as the policy upheld by the Supreme Court in *Christian Legal Society v. Martinez*.<sup>36</sup> In responding to those comments, the Department emphasized that the provisions “do not prohibit public colleges and universities from implementing all-comers policies, nor do they bar these institutions from applying neutral, generally applicable policies to religious student organizations.”<sup>37</sup> The provisions only require equal treatment, and all-comers policies and other neutral and generally applicable policies by their nature do not “give religious student organizations an exemption or preferential treatment, but merely equal treatment, which is required under the First Amendment.”<sup>38</sup> Of course, most colleges and universities do not have actual all-comers policies as they permit organizations, such as fraternities or sororities, to limit membership based on sex or other characteristic. Indeed, not even the school at issue in *Christian Legal Society v. Martinez* had such a policy; the Supreme Court’s decision rested on the parties’ stipulation, which contradicted the Defendants’ admissions in its answer to CLS’s complaint.<sup>39</sup>

Moreover, ED failed to point to any specific policy or instance since the 2020 Rule was finalized where public IHEs were prohibited from “applying neutral, generally-applicable nondiscrimination policies that would otherwise be compliant with the First Amendment.”<sup>40</sup>

**Any claims of confusion are undercut by the plain text of the provisions.** The stakeholder’s claims of confusion are inconsistent with the provisions’ plain text. Public IHEs are prohibited from denying benefits to religious organizations only if the benefits are “otherwise afforded to other student organizations at the public institution.”<sup>41</sup> This mandate could not be clearer. If secular organizations are allowed to select leaders or members based on ideology or

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<sup>34</sup> *Update on the Free Inquiry Rule*, U.S. Dep’t of Edu. (Aug. 19, 2021), <https://blog.ed.gov/2021/08/update-on-the-free-inquiry-rule/>.

<sup>35</sup> 88 Fed. Reg. at 10860.

<sup>36</sup> 85 Fed. Reg. at 59916.

<sup>37</sup> *Id.* at 59939.

<sup>38</sup> *Id.*

<sup>39</sup> *Christian Legal Society v. Martinez*, 561 U.S. 661, 715 (2010) (Alito, J., dissenting).

<sup>40</sup> 88 Fed. Reg. at 10860.

<sup>41</sup> 34 CFR §§ 75.500, 76.500.



affinity, religious organizations cannot be denied the right to select their leaders or members based on religious ideology or affinity. Likewise, if secular organizations are allowed to use funds for their publications and activities, religious organizations cannot be denied the right to use funds for religious publications and activities. As ED recognized in another proposed rule, under “the nondiscrimination rule in *Trinity Lutheran* and *Espinoza* ... ‘disqualifying otherwise eligible recipients from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exactly scrutiny.’”<sup>42</sup>

In this context, the stakeholders’ concern that religious student groups are somehow receiving extra-constitutional protections or are allowed to unlawfully discriminate is unfounded. The provisions make clear that public IHEs are simply required to treat religious student organizations the same way they treat all other student organizations. The Department’s blatant disregard of the text of the provisions to credit the unsubstantiated claims of confusion by stakeholders is irrational.

**ED could easily clarify any alleged confusion resulting from the provisions.** ED’s reliance on the alleged confusion of the provisions is undercut by the Department’s first point that the provisions do not add any material First Amendment protections to student groups. ED cannot have it both ways. Either the provisions provide no more protection than is required under the First Amendment or the provisions’ requirements go beyond the First Amendment. Instead of rescinding the provisions, which provide benefits to religious student groups, colleges and universities, and campus communities, the Department could easily assuage the concerns of the institutions by clarifying the application of the provisions to a specific situation.

**Rescinding the provisions will cause actual confusion.** In contrast to the proposed rule’s claims, rescinding the provisions will cause confusion, further making the Department’s purported need for their rescission arbitrary and capricious. The provisions were enacted to clear the confusion that already existed, as demonstrated by litigation, which the Department acknowledges and references in the proposed rule.<sup>43</sup> As mentioned above, without the provisions, religious student groups may not know their First Amendment rights to equal access and college and university administrators may not know their obligations under law. Most students and administrators are not experts in constitutional or First Amendment law and should not be relied upon to fully understand or appreciate what ED later calls a “complex area of law.”<sup>44</sup>

Moreover, not only does ED fail to identify any evidence of new confusion resulting from the provisions, but it also fails to demonstrate why the alleged confusion is more egregious than the proven and perpetual conflict that has resulted in litigation across the country over whether or not religious student groups may require leaders to affirm the faith and mission of the organization. The Department cannot rationally rely on vague allegations of “confusion” to rescind the provisions without fully exploring and disclosing the reasonableness and scope of the alleged confusion or the risk of the earlier confusion and conflict returning if the provisions are rescinded.

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<sup>42</sup> 88 Fed. Reg. 2395, 2401 (quoting *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246 (2020)).

<sup>43</sup> 88 Fed. Reg. 10857, 10861.

<sup>44</sup> *Id.*

**Institutions have demonstrated that they are not “best positioned” to respect the First Amendment rights of religious student groups.** The proposed rule cites several institutional stakeholders that raised concerns during consultations with ED that the provisions reduced institutions’ ability “to set individualized policies that protect First Amendment freedoms and reflect the diversity of institutional contexts and missions.”<sup>45</sup> According to those stakeholders, “the appropriate level of decision-making should remain at the institutional level” because institutions are “best positioned to ensure respect for religious expression and exercise and protection against unlawful discrimination for students on campuses.”<sup>46</sup> While we assume the concerns raised by institutions are sincere, these statements do not support a need to rescind the provisions and undercut the ongoing discrimination against religious student groups by institutions. Clearly, as demonstrated above, when left to their own initiative, not all institutions are able to set policies or make decisions that comply with the First Amendment.

**ED cannot reasonably rely on institutions’ “good-faith efforts” to respect the First Amendment rights of religious student groups.** ED asserts that “institutions generally make a good-faith effort to abide by the First Amendment irrespective of the implementation of the 2020 final rule” and that “a threat of remedial action” is not necessary “to make the guarantees of the First Amendment, including the Free Exercise Clause, a reality at public institutions.”<sup>47</sup> Yet, as demonstrated by the examples above, this conclusion is not supported in fact, making it arbitrary and capricious. Good-faith efforts do not equal a proper understanding of First Amendment guarantees or compliance with legal obligations. It is disingenuous of ED to assume that all institutions will abide by the First Amendment without any incentive to avoid remedial action. ED itself acknowledges that there are instances where institutions have failed to abide by students’ First Amendment rights and have had to go to court to vindicate those rights.<sup>48</sup>

Regardless of ED’s belief about the good intentions of public IHEs, ED promises it “will continue to encourage all IHEs to protect students’ opportunities to associate with fellow members of their religious communities, to share the tenets of their faith with others, and to express themselves on campus about religious and nonreligious matters alike.”<sup>49</sup> This promise, however, rings hollow and is of little solace to religious student groups facing discrimination. Merely encouraging IHEs to protect First Amendment rights falls far short of providing regulatory language explaining the protections religious student groups hold and the threat of remedial action by ED for lack of compliance.

**If ED chooses not to withdraw the proposed rule, it should, at a minimum, issue a supplemental notice of proposed rulemaking.** Because ED has failed in its burden to establish need for the proposed rule based on confusion, the Department should withdraw the proposed rule. But if it does seek to move forward, it should, at a minimum, issue a supplemental notice of proposed rulemaking explaining, more specifically, the alleged confusion the provisions have caused so that the public has an opportunity to provide meaningful comment in response. In a supplemental notice of proposed rulemaking, the Department should explain the basis of the

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 10859.

<sup>47</sup> *Id.* at 10861.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 10862.

alleged confusion among public IHEs and whether that confusion is justified by existing Supreme Court and Court of Appeals precedent, and how that confusion is justified under the plain meaning of the provisions. Further, the Department is required to assess the cost of rescinding the provisions, particularly in light of the extensive and burdensome litigation that existed before the provisions, which was the impetus for the provisions in the first place.

**IV. ED has a duty to uphold the First Amendment rights of religious student groups and enforcing the two provisions is not unduly burdensome.**

The third point the proposed rule raises is that the provisions allegedly “prescribe an unduly burdensome role for the Department to investigate allegations regarding IHEs’ treatment of religious student organizations.”<sup>50</sup> This claim is made even though ED “has not received any complaints regarding alleged violations.”<sup>51</sup> So far, there has been zero actual burdens on ED to enforce the provisions making it arbitrary and capricious for ED’s claim that a non-existent burden established a need for this rulemaking.

The proposed rule states that enforcement might be “very fact-intensive” and that the First Amendment is a “complex area of law,” courts are “better suited to handle such matters.”<sup>52</sup> But rather than the whole of the First Amendment, only the equal access provisions are at issue. These provisions are a narrow subset of First Amendment law dealing only with equal campus access for religious student groups. Undercutting its stated rationale, ED does not propose to rescind the plethora of other First Amendment-related regulations from the Religious Freedom and Free Inquiry Rule. Further, in other contexts, ED regularly enforces fact-specific and complex areas of law like Title IX sexual assault cases. Further, as explained above, many, if not most cases, never make it to litigation, meaning that courts are not in a position to “handle such matters.”

In short, the complexity of the First Amendment generally does not justify ED’s abdication of its duty to enforce equal campus access for religious student groups.

**V. Conclusion**

The proposed rule to rescind the two provisions relating to equal campus access protections for religious student groups should be withdrawn.

Sincerely,

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<sup>50</sup> *Id.* at 10857.

<sup>51</sup> *Id.* at 10863.

<sup>52</sup> *Id.* at 10861, 10863

## **Attachment A**



CHRISTIAN LEGAL SOCIETY  
CENTER FOR LAW AND  
RELIGIOUS FREEDOM

September 9, 2022

Quinn Williams  
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By email: [qwilliams@uwsa.edu](mailto:qwilliams@uwsa.edu)

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter  
at University of Wisconsin

Dear Mr. Williams:

I write on behalf of the Christian Legal Society Student Chapter at University of Wisconsin-Madison (“CLS-UW”) to secure confirmation of its re-registration as an official student organization. I respectfully request written confirmation by September 14 that CLS-UW has been re-registered as a registered student organization (“RSO”) for the 2022-2023 academic year with all accompanying RSO benefits.

It is our understanding that student organizations that were registered in the prior academic year retain the privileges of recognized student organizations through October 14 of the new academic year. In other words, CLS-UW retains its RSO privileges until October 14. If that is not correct, please advise immediately.

**The recent denial of re-registration:** CLS-UW has been a registered student organization at the University of Wisconsin-Madison since at least 1991. CLS-UW allows any student who attends one-third of its meetings to be a member. Only CLS-UW leaders must affirm that they share the group’s religious beliefs. In applying for recognition for the 2022-2023 academic year, CLS-UW used the same constitution with which it has been recognized since 2010. In response to CLS-UW’s application, a “student organization advising specialist” in the Center for Leadership & Involvement sent the attached email, dated August 24, 2022, denying the application.

The denial stated that CLS-UW’s “leadership requirements are in conflict with the UW-System non-discrimination policy.” The email explained that “[y]ou may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion.” This rather confusing statement makes little sense when applied to a religious organization, like *Christian* Legal Society that requires its leaders to agree with

the basic tenets of the Christian faith, just as other faith groups often require their leaders to agree with their particular faith's core beliefs.

This statement is not only self-contradictory but also contradicts the University of Wisconsin's nondiscrimination policy. We trust this is a relatively new employee's misinterpretation of the University's policy. Such an interpretation would also violate federal regulations and caselaw, as explained below.

**Regent Policy Document 30-6 requirement:** CLS-UW has been an RSO with religious leadership requirements under Regent Policy Document 30-6 for as long as the policy has existed. Adopted by the Board of Regents in 2006, it states:<sup>1</sup>

Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex.

On its face, the policy allows religious and political student organizations to "select their members or officers on the basis of commitment to a set of beliefs." The CLS-UW constitution states that "[m]embership is open to any enrolled University student who is interested in faith and law." To be an active member in good standing who can vote, a student must have "participated in at least 1/3 of the scheduled events." Members are not asked to agree with any beliefs. CLS-UW const., Art. IV, § 1. A leader, but not a member, "must be a Christian, agree to the CLS national set of beliefs (see addendum 1 [the CLS Statement of Faith]), and agree to be living a life consistent with the Christian faith." *Id.*, Art. V, § 7.

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<sup>1</sup> The nondiscrimination policy was adopted as Board of Regents' Resolution 9279 in December 2006, apparently as part of the settlement agreement in *InterVarsity Christian Fellowship-UW Superior v. The Regents of the University of Wisconsin System, et al.*, Civ. No. 06-C-0562-S (W.D. Wis., filed Oct. 2, 2006). On April 11, 2007, the federal district court entered an Agreed Order of Settlement, dismissing the complaint with prejudice, in which the Board of Regents and several University officers, who were named defendants, agreed that InterVarsity Christian Fellowship's constitution was fully compliant with. . . all existing University of Wisconsin System nondiscrimination policies, including the Board of Regents' Resolution 9279, adopted in December 2006." Attached to the court's Order as Exhibit 1, the InterVarsity constitution stated that a leader "will be expected to exemplify Christ-like character, conduct and leadership," required leader candidates to describe "your relationship with Jesus Christ and how you have come to faith in him," and asked whether leader candidates "affirm[ed] the IVCF Doctrinal Basis" and "agree[d] to conduct yourself publicly and privately as a person who agrees with each element of the Doctrinal Basis and the standards for Christian Leaders." InterVarsity filed the lawsuit to defend its right to "us[e] religious criteria to select group leaders" and "to formulate religiously-based rules of conduct for those leaders."

This is, of course, a matter of common sense: Religious organizations should be led by persons who share their religious beliefs, whether they are Christian, Jewish, Muslim, Hindu, Sikh, or any other faith. The nondiscrimination policy embodies this common-sense proposition by protecting the right of religious, as well as political groups, to limit not only officer positions, but also (if they choose) membership and participation, “to students who affirm that they support the organization’s goals and agree with its beliefs.”

**Federal regulations and caselaw requirements:** Let me briefly review recent legal developments that further reinforce the right of religious student organizations to maintain religious leadership requirements. Federal regulations, Seventh Circuit precedent, and recent federal caselaw in the Ninth and Eighth Circuits confirm the right of religious student organizations to have religious leadership requirements and are briefly summarized as follows:

**1. United States Department of Education regulations:** Two United States Department of Education regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), set as a material condition on any grants that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states:<sup>2</sup>

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Under federal law, therefore, University administrators have a duty to recognize CLS-UW and grant it all benefits received by other student groups, or risk the loss of federal Department of Education grants.

**2. Seventh Circuit Precedent:** The Seventh Circuit restored the status of a Christian Legal Society student chapter as an official student organization after a university revoked the

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<sup>2</sup> 34 C.F.R. § 76.500(d), which regulates Department of Education grants channeled through the State or subgrantee, is basically identical.



chapter's status because it thought that the chapter's membership policies<sup>3</sup> violated its nondiscrimination policy. *Christian Legal Society v. Walker*, 453 F.3d 853, 857 (7<sup>th</sup> Cir. 2006). The court granted the student group preliminary injunctive relief because of "strong evidence that the policy has not been applied in a viewpoint neutral way," pointing to "evidence that other recognized student organizations discriminate in their membership requirements on grounds prohibited by [the university's] policy." *Id.* at 866. As examples, the court pointed to the Young Women's Coalition, which limited membership to women, and the Muslim Students' Association, which limited membership to Muslims. *Id.* The court concluded that CLS's free speech rights had been violated because the university had "applied its antidiscrimination policy to CLS alone, even though other student groups discriminate in their membership requirements on grounds that are prohibited by the policy." *Id.*

The Seventh Circuit also upheld the right of a religious student organization to receive student activity fee funding for its religious speech, including "worship, proselytizing, or religious instruction." *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 777 (7<sup>th</sup> Cir. 2010). The court reasoned that "withholding support of religious speech when equivalent secular speech is funded is a form of forbidden viewpoint discrimination." *Id.* at 778. The court then concluded that "the University's activity-fee fund must cover" a religious organization's programs "if similar programs that espouse a secular perspective are reimbursed." *Id.* at 781.

**3. Recent Ninth Circuit Decision:** The Ninth Circuit recently ruled that public school officials likely violated the federal Free Exercise Clause when they derecognized a religious student group because it required its leaders to agree with its religious beliefs. *Fellowship of Christian Athletes, v. San Jose Unified School District Board of Education*, 2022 WL 3712506, --- F.4<sup>th</sup> --- (Aug. 29, 2022). The Ninth Circuit explained that "in our pluralistic society . . . the Free Exercise Clause requires the government to respect religious beliefs and conduct." *Id.* at \*13. The court ordered preliminary injunctive relief for the religious student organization, finding that it "will be irreparably harmed by the denial of full . . . benefits" that accompany recognition given that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at \*18 (quoting *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9<sup>th</sup> Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

As the Ninth Circuit explained, a religious organization's free exercise is violated if "a law [that] is not neutral and generally applicable . . . is selectively enforced against religious entities but not comparable secular entities." *Id.* at 13 (citing *Tandon v. Newsom*, --- U.S. ---, 141 S. Ct. 1294, 1296 (2021)). See also *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2020) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542-546 (1993)). The Ninth Circuit concluded that the defendant school officials

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<sup>3</sup> In 2006, members of CLS chapters were required to agree with CLS's statement of faith; however, for over a decade now, only leaders, not members, of CLS student chapters are required to agree with CLS's statement of faith.

selectively enforced the district's nondiscrimination policies against the religious student group while recognizing some secular student groups despite their facially discriminatory membership criteria. *Fellowship of Christian Athletes*, 2022 WL 3712506, at \*14.

Because the University of Wisconsin's Regent Policy Document 30-6 on its face exempts at least three large groups of secular RSOs, the University would violate the federal Free Exercise Clause if it refused to exempt a religious organization because of its religious leadership requirements. *First*, Policy 30-6 exempts political groups that have belief requirements for leaders and members.

*Second*, Policy 30-6 exempts RSOs that discriminate on the basis of "creed" if the RSOs require "commitment to the beliefs of the organization." Of course, religious organizations are the ultimate example of creedal organizations that require "commitment to the beliefs of the organization." See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 200 (Alito, J., concurring, joined by Kagan, J.) (religious groups' "very existence is dedicated to the collective expression and propagation of shared religious ideals"). Wisconsin fair employment law itself defines "creed" as "a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views." Wis. Stat. Ann. § 111.32 (3m). And if the University exempted secular creedal RSOs but refused to exempt religious creedal RSOs, that would violate the Free Exercise Clause.

*Third*, Policy 30-6 exempts fraternities and sororities that require their leaders and members to belong to a specific sex. Title IX's exemption allowing fraternities and sororities to discriminate on the basis of sex only exempts fraternities and sororities from federal Title IX claims. It is not a blanket exemption from state and local nondiscrimination laws, including public universities' nondiscrimination policies. Exempting fraternity and sorority groups' leadership and membership requirements that discriminate on the basis of sex from a university's nondiscrimination policy is precisely the type of selective enforcement that would trigger a religious organization's free exercise right to an exemption for its religious leadership requirements.

**4. University Officials' Loss of Qualified Immunity under Federal Caselaw:** In 2021, three federal court decisions clearly established that education officials forfeit their qualified immunity if they threaten to derecognize a religious student organization because it requires its leaders to agree with its religious beliefs. In 2021, the Eighth Circuit, in two separate cases, ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing two religious student groups because they had religious leadership requirements. Derecognition was unconstitutional viewpoint discrimination against the religious student groups. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021); *Business Leaders in Christ ("BLinC") v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021). In the *InterVarsity* case, the University's Vice President for Student Life, the Associate Dean of Student Organizations, and the Coordinator for Student Development forfeited their qualified immunity by derecognizing the religious student groups because of their religious leadership requirements.

*InterVarsity*, 5 F.4<sup>th</sup> at 861. Similarly, in the *BLinC* case, the Eighth Circuit held “that the district court erred in granting qualified immunity to the individual defendants on [the religious student group’s] free-speech and expressive-association claims.” *BLinC*, 991 F.3d at 972. The officials who lost qualified immunity were the Dean of Students, the Assistant Dean of Students, and the Executive Director of the Iowa Memorial Stadium.

Likewise, a Michigan federal district court found that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). The court held that the Dean of Students and the Coordinator of Student Life were “not entitled to qualified immunity because the rights [of a religious organization’s “internal management, free speech, free association, and free exercise” and under the Establishment Clause] violated were clearly established.” *Id.* at 835.

**Conclusion:** Federal regulations, Seventh Circuit precedent, and recent federal caselaw in the Ninth and Eighth Circuits confirm the right of religious student organizations to have religious leadership requirements. Because Regent Policy Document 30-6 on its face exempts at least three large groups of secular RSOs, the University would violate the federal Free Exercise Clause if it refused to exempt a religious organization because of its religious leadership requirements. The University also would engage in viewpoint discrimination against religious student organizations if it denied re-registration to CLS-UW because it required its leaders to agree with its religious beliefs, while allowing political and secular creedal organizations to choose their leaders and members according to their beliefs.

Fortunately, for many years, the University has avoided these constitutional violations by interpreting Regent Policy Document 30-6 to allow CLS-UW to be a registered student organization while maintaining its religious leadership requirements. This is the common-sense interpretation of the policy that allows organizations across the religious spectrum—Muslim, Jewish, Christian, Hindu, Sikh, and all others—to contribute their diverse religious perspectives to enrich the University of Wisconsin campus.

I look forward to resolving this matter quickly and request a written response by September 14 affirming that the University has re-registered CLS-UW for the 2022-2023 academic year. Going forward, please direct any communication from the University to me rather than to the CLS-UW chapter leaders.

Yours truly,

/s/ Kim Colby  
Kimberlee Wood Colby  
Of Counsel  
Center for Law & Religious Freedom  
Christian Legal Society

Attachments:

Email from Wisconsin Involvement Network to REDACTED [CLS Student Chapter President, August 24, 2022

Email from REDACTED [University Center for Leadership & Involvement Student Organization Advising Specialist] to REDACTED [CLS Student Chapter President, August 24, 2022

**From:** [noreply@engage.mail.campuslabs.com](mailto:noreply@engage.mail.campuslabs.com) <[noreply@engage.mail.campuslabs.com](mailto:noreply@engage.mail.campuslabs.com)> on behalf of Wisconsin Involvement Network <[noreply@engage.mail.campuslabs.com](mailto:noreply@engage.mail.campuslabs.com)>

**Sent:** Wednesday, August 24, 2022 11:33 AM

**To:** REDACTED [Email Address of CLS Student Chapter President]

**Subject:** Your registration request for Christian Legal Society, UW-Madison Chapter has been denied.

**The registration that you submitted on behalf of Christian Legal Society, UW-Madison Chapter has not been approved and may require further action on your part.**

Please see the reviewer's comments below or view your submission.

Thank you for submitting your application. There are a few things you will need to fix before we can approve your application. Please review our comments below regarding what you will need to fix before we can move forward. DO NOT click the "Re-Register this organization" button on your organization's WIN page as that will give you a new application and you want to make changes to an existing application. To make edits and to resubmit your application, first go to <https://win.wisc.edu/submissions/registrations>, click on the blue eye icon next to the denied submission of your organization's application, and correct the error(s). Then go to the last page in the application and submit. Again, DO NOT start a new application by hitting the "Re-Register this organization" button.

1. You did not pass all of the RSO Canvas quizzes at 100%. I can see that you have used all 3 attempts, so I will send a follow up email with instructions shortly.
2. CONSTITUTION/BYLAWS: Your leadership requirements are in conflict with the UW-System non-discrimination policy. "Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX,

sex.” You may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion. If you have any questions regarding your application, please feel free to contact us by email at [cfli@studentaffairs.wisc.edu](mailto:cfli@studentaffairs.wisc.edu) or phone at (608) 263-0365. We look forward to seeing your resubmission! Thanks, REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist]

[View Registration Submission](#)

You are receiving this email because you are a member of Wisconsin Involvement Network (WIN).  
Manage your [email preferences](#).

**From:** REDACTED [Name and email address of University Center for Leadership & Involvement Student Organization Advising Specialist]

**Sent:** Wednesday, August 24, 2022 11:43 AM

**To:** REDACTED [Name and email address of CLS Student Chapter President]

**Subject:** Registration App for Christian Legal Society

REDACTED [Name of CLS Student Chapter President],

This message is regarding your application to re-register the Christian Legal Society, UW-Madison Chapter.

You should have received another email today explaining why your application has been denied, and

**Comment :** Thank you for submitting your application. There are a few things you will need to fix before we can approve your application. Please review our comments below regarding what you will need to fix before we can move forward. DO NOT click the “Re-Register this organization” button on your organization’s WIN page as that will give you a new application and you want to make changes to an existing application. To make edits and to resubmit your application, first go to <https://win.wisc.edu/submissions/registrations>, click on the blue eye icon next to the denied submission of your organization’s application, and correct the error(s). Then go to the last page in the application and submit. Again, DO NOT start a new application by hitting the “Re-Register this organization” button. 1. You did not pass all of the RSO Canvas quizzes at 100%. I can see that you have used all 3 attempts, so I will send a follow up email with instructions shortly. 2. CONSTITUTION/BYLAWS: Your leadership requirements are in conflict with the UW-System non-discrimination policy. “Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization’s goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex.” You may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion. If you have any questions regarding your application, please feel free to contact us by email at [cfl@studentaffairs.wisc.edu](mailto:cfl@studentaffairs.wisc.edu) or phone at (608) 263-0365. We look forward to seeing your resubmission! Thanks, REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist] Because you have used all 3 attempts in the Canvas quiz, I will ask you to respond to the questions you missed via email:

1. Amnesty through Responsible Action protects which people from legal repercussions from drinking under the age of 21 (check all that apply)?
  - The victim of a crime
  - The person in need of medical attention
  - A person calling for medical assistance for a friend



- The reporter of a crime
- 2. Which of the following on-campus spaces can be reserved by RSO leaders through the Wisconsin Union's Campus Events Services Office (CESO)?
  - Memorial Union, Union South, and Red Gym
  - Most campus classrooms
  - Outdoor spaces (Lower Bascon Hill, Library Mall)
  - All of the above

**For both questions, please respond with the correct answers. Remember that there may be more than one correct answer for question 1, and you should "check all that apply".**

After you have responded with the correct answers, you may continue to update the leadership requirements in your constitution and bylaws (see above comments in red) and resubmit your application through WIN (again, see above instructions in red).

If you have any questions, please don't hesitate to let me know.

Warmly,

REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist]

*She/Her/Hers*

*Student Organization Advising Specialist*

*Center for Leadership & Involvement*

*University of Wisconsin-Madison*

[www.cfli.wisc.edu](http://www.cfli.wisc.edu)

*CfLI's office is on the third floor of the Red Gym. We are open **10am-4pm, M-F** to serve our students. Virtual appointments are available by request. For a complete list of services and resources available, please visit "[About CfLI](#)". For continuing information related to UW-Madison, COVID-19, and the status of campus operations please visit: <https://covidresponse.wisc.edu/>.*

## **Attachment B**



CHRISTIAN LEGAL SOCIETY  
CENTER FOR LAW AND  
RELIGIOUS FREEDOM

September 26, 2022

Mr. Quinn Williams  
General Counsel  
University of Wisconsin System  
1856 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

By email: [qwilliams@uwsa.edu](mailto:qwilliams@uwsa.edu)

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter at University of Wisconsin

Dear Mr. Williams:

This letter is in response to your September 22 email suggesting that we resolve this matter by eliminating three words—“be a Christian”—from the constitution submitted by the Christian Legal Society Student Chapter at University of Wisconsin-Madison (“CLS-UW”). We are unwilling to do this for the following reasons:

1. Common sense dictates that the *Christian* Legal Society be allowed to require that its leaders “be a Christian.”
2. CLS-UW does not want to see other religious student organizations subjected to government censorship. If University officials prohibit a Christian student group from requiring its leaders to be Christian, they must likewise prohibit a Jewish student group from requiring its leaders to be Jewish or Orthodox or Conservative or Reformed. Similarly, University officials must prohibit a Muslim student group from requiring its leaders to be Sunni or Shia. Nor could a Catholic student organization require its leaders to be Catholic.
3. For the past 12 years, University officials have approved the CLS-UW constitution with its leadership eligibility requirement of “be a Christian.” CLS-UW has not changed its constitution, and the Board of Regents has not changed Regent Policy Document 30-6 governing recognition of religious and political student organizations. Twelve years of registration under the same constitution and the same policy cannot be dismissed as “inadvertence.”
4. Federal regulation prohibits a public university that receives a United States Department of Education grant, either directly or through the State or a subgrantee, from denying recognition and funding to a student organization “because of the religious student organization’s *beliefs, practices, policies, speech, membership standards or leadership standards.*” 34 C.F.R. §§ 75.500(d)

September 26, 2022

- & 76.500(d). If CLS-UW is de-registered because its constitution states that a leader must “be a Christian,” University officials will be in violation of clearly established federal law. *See, e.g., InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021) (university officials forfeited qualified immunity when they derecognized religious student organization because of its religious leadership requirements).
5. As the past 12 years attest, CLS-UW’s constitution does not violate Regent Policy Document 30-6, which specifically guarantees that religious student organizations may select their *members or officers* “on the basis of commitment to a set of beliefs.” Policy 30-6 does not prohibit a religious organization from stating in its constitution that an officer must identify with its faith.
  6. Policy 30-6 further permits religious and political student organizations to “exclude[]” students from “officer positions . . . on the basis of . . . creed” if based on “commitment to the beliefs of the organization.” Religious groups are the quintessential example of creedal organizations that require “commitment to the beliefs of the organization.”
  7. Because Policy 30-6, on its face, exempts at least three major types of student organizations (*i.e.*, political, creedal, and Greek organizations), the Free Exercise Clause requires that religious organizations also be exempted. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2020); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).
  8. Government officials’ explicit censorship of a religious organization’s religious leadership requirements violates the First Amendment in myriad ways, including the following clearly established law:
    - a. Separation of church and state prohibits government officials from interfering with a religious organization’s leadership requirements. *Hosanna-Tabor Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012);
    - b. University officials’ censorship of religious student groups violates the Free Speech Clause’s prohibition on viewpoint and content discrimination. *See, e.g., Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 815 (1995); *Christian Legal Society v. Walker*, 453 F.3d 853 (7<sup>th</sup> Cir. 2006); *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775 (7<sup>th</sup> Cir. 2010); and
    - c. A nondiscrimination policy that, on its face or as applied, exempts secular conduct must also exempt religious conduct. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2020); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

September 26, 2022

Finally, because the law is clearly established, University officials are likely to forfeit qualified immunity if they derecognize a religious student organization because it requires its leaders to agree with its religious beliefs and, therefore, refuses to censor its honest statement of its religious leadership eligibility requirements as found in its constitution. *See Univ. of Iowa, supra; InterVarsity Christian Fellowship/USA v. Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021).

As our letter of September 9 made clear, CLS-UW simply wants to be re-registered as a student organization with the same constitution that the University has approved for at least the past 12 years. CLS-UW urges University officials to avoid violations of the First Amendment, as well as federal regulations, by continuing to interpret Regent Policy Document 30-6 to allow CLS-UW to be a registered student organization while maintaining its religious leadership eligibility requirements as stated in its constitution for at least the past 12 years.

Without this common-sense and constitutional interpretation, University officials will necessarily have to de-register many other religious organizations that require their leaders to belong to their faiths. University officials will also have to de-register many political, creedal, Greek, and other organizations that Policy Document 30-6 currently exempts. CLS-UW simply seeks to maintain the status quo: CLS-UW remains a registered student organization alongside other creedal, religious, political, and single-sex student organizations.

Because the October 14<sup>th</sup> deadline for re-registering is fast approaching, we request confirmation that CLS-UW is a registered student organization for the 2022-23 academic year by COB Wednesday, September 28, 2022.

Yours truly,

/s/ Kim Colby

Kimberlee Wood Colby

Of Counsel

Center for Law & Religious Freedom

Christian Legal Society

## **Attachment C**



CHRISTIAN LEGAL SOCIETY  
CENTER FOR LAW AND  
RELIGIOUS FREEDOM

October 24, 2022

Dean Shane Cooper  
University of New Hampshire  
Franklin Pierce School of Law  
2 White Street  
Concord, NH 03301

By email: [Shane.Cooper@law.unh.edu](mailto:Shane.Cooper@law.unh.edu)

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter at University of New Hampshire

Dear Dean Cooper:

I write on behalf of the Christian Legal Society Student Chapter at University of New Hampshire (“CLS-NH”). CLS-NH seeks recognition as an official student organization at the Franklin Pierce School of Law and has filed the necessary documents to be an officially recognized student organization. Unfortunately, instead of treating the CLS students fairly and with respect, the School of Law’s Student Body Association (“SBA”) has delayed recognizing CLS-NH and subjected its student leaders to an unseemly inquisition regarding their religious beliefs, particularly religious standards for leaders. Regarding leadership standards, it is a common practice on university campuses—and common sense—not only for religious groups, but also for environmental, pro-abortion or pro-life organizations, and many other advocacy groups, to require that their leaders agree with the organizations’ core beliefs.<sup>1</sup>

**The SBA is engaging in unconstitutional viewpoint discrimination.** Every student has a right to attend a public university without having to identify and defend his or her religious beliefs, or lack thereof. There is no more basic right for any American student. The withholding of recognition from CLS-NH, as well as questions asked by SBA members of CLS student representatives, makes clear that CLS’s religious beliefs are unpopular with many members of the SBA Board. The unpopularity of the CLS students’ religious beliefs appears to be the reason for the withholding of recognition.

The SBA’s withholding of recognition and its unconstitutional examination of the CLS students’ religious beliefs are unconstitutional viewpoint discrimination. University officials “must abstain from regulating speech when the specific motivating ideology or

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<sup>1</sup> Student organizations meeting at the law school include several advocacy, religious, ethnic, and ideological groups, many of which may often promote controversial viewpoints, including the following: Asian Pacific American Law Association; Black Law Student Association; Environmental Law Society; Federalist Society; Hispanic and Latinx Student Association; LAMBDA; and UNH Law Democrats.



the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (exclusion of religious student organization from allocation of student activity fees because of its evangelical Christian beliefs violated the Free Speech Clause). This same regulation of CLS students’ speech because of its “specific motivating ideology or the opinion or perspective of the speaker” is precisely the viewpoint discrimination that the SBA is committing by its withholding recognition of the CLS student organization.

As a result of the SBA’s treatment of CLS students, it has become readily apparent that the SBA is unable to render a fair and unbiased judgment as to whether the CLS chapter should be recognized as a student group. As the Supreme Court held 50 years ago, a public college may not deny a student organization recognition or otherwise “restrict speech or association simply because it finds the views expressed by any group to be abhorrent.” *Healy v. James*, 408 U.S. 169, 187-88 (1972). University administrators, therefore, need to step in and grant official recognition to the CLS chapter.

The SBA’s unlawful actions pose a serious threat to the CLS students. The SBA’s actions also pose a grave legal threat to University of New Hampshire officials. University administrators are responsible for any unconstitutional and unlawful actions taken by the university’s SBA. University officials are ultimately responsible for the final decision whether to recognize an organization. See, e.g., *Bd. of Regents of Univ. of Wisconsin v. Southworth*, 529 U.S. 217, 233 (2000); *Rosenberger*, 515 U.S. at 832. The SBA may play a role in the process, but the final decision cannot be outsourced to the SBA. When the SBA’s actions violate federal law, it is the legal duty of university officials to step in and recognize the group and provide it with all the benefits otherwise available to other student groups.

**Federal regulations reinforce the right of religious student organizations to have religious leadership requirements.** Two United States Department of Education regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), set as a material condition on any grants that a university receives from the Department of Education, either directly or through the State or a subgrantee, that the university not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states:<sup>2</sup>

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the

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<sup>2</sup> 34 C.F.R. § 76.500(d), which regulates Department of Education grants channeled through the State or a subgrantee, is basically identical.

facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Under federal law, therefore, university administrators have a duty to recognize CLS-NH and grant it all benefits received by other student groups, or risk the loss of federal Department of Education grants.

**Recent Ninth Circuit caselaw also supports the right of religious student organizations to have religious leadership requirements.** The Ninth Circuit recently ruled that public school officials likely violated the federal Free Exercise Clause when they derecognized a religious student group because it required its leaders to agree with its religious beliefs. *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 46 F.4<sup>th</sup>1075 (9<sup>th</sup> Cir. 2022). The Ninth Circuit explained that “in our pluralistic society ... the Free Exercise Clause requires the government to respect religious beliefs and conduct.” *Id.* at 1093. The court ordered preliminary injunctive relief for the religious student organization, finding that it “will be irreparably harmed by the denial of full ... benefits” that accompany recognition given that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* at 1098 (quoting *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9<sup>th</sup> Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

As the Ninth Circuit explained, a religious organization’s free exercise is violated if “a law [that] is not neutral and generally applicable ... is selectively enforced against religious entities but not comparable secular entities.” *Id.* at 1093 (citing *Tandon v. Newsom*, --- U.S. ---, 141 S. Ct. 1294, 1296 (2021)). *See also* *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2020) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542-546 (1993)). The Ninth Circuit concluded that the defendant school officials selectively enforced the district’s nondiscrimination policies against the religious student group while recognizing some secular student groups despite their facially discriminatory membership criteria. *Fellowship of Christian Athletes*, 46 F.4<sup>th</sup> at 1096.

**University officials can lose qualified immunity under federal caselaw.** In 2021, three federal court decisions clearly established that education officials forfeit their qualified immunity if they derecognize or threaten to derecognize a religious student organization because it requires its leaders to agree with its religious beliefs. The Eighth Circuit, in two separate cases, ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing two religious student groups because they had religious leadership requirements. The court found that derecognition was unconstitutional viewpoint discrimination against the religious student groups. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021). In the *InterVarsity* case, the University’s Vice President for Student Life, the Associate Dean of

Student Organizations, and the Coordinator for Student Development forfeited their qualified immunity by derecognizing the religious student groups because of their religious leadership requirements. *InterVarsity*, 5 F.4<sup>th</sup> at 861. Similarly, in the *BLinC* case, the Eighth Circuit held “that the district court erred in granting qualified immunity to the individual defendants on [the religious student group’s] free-speech and expressive-association claims.” *BLinC*, 991 F.3d at 972. The officials who lost qualified immunity were the Dean of Students, the Assistant Dean of Students, and the Executive Director of the Iowa Memorial Stadium.

Likewise, a Michigan federal district court found that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). The court held that the Dean of Students and the Coordinator of Student Life were “not entitled to qualified immunity because the rights [of a religious organization’s “internal management, free speech, free association, and free exercise” and under the Establishment Clause] violated were clearly established.” *Id.* at 835.

CLS-NH wants only to be a positive contributor to the Franklin Pierce School of Law community. To that end, CLS-NH representatives will meet one last time with the SBA and will answer questions for no more than ten minutes. *They will not answer any questions that touch upon their religious beliefs, speech, practices, policies, or leadership standards.* They will not answer any disparaging questions, including any questions about CLS’s or their religious beliefs, speech, practices, policies, or leadership standards.

The guiding principle is that government actors, including the SBA or any university administrator, cannot question any Americans about their religious beliefs. Like all government officials, student government representatives must heed our Republic’s timeless lesson:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

If the SBA fails to recognize CLS-NH with all the attendant benefits, including funding, at the next SBA meeting, which we understand will take place tomorrow, October 25, we respectfully request a response from the University no later than COB on October 29 that University of New Hampshire administrators will comply with clearly established federal law and grant CLS-NH official recognition and the full benefits of recognition, including funding.

If I can be of any assistance, I am happy to schedule a time to talk. Also, going forward, please communicate with me rather than the CLS students. It is important that they be

Letter to Dean Cooper

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October 24, 2022

able to concentrate on their studies at this point in the semester and not have to deal further with this unconstitutional treatment.

Thank you for your consideration. I look forward to resolving this matter quickly.

Yours truly,

/s/ Laura Nammo

Laura Nammo

Center for Law & Religious Freedom

Christian Legal Society

## **Attachment D**



CHRISTIAN LEGAL SOCIETY  
CENTER FOR LAW AND  
RELIGIOUS FREEDOM

October 25, 2022

Dean Shane Cooper  
University of New Hampshire  
Franklin Pierce School of Law  
2 White Street  
Concord, NH 03301

Tracy Birmingham  
Associate General Counsel  
University System of New Hampshire  
5 Chenell Drive  
Suite 301  
Concord, NH 03301

By email: [Shane.Cooper@law.unh.edu](mailto:Shane.Cooper@law.unh.edu); [tracy.birmingham@unh.edu](mailto:tracy.birmingham@unh.edu)

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter at University of New Hampshire

Dear Dean Cooper and Ms. Birmingham:

This letter responds to Ms. Birmingham's email reply to our letter of October 24 that was sent on behalf of the Christian Legal Society Student Chapter at University of New Hampshire ("CLS-NH"). As you know, CLS-NH seeks recognition as an official student organization at the Franklin Pierce School of Law and has filed the necessary documents to be an officially recognized student organization. Unfortunately, instead of treating the CLS students fairly and with respect, the School of Law's Student Body Association ("SBA") has delayed recognizing CLS-NH and subjected its student leaders to an unseemly inquisition regarding their religious beliefs, particularly religious standards for leaders. We understand that the SBA will meet this evening.

Today, we became aware of a tweet by REDACTED, a student at UNH Law School and presumably a member of the SBA, indicating his belief that this matter would be "a new *CLS v Martinez*." Of course, this is not a situation governed by *CLS v. Martinez*, 561 U.S. 661 (2010), as the Court made abundantly clear in its 5-4 opinion. There the Court considered only whether an "all-comers policy" could constitutionally be applied to all student organizations. It specifically said that it was not deciding whether a nondiscrimination policy with enumerated categories could be constitutionally applied to a religious student group's religious leadership requirements. *See, e.g., Martinez*, 561 U.S. at 678 ("This opinion, therefore, considers only whether conditioning access to a student-organization forum on compliance with an *all-comers policy* violates the Constitution) (emphasis supplied"); *id.* at 698 (Steven, J., concurring) ("The Court

correctly confines its discussion to the narrow issue presented by the record . . . the all-comers policy.”).

It is clear that UNH does not have an “all-comers policy.” Instead, the policy is a nondiscrimination policy with enumerated categories, which the *Martinez* decision explicitly did not address. Few if any public universities have an “all-comers policy” because such a policy is categorically incompatible with fraternities and sororities, a capella groups, or single-sex club sports teams. *See, e.g., Business Leaders in Christ v. University of Iowa*, 991 F.3d 969, 973-74 (8<sup>th</sup> Cir. 2021). Just by way of example, under an “all-comers policy,” Democratic student organizations could not require that their leaders agree with the Democratic platform, reproductive rights groups could not require their leaders to condemn the *Dobbs* decision, and environmental groups could not require their leaders to agree that fracking is bad policy.

Furthermore, as the University of Iowa learned firsthand, prohibiting one faith group from having religious leadership standards means prohibiting all faith groups—Catholic, Jewish, Muslim, Sikh—from requiring their leaders to agree with their religious beliefs. *Business Leaders in Christ v. University of Iowa*, 360 F. Supp. 3d 885, 894 (S.D. Iowa 2019) (“Following the University’s review, over thirty groups were deregistered……. The University has suspended the registration of various religious student groups pending the outcome of this litigation.”).

As detailed in our October 24 letter, university officials have not fared well in their attempts to invoke *Martinez* to justify their denial of recognition to religious student organizations because of their religious leadership standards. Instead, they have lost their qualified immunity. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021); *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). And those cases arose *before* the United States Department of Education adopted its regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), setting as a material condition on any grants that a university receives from the Department, either directly or through the State or a subgrantee, that the university not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Finally, we would be remiss if we failed to note that the Court’s caselaw regarding religious organizations’ ability to choose their leaders without government interference has evolved dramatically since 2010. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 196 (2012) (“The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.”). Four of the five members of the *Martinez* majority no longer serve on the Court after the departures of Justices Stevens, Kennedy, Ginsburg, and Breyer. Three of the four dissenters continue to serve: Chief Justice Roberts and

Letter to Dean Cooper and Ms. Tracy Birmingham

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October 25, 2022

Justices Alito and Thomas. Justice Gorsuch, who replaced Justice Scalia, is a strong voice for religious freedom, as are Justices Kavanaugh and Barrett.

In our previous letter, as legal counsel for CLS-NH, we requested that communication regarding this matter be directed to me rather than the CLS-NH student leaders. In her email response, Ms. Birmingham indicated “that the law school will continue to communicate with the students who are petitioning for recognition for a CLS chapter.” We understand that you were to talk with CLS-NH before the meeting tonight and share requested documents with them. We consent to that but reiterate that, after today, any communication from university officials should be directed to me as legal counsel for CLS-NH. Not only is this a matter of legal ethics, but it also avoids unnecessary confusion in trying to resolve this legal matter.

If I can be of any assistance, I remain happy to schedule a time to talk. Thank you for your consideration. I look forward to resolving this matter quickly.

Yours truly,

/s/ Laura Nammo

Laura Nammo

Center for Law & Religious Freedom  
Christian Legal Society



## **Attachment E**



November 8, 2021

President C. Scott Green  
University of Idaho  
Administration Building, Room 105  
875 Perimeter Drive, MS 3151  
Moscow, Idaho 83844-3151

Sent by email: president@uidaho.edu

**RE: Time Sensitive Matter—Violation of Students’ Rights Under the Federal Constitution, Federal Regulations, And State Statute**

Dear President Green:

I write on behalf of the Christian Legal Society (“CLS”) chapter at the University of Idaho College of Law. The chapter seeks recognition as an official student organization at the College of Law and has filed the necessary documents to be an officially recognized student organization. Unfortunately, instead of treating the CLS students fairly and with respect, the College of Law’s Student Body Association (“SBA”) has delayed recognizing the CLS chapter and subjected its student leaders to an unseemly inquisition regarding their religious beliefs, including religious standards for leaders.

**I. Demanding that Public University Students Defend Their Religious Beliefs Before the SBA is Unconstitutional Viewpoint Discrimination in Two Basic Ways.**

**Cross-examining students about their religious beliefs.** Every student has a right to attend a public university without having to identify and defend his or her religious beliefs, or lack thereof. There is no more basic right for any American student. Yet, the SBA Board has asked CLS students questions about their religious beliefs in violation of the First Amendment, two federal regulations, and Idaho state law. The withholding of recognition from the CLS chapter, as well as the questions asked by SBA of CLS student representatives, make clear that CLS’s religious beliefs are unpopular with many members of the SBA Board, and also with some College of Law administrators. The unpopularity of the CLS students’ religious beliefs is the reason for the withholding of recognition.

The SBA’s withholding of recognition and its unconstitutional examination of the CLS students’ religious beliefs are unconstitutional viewpoint discrimination. University officials “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (exclusion of religious student organization from allocation of student activity fees because of its evangelical Christian beliefs violated the Free Speech Clause). This same regulation of CLS students’

speech because of its “specific motivating ideology or the opinion or perspective of the speaker” is precisely the viewpoint discrimination that the SBA is committing by its withholding recognition of the CLS student organization.

As a result of the SBA’s treatment of the CLS students, it has become readily apparent that the SBA is unable to render a fair and unbiased judgment as to whether the CLS chapter should be recognized as a student group. As the Supreme Court held nearly 50 years ago, a public college may not deny a student organization recognition or otherwise “restrict speech or association simply because it finds the views expressed by any group to be abhorrent.” *Healy v. James*, 408 U.S. 169, 187-88 (1972). Therefore, university administrators need to step in and grant official recognition to the CLS chapter.

**Allocation of student activity fees must be viewpoint neutral.** Second, SBA’s allocation of student activity fees is also unconstitutional viewpoint discrimination. The allocation of student activity fees must be viewpoint neutral—or the allocation system must cease. In *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 221 (2000), the Supreme Court held that “[t]he First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech *if the program is viewpoint neutral*[,]” but the Court *refused to “sustain . . . the student referendum mechanism of the University’s program, which appears to permit the exaction of fees in violation of the viewpoint neutrality principle.”* (Emphasis added).

The Court remanded the case to determine how the referendum worked. Specifically, the Court explained, “it appears that by majority vote of the student body a given RSO may be funded or defunded. . . . To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. *The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent.* That principle is controlling here.” *Southworth*, 529 U.S. at 235.

## **II. In 2021, Three Federal Courts Ruled that University Officials Lost Their Qualified Immunity for Threatening to Derecognize Religious Student Organizations Because They Required Their Leaders to Agree with Their Religious Beliefs.**

The SBA’s unlawful actions pose a serious threat not only to the CLS students, and to the continued allocation of student activity fees, but the SBA’s actions also pose a grave legal threat to University of Idaho officials. University administrators are responsible for any unconstitutional and unlawful actions taken by the SBA. University officials are ultimately responsible for the final decision whether to recognize an organization. See, e.g., *Southworth*, 529 U.S. at 233; *Rosenberger*, 515 U.S. at 832. The SBA may play a role in the process, but the final decision cannot be outsourced to the SBA. When the

SBA's actions violate federal and state law, it is the legal duty of the University officials to step in and recognize the CLS chapter and provide it with all the benefits otherwise available to other student groups.

In 2021, three federal court decisions held that college administrators lost their qualified immunity when they unconstitutionally threatened the recognition status of religious student groups because the groups required their leaders to agree with their religious beliefs. It is a common practice—and common sense—not only for religious groups, but also for environmental, pro-abortion or pro-life organizations, and many other advocacy groups, to require that their leaders agree with the organizations' core beliefs.<sup>1</sup>

**The law is clearly established: Both federal and state law require that the University recognize the CLS chapter.** If the University does not grant recognition to the CLS student group, the University officials who decide to withhold recognition risk losing their qualified immunity and incurring personal liability for their decisions to withhold recognition and any attendant benefits provided to other student organizations.

**A. Idaho State Law Requires that the Christian Legal Society Chapter be Recognized as an Official Student Organization at the University.**

Idaho is one of sixteen states that, over the past decade, have enacted laws to protect religious student groups' right to choose leaders who agree with their core beliefs.<sup>2</sup> Those states are: Arizona (2011), Ohio (2011), Idaho (2013), Tennessee (2013), Oklahoma (2014), North Carolina (2014), Virginia (2016), Kansas (2016), Kentucky (2017), Louisiana (2018), Arkansas (2019), Iowa (2019), South Dakota (2019), Alabama (2020), North Dakota (2021), and Montana (2021).

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<sup>1</sup> Student organizations meeting at the law school include several advocacy, religious, ethnic, and ideological groups, often promoting controversial viewpoints: Advocacy for Disability Justice; American Civil Liberties Union; American Constitutional Society; Environmental Law Society; Federalist Society; Idaho Trial Lawyers Association; Idaho Veteran Law Association; J. Reuben Clark Law Society; Latino/a Law Caucus; Native American Law Students Association; National Lawyers Guild; OutLaw; Pan-Asian Law Affairs; and Women's Law Caucus.

<sup>2</sup> See Ala. Code 1975 § 1-68-3(a)(8) (all student groups); Ariz. Rev. Stat. § 15-1863 (religious and political student groups); Ark. Code Ann. § 6-60-1006 (all student groups); Idaho Code § 33-107D (religious student groups); Iowa Code § 261H.3(3) (all student groups); Kan. Stat. Ann. §§ 60-5311-5313 (religious student groups); Ky. Rev. Stat. Ann. § 164.348(2)(h) (religious and political student groups); La. Stat. Ann.-Rev. Stat. § 17:3399.33 (belief-based student groups); Mont. Code Tit. 20, Chap. 25, Pt. 5; N.C. Gen. Stat. Ann. § 116-40.12 (religious and political student groups); N.D. Code § 15-10.4-02(h); Ohio Rev. Code § 3345.023 (religious student groups); Okla. St. Ann. § 70-2119.1 (religious student groups); S.D. Ch. § 13-53-52 (ideological, political, and religious student groups); Tenn. Code Ann. § 49-7-156 (religious student groups); Va. Code Ann. § 23.1-400 (religious and political student groups).

Idaho Code § 33-107D requires:

(1) No state postsecondary educational institution shall take any action or enforce any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders adhere to its sincerely held religious beliefs or standards of conduct.

(2) As used in this section:

(a) “Benefits” include without limitation:

- (i) Recognition;
- (ii) Registration;
- (iii) The use of facilities at the state postsecondary educational institution for meetings or speaking purposes;
- (iv) The use of channels of communication of the state postsecondary educational institution; and
- (v) Funding sources that are otherwise available to any other student group through the state postsecondary educational institution.

(b) “State postsecondary educational institution” means a public postsecondary organization governed or supervised by the state board, the board of regents of the University of Idaho, a board of trustees of a community college established pursuant to the provisions of chapter 21, title 33, Idaho Code, or the state board for career technical education.

The Idaho Legislature enacted the law in 2013<sup>3</sup> after Boise State University threatened to derecognize religious student groups for requiring their leaders to agree with their religious beliefs. Idaho Code ¶ 33-107D was enacted to prohibit Idaho postsecondary educational institutions from denying recognition and other benefits, including funding, to a religious student organization. Specifically, the CLS chapter at the University of Idaho cannot be denied recognition or benefits “based on the religious student group's requirement that its leaders adhere to its sincerely held religious beliefs or standards of conduct.”

Idaho state law clearly establishes that University of Idaho administrators must recognize the Christian Legal Society chapter and grant it any benefits otherwise received by other student groups.

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<sup>3</sup> S 1078 passed the Senate 30-5, and the House 56-11. Idaho Legislature, 2013 Legislation, S 1078, <https://legislature.idaho.gov/sessioninfo/2013/legislation/S1078/>

**B. Federal Regulations Make it a Material Condition of Any Grant that the University Receives Directly or Indirectly from the United States Department of Education that the University Not Deny Recognition and Attendant Benefits to a Religious Student Organization “Because of the Religious Student Organization’s Beliefs, Practices, Policies, Speech, Membership Standards, or Leadership Standards.”**

Two United States Department of Education regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), set as a material condition on any grants that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states, and 34 C.F.R. § 76.500(d) is nearly identical:

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Like Idaho Code § 33-107D, the federal regulations clearly establish that University of Idaho administrators have a duty to recognize the CLS chapter and grant it any benefits otherwise received by other student groups, or risk the loss of Department of Education grants.

**C. Three Federal Court Decisions in 2021 Clearly Establish that Education Officials Forfeit Their Qualified Immunity if They Threaten to Derecognize a Religious Student Organization Because it Requires its Leaders to Agree with its Religious Beliefs.**

In 2021, the Eighth Circuit Court of Appeals in two separate cases ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing two religious student groups because they had religious leadership requirements. Derecognition was unconstitutional viewpoint discrimination against the religious student groups. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021). The University’s Vice President for Student Life, the

Associate Dean of Student Organizations, and the Coordinator for Student Development forfeited their qualified immunity. *InterVarsity*, 5 F.4<sup>th</sup> at 861.

Similarly, in the *BLinC* case, the Eighth Circuit held that University officials lost their qualified immunity because they denied recognition to a religious student group because it required its leaders to agree with its religious beliefs, including its beliefs concerning marriage and sexual conduct. The Eighth Circuit held “that the district court erred in granting qualified immunity to the individual defendants on [the religious student group’s] free-speech and expressive-association claims.” *BLinC*, 991 F.3d at 972. The officials who lost qualified immunity were the Dean of Students, the Assistant Dean of Students, and the Executive Director of the Iowa Memorial Stadium.

Finally, a Michigan federal district court found that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, --- F. Supp.3d ---, 2021 WL 1387787 (E.D. Mich. 2021). The court held that the defendants, including the Dean of Students and the Coordinator of Student Life, were “not entitled to qualified immunity because the rights violated were clearly established.” *Id.* at \*32.

### **III. The CLS Chapter at University of Idaho Wishes to Move Forward.**

The CLS chapter wants only to be a positive contributor to their law school community. The CLS students wish to put this regrettable episode behind them. To that end, they will meet one last time with the SBA on November 10. But they will answer questions for no more than ten minutes. *They will not answer any questions that touch upon their religious beliefs, speech, practices, policies, or leadership standards.* They will not answer any disparaging questions, including any questions about CLS’s or their religious beliefs, speech, practices, policies, or leadership standards.

The guiding principle is that government actors, including the SBA or any University administrator, cannot question any Americans about their religious beliefs. Like all government officials, student government representatives must heed our Republic’s timeless lesson:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

If the SBA fails to recognize the CLS chapter with all the attendant benefits, including funding, on November 10, we respectfully request a response from the University

President C. Scott Green  
University of Idaho  
November 8, 2021  
Page 7

by November 12 to the effect that University administrators will comply with clearly established federal and state law and grant the CLS chapter official recognition, and the full benefits of recognition, including funding.

If I can be of any assistance, I am happy to schedule a time to talk. Also, going forward, please communicate with me rather than the CLS students. It is important that they be able to concentrate on their studies at this point in the semester and not have to deal further with this unconstitutional treatment.

Thank you for your consideration. I look forward to resolving this matter quickly.

Respectfully,

/s/ Kim Colby

Kim Colby  
Director  
Center for Law and Religious Freedom  
Christian Legal Society  
kcolby@clsnet.org  
(703) 919-8556



## **Attachment F**



President James E. Ryan  
Office of the President  
University of Virginia  
Post Office Box 400224  
Charlottesville, VA 22904-4224

Re: Time sensitive First Amendment matter

Dear President Ryan:

The Center for Law and Religious Freedom of the Christian Legal Society has worked to protect the rights of religious student groups on public university and high school campuses for over four decades. The Center has consistently advocated for free speech and religious freedom for students of all faiths. I write to make you aware of a serious problem that, if not rectified in the next two days, will result in great harm to numerous students' civil rights as well as potential individual legal liability for University officials.

Last fall we watched with growing concern as the University of Virginia Student Council exhibited disturbing disdain for religious and political groups' freedom of speech and religion, culminating in the Council's adoption of a resolution, on November 22, urging the rescission of the Virginia statute that protects the right of religious and political student organizations at public universities to select their leaders and members according to their religious and political beliefs.<sup>1</sup> But the proposition that religious and political groups should be led by persons who agree with their religious and political beliefs is both common sense and a quintessential human right.

On August 2, 2021, the Student Council mandated that student organizations submit a novel "Identity Inclusion Disclosure Form" as a condition for participation in the Fall Activities Fairs. These fairs are an important means by which student organizations make incoming students aware of their existence and activities. Especially after the last academic year during which students struggled to keep their organizations intact because they could not meet in person, this year's activities fairs are particularly critical to student organizations' efforts to rebuild. For that reason alone, the University has a strong interest in enabling as many student organizations as possible to participate in the activities fairs. But instead the Student Council has chosen to impose an arbitrary obstacle to student organizations' participation. As the Form expressly acknowledges, the Council has conditioned participation in the Fall Activities Fairs on submission of the Form because of its dissatisfaction that religious and political groups have equal access to University facilities and resources along with other student groups.

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<sup>1</sup> The Center sent a letter to all Student Council members before the November 22 meeting, which is attached to this letter. Unfortunately, the Council members disregarded its call for respect for other students' freedoms of speech, thought, and belief.

The Council's Form asks whether an organization is a religious or political group and whether it restricts its membership, leadership, programs, or activities on the basis of 15 different categories. If so, the organization's president is to indicate which categories are the basis for its restrictions. The Form is confusing in its wording but expressly raises the possibility that should the student president submit the Form with what the Council deems to be an incorrect answer, the student may face a charge of violating the Honor Code. As anyone familiar with the University knows, the mere possibility of facing such a charge (which in many cases leads to the penalty of expulsion, and in every case is highly stressful for students subjected to the process) threatens and intimidates prudent students. And clearly the Council intends the Form to have that effect on students. Furthermore, the Form states that if the Council understands the answer to be "misrepresentation," the organization may have its recognition "suspend[ed]" or have "its access to resources provided by the Council" "restrict[ed]."

Because the University ultimately is responsible for unlawful actions taken by the Council, the Council's actions pose a threat not only to students but also to University officials. See *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995). Specifically, in the last eight months, three federal court decisions have made clear that the Council's actions expose University officials to the loss of qualified immunity, if the University allows the Council to continue on its current course of targeting religious groups with threats of withholding benefits otherwise available to other student organizations. These federal courts have held that public university officials lose qualified immunity when they utilize university nondiscrimination policies to penalize religious student groups for requiring their leaders to agree with their religious beliefs.

In 2021, the Eighth Circuit Court of Appeals twice has ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing two religious student groups because they had religious leadership requirements. *InterVarsity Christian Fellowship/USA v. University of Iowa*, --- F.4th ---, 2021WL 3008743 (8th Cir. 2021); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021). Specifically, five University officials lost their qualified immunity: the University President, the Vice President for Student Life, the Associate Dean of Student Organizations, the Coordinator for Student Organization Development, and the Student Misconduct and Title IX Investigator. *InterVarsity*, 2021 WL 3008743. Likewise, a Michigan federal district court found that Wayne State University officials forfeited qualified immunity by threatening a religious student group with derecognition because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, --- F. Supp.3d ---, 2021 WL 1387787 (E.D. Mich. 2021).

For nearly two decades, the University of Iowa student government sporadically harassed the Christian Legal Society student chapter about its leadership requirements. Eventually, in 2017, the University derecognized a small religious group of graduate business students for declining to give a leadership position to a student who expressly rejected the

group's religious beliefs regarding sexual conduct. *Business Leaders in Christ*, 991 F.3d at 974-977. During the ensuing litigation, University officials placed a hold on the status of over 30 religious student groups because of their leadership standards, including student groups from the Muslim, Jewish, Sikh, Latter-Day Saints, Evangelical, and Catholic traditions.<sup>2</sup>

Nor would religious groups be the only groups affected. The leadership and membership requirements of social fraternities and sororities violate nondiscrimination policies' prohibitions on sex or gender identity discrimination.<sup>3</sup> The same is true for *a cappella* groups and club sports teams that restrict membership based on sex or gender identity. Student groups that form around racial, ethnic, or national origin similarly would violate university nondiscrimination policies. See *InterVarsity v. University of Iowa*, 2021 WL 3008743, \*2, \*5-6. No doubt these groups address an important need for their members, as do religious groups. But universities must apply their nondiscrimination policies evenhandedly to religious and nonreligious groups alike.

The Eighth Circuit found that First Amendment law was clearly established in favor of the religious groups' right to recognition and, therefore, University officials lost their qualified immunity, even though no Iowa statute or federal regulation at the time protected religious student groups' religious leadership standards.<sup>4</sup> By contrast, Virginia law has protected religious student groups' leadership standards since 2016. Va. Code § 23.1-400.

In addition, two federal regulations make it a material condition of any grant that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization "any right, benefit, or privilege that is otherwise afforded to other student organizations . . . because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards." 34 C.F.R. § 75.500(d) & § 76.500(d).

Under clearly established law, University officials have the *legal* duty to intervene to prevent further bullying of religious student groups by the Student Council. Specifically, University officials should instruct the Council to drop its requirement that the Form be submitted by religious student organizations. And the University has the *moral* responsibility to require that the Council respect their fellow students' religious and

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<sup>2</sup> In response to the trial court's request, University officials produced a document in which it identified (by highlighting in blue) the religious student groups whose recognition status was on hold. That document is attached to this letter.

<sup>3</sup> Title IX exempts social fraternities and sororities solely from the nondiscrimination provision of Title IX. 20 U.S.C. § 1680(a)(6)(A). Title IX does not exempt fraternities and sororities from state nondiscrimination laws or universities' nondiscrimination policies.

<sup>4</sup> The Iowa Legislature adopted a law in 2019 protecting all student organizations' leadership requirements. I.C.A. § 261H.3(3).

Letter to President Ryan

August 12, 2021

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political beliefs even when—no, especially when—the Council disagrees with those religious and political beliefs.

Student Council representatives, like every government official, need to recall our Republic’s timeless lesson: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Respectfully,

/s/ Kim Colby

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Christian Legal Society

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## **Attachment G**



November 24, 2020

Dear Members of the University of Virginia Student Council:

We have a great fondness and deep respect for the University of Virginia. This fondness and respect derive from two of this University's essential characteristics. First, the University was founded on a profound commitment to freedom of expression and conscience. Second, this commitment has nurtured a diverse religious community among the UVA student body for which UVA is rightly celebrated.

The University's commitment to diversity, including religious diversity, and the resulting vibrant communities that exist among its students attracts new students to UVA every year. Students with diverse religious beliefs come because they know UVA is a place where their right to hold their respective beliefs will be respected, even if those beliefs are in the minority and even unpopular. On far too many college campuses, religious students are silenced and suppressed. But UVA is known to be a place where all students, including students who embrace religious faith, are welcome to form groups that reflect their diverse beliefs without fear of having any orthodoxy imposed upon them by the University or by any official body exercising its authority.

Unfortunately, an item under consideration on the Council's agenda for its meeting this evening would seek to impose an orthodoxy not only on religious groups but on political groups as well. FR20-38 would silence the voices of religious and political student organizations because their political or religious viewpoints are minority viewpoints and unpopular with a majority of the Council. The ability of political and religious groups to define their own standards for their leaders is absolutely essential to their self-expression. Genuine diversity exists on a campus only if political and religious groups can choose their leaders without interference from government actors. Such attempts to censor unpopular political and religious viewpoints is unworthy of this University and this Council.

If history teaches any lesson, it is that the right to express unpopular political and religious viewpoints is not to be put to a majoritarian vote. In 1943, the United States was in an existential fight with fascism. Many public school officials deemed it essential that students demonstrate their loyalty to the United States by daily pledging allegiance to its flag. But students belonging to a minority faith, Jehovah's Witnesses, could not salute the flag without violating their religious beliefs. As punishment, West Virginia education officials expelled the students from the public schools and then fined and jailed their parents for their children's truancy.

But in one of its landmark decisions, the United States Supreme Court ruled that, even in wartime, students have a First Amendment right to follow their religious and political convictions and refuse to salute the flag. The Court warned in perhaps its most famous passage:

[The] freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

*West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

The courts have continued to affirm these essential rights, specifically in the context that is the subject of FR 20-38. Just last year, in *InterVarsity Christian Fellowship v. University of Iowa*, a federal district court found that the University of Iowa violated the First Amendment by prohibiting an InterVarsity chapter from selecting its leaders according to its religious beliefs. 408 F. Supp. 3d 960 (S.D. Iowa 2019), *on appeal*, No. 19-3389 (8<sup>th</sup> Cir. 2019). *See also InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 413 F. Supp. 3d 687 (E.D. Mich. 2019) (rejecting university's motion to dismiss). And in *Business Leaders in Christ v. University of Iowa*, the court ruled that a public university could not discriminatorily punish a religious student group that declined to accept a leader who rejected the group's religious views on same-sex marriage. 360 F. Supp.3d 885 (S.D. Iowa 2019), *on appeal*, No. 19-1696 (8<sup>th</sup> Cir. 2019). In fact, the Constitutional violations in the *InterVarsity Christian Fellowship v. University of Iowa* case were so clear that the district court held school officials personally liable for their actions. 408 F. Supp. 3d at 978.

Of course, the prohibition on government imposing orthodoxy on political and religious organizations runs both ways. Just as government may not penalize a student group for one viewpoint on same-sex marriage, they may not penalize a different student group for the opposite view. *Gay & Lesbian Students Ass'n v. Gohn*, 850 F.2d 361, 365-66 (8<sup>th</sup> Cir. 1988) (finding that student government's denial of equal treatment to an LGBT student group violated the First Amendment). "Tolerance is," as federal courts have explained, "a two-way street." *Ward v. Polite*, 667 F.3d 727, 735 (6<sup>th</sup> Cir. 2012). "Otherwise, the rule mandates orthodoxy, not anti-discrimination." *Id.* (Our organization was instrumental in the passage of the federal Equal Access Act of 1984, 20 U.S.C. §§ 4071-4074, which protects the right of both religious and LGBT student groups to meet in public secondary schools. We practice the tolerance that we preach.)

These constitutional protections are particularly applicable "in the community of American universities," where the First Amendment rejects "any strait jacket" that "'cast[s] a pall of orthodoxy' over the free exchange of ideas." *Dube v. State University of New York*, 900 F.2d 587, 597-98 (2d Cir. 1990) (quoting *Sweezy v. New Hampshire*,



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354 U.S. 237, 250 (1957), and *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967), and finding that university officials could be personally liable for damages for censoring free speech).

When we look back to West Virginia in 1943, we shake our heads that any education officials thought it right to compel students to mouth words that violated their political and religious convictions. But history teaches that government officials repeatedly have chosen to impose their particular orthodoxy at great cost to individual human freedom.

That same deeply misguided desire to coerce uniformity of opinion animates FR20-38. For that reason, the resolution should be rejected.

Thank you for considering our comments.

Yours truly,

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Organization Name	Compliant (YES, NO, REVIEW STOPPED, PENDING LITIGATION)
5050 in 2020 @ Iowa	YES
AAUW at Iowa	YES
Acacia Fraternity	YES
Academy of Managed Care Pharmacy (AMCP) Student Chapter at the University of Iowa (UI)	YES
Active Minds at The University of Iowa	YES
Actuarial Science Club	YES
Advocates for Cross Cultural Experiences (ACCE)	YES
African Student Association	YES
Agape Chinese Student Fellowship	STOPPED, PENDING LITIGATION
ALMA (Association of Latinos Moving Ahead)	YES
Alpha Chi Omega	YES
Alpha Delta Pi	YES
Alpha Epsilon Phi	YES
Alpha Epsilon Pi	YES
Alpha Kappa Alpha Sorority, Inc.	YES
alpha Kappa Delta Phi	YES
Alpha Kappa Psi Professional Business Fraternity	YES
Alpha Phi	YES
Alpha Phi Alpha	YES
Alpha Phi Omega-Omicron (APO)	YES
Alpha Sigma Phi	YES
Alpha Tau Omega	YES
Alpha Xi Delta	YES
Amateur Radio Club (University of Iowa)	YES
American Academy of Pediatric Dentistry	YES
American Advertising Federation (formerly known as Students in Advertising)	YES
American Association of Petroleum Geologists	YES
American Association of Public Health Dentistry University of Iowa Student Chapter	YES
American Association of Women Dentists	YES
American Chemical Society Student Chapter (U of I)	YES
American College of Clinical Pharmacy Student Chapter (University of Iowa)	YES
American College of Veterinary Pharmacists	YES
American Constitutional Society for Law and Policy, University of Iowa College of Law Chapter	YES
American Institute of Aeronautics and Astronautics	YES
American Institute of Chemical Engineers - University of Iowa Student Chapter	YES
American Marketing Association (U of I chapter)	YES
American Medical Women's Assoc - UI Std Branch (AMWA)	YES
American Pharmacists Association - Academy of Student Pharmacists	YES
American Rehabilitation Counseling Association (UI)	YES
American Sign Language Club (ASL Club)	YES
American Society of Civil Engineers (ASCE)	YES

American Society of Mechanical Engineers	YES
American Wind Energy Association (Student Chapter)	YES
Amnesty International (U of I)	YES
Anime and Manga Club	YES
Anime, Comics & Games Association	YES
Anthropology Club (University of Iowa)	YES
Anthropomorphic Furry Friends	YES
Arab Students Association	YES
Art Hawks	YES
Artineers	YES
Asian Pacific American Medical Student Association	YES
Asian Pacific American Student Association (U of I)	YES
Associated Residence Halls (ARH)	YES
Association for Computing Machinery Student Chapter	YES
Association for India's Development-IOWA	YES
Association for Multicultural Scientists	YES
Association of Graduate Nursing Students	YES
Association of Graduate Students in English (AGSE)	YES
Association of Nursing Students (UIANS)	YES
Association of Pre-Physician Assistant Students	YES
Astronomy Club	YES
<b>Athletes inAction</b>	STOPPED, PENDING LITIGATION
Auto Club	YES
B Sides	YES
Backpack Project	YES
Badminton Club (U of I)	YES
Ballet Club at Iowa	YES
Baseball Club (Iowa Hawkeye)	YES
Bass Fishing Team (Iowa)	YES
Be The Match on Campus-UI	YES
Bertrand Russell Society - Iowa Chapter	YES
Best Buddies	YES
Beta Theta Pi	YES
Big Brothers Big Sisters at Iowa	YES
Bijou Theater	YES
Bike Friends (University of Iowa) (Formerly Recreational Bicycling Club - UI)	YES
Biochemistry Majors Club (University of Iowa)	YES
Biological Interests Organization (University of Iowa)	YES
Biomedical Engineering Student Society	YES
Biostatistics Student Organization	YES
Black Law Student Association, Alexander G. Clark Sr. & Jr. Chapter (University of Iowa College of Law)	YES
Black Student Union	YES
Board Game Club	YES

Body Image and Eating Disorder Awareness	YES
Book of the Month Club	YES
Bowling Club (U of I)	YES
Brandyou Fashion Channel	YES
Brazilian Jiu-Jitsu Club (Hawkeye)	YES
Breakers (U of I)	YES
Bridges International (UI Chapter)	STOPPED, PENDING LITIGATION
Bruce Gronbeck Rhetoric Society	YES
Business Leaders in Christ	STOPPED, PENDING LITIGATION
Camp Adventure Youth Services	YES
Camp Kesem	YES
Campus Activities Board (CAB)	YES
Campus Bible Fellowship	STOPPED, PENDING LITIGATION
Campus Christian Fellowship	STOPPED, PENDING LITIGATION
Caribbean Student Association	YES
Carver College of Medicine Student Government	YES
Carver College of Medicine-Medicus Mentorship Program	YES
CHAARG at Iowa	YES
Chabad Jewish Student Association	STOPPED, PENDING LITIGATION
Chess Club	YES
Chi Alpha Christian Fellowship	STOPPED, PENDING LITIGATION
Chi Epsilon	YES
Chi Omega	YES
Chi Sigma Iota Counseling Academic & Prof. Honor Society Int'l; Rho Upsilon Chapter	YES
Child Life Student Association (UI)	YES
Children of the Clay - The (formerly Ceramics Society)	YES
Chinese Dance Club	YES
Chinese in Iowa City	YES
Chinese Music Club	YES
Chinese Student Christian Fellowship	STOPPED, PENDING LITIGATION
Chinese Students and Scholars Association (CSSA)	YES
Christian Legal Society	STOPPED, PENDING LITIGATION
Christian Medical Association	STOPPED, PENDING LITIGATION
Christian Pharmacy Fellowship	STOPPED, PENDING LITIGATION
Chronic Illness Alliance	YES
Circle K International	YES
Clothing Closet at Iowa	YES
Club Cheerleading	YES
College Diabetes Network at Iowa	YES
College of Education Graduate Student Executive Committee	YES
College of Law Federalist Society	YES
College of Medicine Emergency Medicine Interest Group (University of Iowa)	YES
College of Pharmacy Student Leadership Council	YES

College Republicans	YES
Colleges Against Cancer (U of I)	YES
Collegiate 4-H (The University of Iowa)	YES
Communication Studies Graduate Student Association	YES
Communication Studies Student Association	YES
Competitive Club Golf Team (Iowa)	YES
Computer Comfort	YES
Continental Crossings	YES
Cosplay Club at Iowa	YES
Craft, Critique, Culture Conference Planning Committee	YES
Cricket Club	YES
Crisis Center	YES
Cru	STOPPED, PENDING LITIGATION
Dance Club (University of Iowa)	YES
Dance Marathon	YES
Dean's Student Advisory Committee	YES
Debate Club (U of I)	YES
DeGowin Blood Center Student Organization (University of Iowa)	YES
Delta Chi	NO LONGER REGISTERED AT UI
Delta Delta Delta	YES
Delta Gamma	YES
Delta Lambda Phi	YES
Delta Phi Lambda	YES
Delta Sigma Phi	YES
Delta Sigma Pi (Professional Business Fraternity)	YES
Delta Sigma Theta	YES
Delta Tau Delta	YES
Delta Upsilon	YES
Delta Zeta	YES
Disc Golf Club	YES
Earthwords	YES
Eats And Treats	YES
Ed on Campus	YES
Electrochemical Society Student Chapter at Iowa	YES
Emergency Medical Services Student Interest Organization (University of Iowa)	YES
Enactus at Iowa	YES
Engineering Student Council	YES
English Society (University of Iowa)	YES
Environmental Coalition (U of I)	YES
Environmental Law Society	YES
Epidemiology Student Association	YES
EPX Studio	YES
EQUAL Meds (formerly Med Iowa's Queer Students (MEDIQS))	YES

eSports Club at Iowa	YES
Eta Sigma Phi National Classics Honor Society	YES
Euchre Club at Iowa	YES
Exchanges	YES
Fair Trade at Iowa	YES
Family Medicine Interest Group	YES
Federal Reserve Challenge at Iowa	YES
Female Alliance of Civil Engineers	YES
Fencing Club (U of I)	YES
Fight Inclined Student Thespians	YES
Figure Skating Club (Black and Gold)	YES
Financial Management Association	YES
Fine Arts Council	YES
FIRST Alumni Club	YES
First Generation Iowa	YES
FLARES (Foreign Language Acquisition Research and Education Students)	YES
Food Pantry at Iowa	YES
Fools Magazine	YES
Fraternal Values Society	NO LONGER REGISTERED AT UI
From Cover To Cover	YES
Futures Trading Challenge	YES
Gamma Iota Sigma	YES
Gamma Phi Beta	YES
Gamma Rho Lambda	YES
Gardeners (University of Iowa)	YES
<b>Geneva Campus Ministry</b>	STOPPED, PENDING LITIGATION
Global Health Club	YES
Golden Key International Honour Society	YES
Graduate & Professional Student Government	YES
Graduate Association of Political Science	YES
Graduate History Society (GHS)	YES
Graduate Organization of Higher Education and Student Affairs (GOHESA)	YES
Graduate Philosophical Society (U of I)	YES
Graduate Social Work Student Association	YES
Graduate Student Anthropology Association (U of I)	YES
Graduate Student Senate	YES
Graduate Women in Science - Iowa City Chapter (previously GWIS - Iota Chi"	YES
Greater China Business Association	YES
Guitar Club at Iowa	YES
Habitat for Humanity Campus Chapter (U of I)	YES
HackIowa	YES
Hallyu@Iowa	YES
Hawkapellas - Iowa	YES

Hawkeye Athletic Training Association (HATA)	YES
Hawkeye Ballroom Dance Company	YES
Hawkeye Caucus	YES
Hawkeye Flying Club	YES
Hawkeye History Corps	YES
Hawkeye Model UN delegation	YES
Hawkeye Optimist Chapter	YES
Hawkeye Sparkles (University of Iowa)	YES
Hawkeye Water for Change! (Formerly: Hawkeye Water to Thrive)	YES
Hawkeyes Fighting Alzheimer's	YES
Hawkeyes for Humanity	YES
Hawkeyes for Israel	YES
HawkeYes Plan Events - HYPE (formerly Student Event Planners Association - UI)	YES
Hawks for Choice	YES
Hawks for McGuire	YES
Hawks Nest	YES
HawkTrade	YES
Heart Workshop	YES
HFES Student Chapter at Iowa	YES
<b>Hillel (University of Iowa)</b>	STOPPED, PENDING LITIGATION
Hispanic Dental Association (Iowa Chapter)	YES
Hispanic/Latino Law Student Association	YES
Homecoming Council	YES
Hong Kong Student Association	YES
House of Lorde: a space for Black Queer Individuals	YES
Human Rights Student Collective	YES
Human Trafficking Initiative	YES
IC RED	YES
I-Envision Entrepreneurship	YES
<b>Imam Mahdi Organization</b>	STOPPED, PENDING LITIGATION
Immunity Campaign	YES
Indian Student Alliance (ISA)	YES
INFORMS Iowa Student Chapter	YES
Institute of Industrial and Systems Engineers (IISE)	YES
Integrative Medicine Interest Group	YES
Intellectual Property Law Society	YES
Interfraternity Council (IFC)	YES
International Genetically Engineered Machine	YES
International Law Society	YES
International Law Student Association (formerly International Law-school Student Association)	YES
<b>International Neighbors at Iowa</b>	STOPPED, PENDING LITIGATION
International Student Outdoor Recreation Association	YES
Intersection	YES

<b>InterVarsity Graduate Christian Fellowship</b>	STOPPED, PENDING LITIGATION
InvestHer	YES
Iowa Agni	YES
Iowa American Student Dental Association (IASDA)	YES
Iowa Andhi	YES
Iowa Comic Book Club	YES
Iowa Edge Student Organization - The	YES
Iowa Formula	YES
Iowa Forum for Graduate Medievalists	YES
Iowa Health Administration Club	YES
Iowa Improv Club	YES
Iowa Journal of Cultural Studies	YES
Iowa Kendo Kumdo Club	YES
Iowa Marine Autonomous Racing Club	YES
Iowa Men's Hockey	YES
Iowa National Lawyers Guild	YES
Iowa Neuroscience Club	YES
Iowa Print Group	YES
Iowa Quiz Bowl	YES
Iowa Student Association of Healthcare Leaders	YES
Iowa Student Athlete Advisory Committee	YES
Iowa Student Bar Association	YES
Iowa Student Chapter of the American String Teachers Association	YES
Iowa Student Medical Research Club	YES
Iowa Student Psychology Association (ISPA)	YES
Iowa Students for Refugees	YES
Iowa Surgical Interest Group	YES
Iowa Young Americans for Freedom Chapter	YES
Iowa-Illinois Industrial Hygiene Student Association (I3HSA)	YES
<b>J. Reuben Clark Law Society</b>	STOPPED, PENDING LITIGATION
Japan Karate-Do Organization of University of Iowa	YES
Jazz Club	YES
Journal of Corporation Law	YES
Journal of Gender, Race & Justice	YES
Journalism and Mass Communication Graduate Student Association	YES
Judo Club (University of Iowa)	YES
Juggalos (U of I)	YES
Kappa Alpha Psi	no (has been unregistered)
Kappa Alpha Theta	YES
Kappa Kappa Gamma	YES
Kappa Psi Pharmaceutical Fraternity	YES
Kappa Sigma	NO LONGER REGISTERED AT UI
Knitting Club (UI)	YES



Korean Conversation Group	YES
Korean U Iowa Students Association	YES
KRUI-FM	YES
Lacrosse (U of I - Men's )	YES
Lacrosse (U of I - Women's)	YES
Lambda Chi Alpha	YES
Lambda Theta Nu Sorority, Inc.	YES
Lambda Theta Phi Latin Fraternity, Inc.	YES
Latina/o Graduate Student Association	YES
Latino Medical Student Association - University of Iowa Roy J. & Lucille A. Carver College of Medicine	YES
<b>Latter-day Saint Student Association</b>	STOPPED, PENDING LITIGATION
League of Legends Club (UI)	YES
League of United Latin American Citizens Collegiate Council #373	YES
Leopold Society	YES
LGBT Advocates for Public Health Equity	YES
Library & Info Science Std Chapter of American Lib Assoc. (LISSO)	YES
Love Works	YES
<b>Lutheran Campus Ministry</b>	STOPPED, PENDING LITIGATION
Malaysian Student Society	NO
Master of Business Administration Association (MBAA)	YES
Math Graduate Board (MGB)	YES
Media Entertainment & Lifestyle	YES
Medicus Pre-Medical Society	YES
Microbiology Undergraduate Student Association	YES
Middle East Law Students Association	YES
Mindful@Iowa	YES
Minority Association of Pre-medical Students	YES
Mock Trial Club (U of I)	YES
Moneythink	YES
MPR Dance Crew	YES
Multicultural Business Student Association	YES
Multicultural Greek Council	YES
Multicultural Nursing Association	YES
Multi-Ethnic Engineering And Science Association	YES
<b>Multiethnic Undergrad Hawkeye InterVarsity</b>	STOPPED, PENDING LITIGATION
Multiracial Student Association	YES
Musicology Society (University of Iowa)	YES
<b>Muslim Students Association</b>	STOPPED, PENDING LITIGATION
Narwhal Finance Group	YES
National Alliance on Mental Illness on Campus at Carver College of Medicine	YES
National Association for Music Education	YES
National Association for the Advancement of Colored People (UI Chapter of NAACP)	YES
National Association of Black Journalists - Unity (UI)	YES

National Community Pharmacists Association	YES
National Pan-Hellenic Council (NPHC)	YES
National Residence Hall Honorary	YES
National Retail Federation Student Association	YES
National Science Teachers Association Chapter at Iowa	YES
National Society of Black Engineers (NSBE)	YES
National Society of Collegiate Scholars	YES
National Student Speech Language Hearing Association (NSSLHA)	YES
Native American Student Association	YES
Nepalese Student Association	YES
Net Impact	YES
Net Impact U Iowa	YES
Neuroscience Journal Club	YES
<b>Newman Catholic Student Center</b>	STOPPED, PENDING LITIGATION
Nightingale Writers' Group	YES
NOBCCHE (National Organization for the Professional Advancement/Black Chemists & Chemical Engineers)	YES
Old Gold A Cappella	YES
Olympic Weightlifting Club (University of Iowa)	YES
Omega Chi Epsilon	YES
Omicron Delta Kappa	YES
ONE at University of Iowa	YES
Operation Smile at Iowa	YES
Order of Omega	YES
Organization for the Active Support of International Students (OASIS)	YES
Organization for Women Law Students & Staff (OWLSS)	YES
<b>Orthodox Christian Fellowship</b>	STOPPED, PENDING LITIGATION
Orthopedic Surgery Interest Group	YES
oSTEM@Iowa	YES
Outlaws	YES
Pain Management, Substance Use Disorders, Palliative Care (U of I)	YES
Pakistani Student Association	YES
Panhellenic Council (PHC)	YES
PAWS - UI (Promoting Animal Welfare in Society)	YES
Pediatric Pharmacy Advocacy Group at the University of Iowa	YES
Percussion Society (U of I)	YES
Persian Student Organization	YES
Pharmacy Ambassadors	YES
Pharmacy Communicators Association	YES
Phi Alpha Delta Law Fraternity, International Hammond Chapter	YES
Phi Alpha Delta Pre-Law Fraternity	YES
Phi Beta Chi	YES
Phi Beta Sigma	YES
Phi Delta Chi Pharmacy Fraternity	YES

Phi Delta Theta	YES
Phi Eta Sigma (Freshman Honor Society)	YES
Phi Gamma Delta (FIJI)	YES
Phi Gamma Nu Professional Business Fraternity	YES
Phi Kappa Psi	YES
Phi Kappa Theta	YES
Phi Lambda Sigma	YES
Phi Mu Alpha Sinfonia Men's Music Fraternity, Iota Gama Chapter	YES
Phi Sigma Pi National Honor Fraternity	YES
Physical Therapy Student Organization	YES
Pi Alpha Phi	YES
Pi Beta Phi	YES
Pi Kappa Alpha (PIKE)	YES
Pi Kappa Phi	YES
Pi Sigma Alpha - Political Honors Society at Iowa	YES
PMBA Student Association, Des Moines (University of Iowa)	YES
Powerlifting (University of Iowa)	YES
Pre-Dental Club (U of I)	YES
Pre-Health International Association	YES
Pre-Occupational Therapy Club	YES
Pre-Optometry Club (U of I)	YES
Pre-Physical Therapy Organization	YES
Pre-Veterinary Club	YES
Product Design Studio	YES
Psi Chi International Honor Society in Psychology	YES
Public Relations Student Society of America (PRSSA)	YES
Quidditch Club	YES
Radiation Sciences Student Organization	YES
Ratio Christi	STOPPED, PENDING LITIGATION
RAYs of REACH	YES
Reaching OUT in Business	YES
Real Estate Club (The)	YES
Red Shamrock Student Organization	YES
Religion Graduate Students Organization	YES
Rex Montgomery Physician Assistant Student Society	YES
Rho Chi Society: Delta Chapter	YES
Rho Lambda	YES
RiverRun	YES
Robotics Club (University of Iowa)	YES
Rock Climbing Club	YES
Roosevelt Network	YES
Rowing Club (Men's)	YES
Rugby Club (Men's)	YES

Rugby Club at Iowa (Women's)	YES
Running Club (University of Iowa)	YES
Russian-Speaking Students and Scholars Association	YES
Sailing Club (Iowa)	YES
Sales Engineering Club	YES
Salsa Dance Club	YES
<b>Salt Company -The</b>	STOPPED, PENDING LITIGATION
SCOPE Productions (Student Commission on Programming Entertainment)	YES
Secular Students at Iowa	YES
Semper Fidelis Society	YES
Shooting Sports Club	YES
Sigma Alpha Epsilon	NO LONGER REGISTERED AT UI
Sigma Alpha Iota - Zeta Epsilon	YES
Sigma Alpha Lambda	YES
Sigma Chi	YES
Sigma Lambda Beta	YES
Sigma Lambda Gamma	YES
Sigma Nu	NO LONGER REGISTERED AT UI
Sigma Nu Tau Entrepreneurship Honors Society	YES
Sigma Phi Epsilon	YES
Sigma Pi	YES
Sigma Tau Delta International English Honors Society, Alpha Tau Iota Chapter of Iowa	YES
<b>Sikh AwarenessClub</b>	STOPPED, PENDING LITIGATION
SistaSpeak	YES
Ski & Snowboard Club (U of I)	YES
Slavic Student Alliance	YES
Soccer (Iowa Women's)	YES
Social Work Student Association	YES
Society for Human Resource Management	YES
Society of Automotive Engineers	YES
Society of Black Graduate & Professional Students (BGAPS)	YES
Society of Composers, Inc. Student Chapter	YES
Society of Hispanic Professional Engineers	YES
Society of Physics Students	YES
Society of Women Engineers	YES
Softball Club (University of Iowa)	YES
Sound Awareness for Everyone (University of Iowa - student affiliate group)	YES
South Asian Student Alliance	YES
Special Olympics (University of Iowa Chapter)	YES
Spectrum UI	YES
Sport and Recreation Management Club	YES
Sports Law Society of the University of Iowa	YES
Sports Stocks	YES

Sri Lankan Students' Association (SLSA)	YES
St. Paul's University Center	STOPPED, PENDING LITIGATION
STAR (Students To Assist Recruitment)	YES
Stars and Stripes Club	YES
Starts With Soap	YES
Strength in Numbers	YES
Student Academy of Audiology	YES
Student Advancement Network	YES
Student Advocates for Planned Parenthood	YES
Student Iowa School Counseling Association	YES
Student National Medical Association	YES
Student National Pharmaceutical Association	YES
Student Photography Organization	YES
Student Society of Health-System Pharmacists (University of Iowa)	YES
Student United Way	YES
Student Video Productions (SVP)	YES
Students Against Casteism	YES
Students Care	YES
Students for Boys and Girls Club of Iowa City	YES
Students for Human Rights	YES
Students for Interprofessional Practice and Education (formerly Students for Interprofessional Education)	YES
Students for Life	YES
Students for Pat Wronkiewicz	YES
Students for Reynolds	YES
Students in Design (UI)	YES
Students in Technology and Sciences	YES
Students International Meditation Society	YES
Students Supporting Israel	YES
Swing Dance Club	YES
Tabletop RPG Organization (The U of I)	YES
Taiwanese Student Association	YES
Tau Beta Pi	YES
Tau Kappa Epsilon (TKE)	YES
Tau Omega Catholic Service Fraternity	STOPPED, PENDING LITIGATION
Tau Sigma Military Dental Club	YES
Teddy Bear Clinic	YES
Tennis Club (Hawkeye)	YES
Tennis Club (International)	YES
Thai Student Association	YES
The Celi-Yaks Club	YES
The Gymnastics Club at Iowa	YES
Therapeutic Recreation Student Association	YES
Theta Tau-Professional Engineering Fraternity	YES

Tippie Senate	YES
Tippie Students for Service (formerly Tippie Community Collective)	YES
Tippie Technology and Innovation Assoc.	YES
To Write Love on Her Arms at The University of Iowa	NO
Track and Field Club (Iowa)	YES
Traditional Jujutsu Club (Iowa)	YES
Trans Alliance - UI	YES
Transfers Leading Change	YES
Translate Iowa Project - The	YES
Transnational Law & Contemporary Problems	YES
Triathlon Club (U of I)	YES
Turkish Student Association	YES
Turning Point USA	YES
<b>Twenty Four Seven</b>	STOPPED, PENDING LITIGATION
Tzu Chi Collegiate Association	YES
UI Students for Disability Advocacy & Awareness (Formerly: Hawkeye Accessibility Ambassador Org)	YES
UISG (University of Iowa Student Government)	YES
UISight	YES
Ultimate Frisbee (Women's)	YES
Ultimate Frisbee Club (Iowa Hawkeye Men's)	YES
Under Your Wing	YES
Undergraduate Art History Society	YES
Undergraduate Dance Organization	YES
Undergraduate Political Science Association	YES
Undergraduate Public Health Organization	YES
Unified for Uganda	YES
United Nations Association (University of Iowa)	YES
University Democrats	YES
University of Iowa Men's Club Volleyball	YES
University of Iowa Men's Soccer Club	YES
University of Iowa Men's Water Polo Club Team	YES
University of Iowa Table Tennis Club	YES
University of Iowa Taekwondo Club	YES
University Theatres Student Representatives	YES
Urban and Regional Planning Student Association	YES
USITT Student Chapter	YES
UStart	YES
Vegan Society UIowa	YES
Vertical Cinema	YES
Veterans Association (U of I)	YES
Veteran's Legal Association	YES
Vietnamese Student Association	YES
Voices of Soul	YES

Volleyball (Women's LadyHawk)	YES
Walk It Out	YES
Wall-Breakers	YES
Water Polo Club (U of I - Women's)	YES
Water Ski Team (U of I)	YES
Werewolf Club	YES
Wilderness Medicine Interest Group	YES
Wishmakers (University of Iowa)	YES
Women in Business	YES
Women in Computing Sciences	YES
Women in Science and Engineering (WISE) Ambassadors	YES
Women's Club Basketball	YES
Women's Ice Hockey	YES
World Languages Graduate Organization	YES
Wrestling Club (Iowa)	YES
Young Americans for Liberty	YES
Young Democratic Socialists at Iowa	YES
Young Life	STOPPED, PENDING LITIGATION
Young Women for America at Iowa	YES
Zeta Beta Tau	YES
Zeta Phi Beta Sorority, Inc.	YES
Zeta Tau Alpha	YES

## **Attachment H**





November 3, 2021

Chancellor Douglas A. Girod  
Office of the Chancellor  
University of Kansas  
Strong Hall  
1450 Jayhawk Blvd., Room 230  
Lawrence, KS 66045  
[chancellor@ku.edu](mailto:chancellor@ku.edu)

Provost Barbara Bichelmeyer  
Provost & Executive ViceChancellor  
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Brian A. White  
General Counsel and Vice Chancellor for Legal Affairs  
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Dear Chancellor Girod, Provost Bichelmeyer, and Vice Chancellor White,

Bridges International (Bridges) is a registered student organization at the University of Kansas. It is a student led group that is affiliated with the national organization of Bridges International, a ministry of Cru. I was contacted by the student leaders and the KU Affiliate advisor for the group, after it was denied its funding request through the Student Diversity, Equity and Inclusion Fund to help international shidents to attend the Bridges International End-of-the year Vision Conference in Baltimore, Maryland.

The decision to deny funding was made by the voting members of the Student Senatecommittee "due to the religious activity that would be taking place during the trip," according to Student Senate Treasure , in an email on October 26, 2021. The student leaders for Bridges demonstrated in their funding application that the criteria for funding were met, noting that the purpose of the conference is to "experience unique global community." This purpose is consistent with the DEI flmd's purpose to "foster an inclusive and multicultural environment for students" See DEI fund website at <https://studentsenate.k u.edu/ guidelines-fun ding>. Bridge s

leadership also indicated that the conference would involve considering the "spiritual aspect" to life's purpose. I am writing to request that the funding request be granted for the legal reasons stated below.

The decision to reject funding for Bridges was based on unlawful policy language embedded throughout the Student Senate Rules and Regulations. The funds that the Student Senate allocates for student organizations are from student activity fees that are collected from each student at the University of Kansas. The DEi fund, described in Appendix N (e)(2) of the Student Senate Rules and Regulations, says "Funds cannot be used for specific religious activities or materials." Section 3.23 of the Student Senate Rules and Regulations state that "Funds cannot be used for specific religious activities or materials. This includes, but is not limited to, religious texts, worship or devotional services, conversion efforts and salaries for religious officials. Funds can be allocated to organizations whose primary function is religious for traditionally secular activities that may have a religious perspective."

This policy language that excludes based on the religious character of the group and its activities is contrary to State law, Supreme Court precedent, and Federal Regulations. We respectfully ask that you change the policies to remove the unconstitutional language.

This policy is wrong for the following reasons, described in more detail below:

- Supreme Court precedent makes clear that the policy is unconstitutional under both the Free Speech and Free Exercise clauses of the First Amendment.
- The Establishment Clause is not violated when the university creates a limited open forum and treats all groups, including religious groups, fairly.
- The policy is in violation of Kansas Law under KSA60-5312.
- The policy contravenes Federal regulations that uphold the importance of treating religious groups fairly.

First, under clear Supreme Court precedent, this policy violates both free speech rights and free exercise rights. Under the First Amendment Free Speech Clause, it is content discrimination to exclude religious content based on its religious nature. In *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), the university refused to pay the printing costs of a publication by a religious student organization because the content was religious. The Supreme Court called it a free speech violation to refuse the religious group funding due to the religious content of its speech. *Id.* at 837.

In addition, when a university establishes a structure for students to form student organizations and to provide those groups opportunities to get funding, it has created a limited open forum with the purpose of stimulating extracurricular student expression. The university is not speaking, but enabling speech in a neutral manner. *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 235 (2000). In addition, a university may not seek to exclude certain types of religious speech, claiming they are unprotected. Even "worship" is an expressive activity protected by the First Amendment's Speech Clause. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

The Free Exercise Clause is also violated when a law imposes a particular burden on the basis of religious status. The distinction in this policy based on "religious activities" clearly uniquely burdens religious organizations, leading to different treatment because of their religious status.

The Supreme Court made this principle clear in both *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012, 2019, 2021 (2017) and most recently in *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020). *Espinoza* emphasizes that *Trinity Lutheran* said no to "laws that impose special disabilities on the basis of religious status." ("because of their faith..."). The *Espinoza* court further clarified that the government may not disqualify "otherwise eligible recipients from a public benefit solely because of their religious character." That is a penalty on free exercise and triggers strict scrutiny. 140 S.Ct. at 2254. The government actor does not have to restrict specific content or beliefs in order to violate a group's free exercise; the scrutiny is triggered merely by a distinction based on religious character. *Id.*, at 2255.

Second, the Establishment Clause is not violated when religious groups receive generally available benefits. The Supreme Court has made clear that the Establishment Clause is not violated when religious groups are allowed to participate in limited open forums. *Widmar*, 454 U.S. at 273 (stating that "an open forum in a public university does not confer any imprimatur of state approval on religious sects or practices"). The most important factor is neutrality; religious speech may not be favored or disfavored. Universities must distribute resources with "neutrality towards religion." *Rosenberger*, 515 U.S. at 839; *see also Southworth*, 529 U.S. at 233. True neutrality can happen only when the government "extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Rosenberger*, 515 U.S. at 839.

If a university operates a limited open forum in a viewpoint neutral manner, then the fact that a particular voice is religious does not mean the state is "giving preference" to that particular viewpoint. In contrast, excluding religious groups from such a forum is unconstitutional "content-based discrimination against respondents' religious speech." *Widmar*, 454 U.S. at 276. The state violates the First Amendment if it silences religious voices by treating them differently. *See Southworth*, 529 U.S. at 233. The Supreme Court calls this violation of the free speech rights of groups "viewpoint discrimination." *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993).

In addition, the Supreme Court has directly addressed the particular situation of student activity fee distribution, and has drawn an even more clear line, stating that such funds are distinct from a normal discussion of state fund distributions. Money distributed from mandatory student activity fees is not money coming directly from state coffers. *Rosenberger*, 515 U.S. at 841 (noting the fee paid by students "is not a general tax designed to raise revenue for the University").

Third, the law violates KSA60-5312, passed in 2016 to protect religious student organizations on college campuses and ensure that they receive the same benefits available to other student associations. The law was passed specifically to ensure that religious student organizations are not excluded from benefits given to other student organizations. KSA60-5313 then also

indicates that a cause of action may be brought against a university that violates KSA60-5312 by treating religious student associations differently than other student associations.

Fourth, the policies also must be changed based on two federal regulations that make it a material condition of any grant that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization "any light, benefit, or privilege that is otherwise afforded to other student organizations ... because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards." 34 C.F.R. § 75.500(d) & § 76.500(d).

For all the foregoing reasons, the policy excluding "religious activities" from receiving funding is improper and must be changed to prevent religious discrimination. The university is responsible to ensure that the Student Senate follows the law, and that it distributes any student activity fees in a viewpoint neutral manner. You therefore must act to correct these Student Senate policies and ensure that all student organizations are being treated fairly, including religious student organizations.

We respectfully request that you amend the policy accordingly. We also appeal the funding denial for the Vision Conference and ask that the Student Senate approve the funding request because the only reason it gave for the denial is unconstitutional. Thank you for your time and attention to this matter.

Respectfully submitted ,

/s/ Lori D. Kepner

Lori D. Kepner  
Staff Attorney  
Cru-General Counsel's Office

Cc: Dennis Kasper, of Lewis, Brisbois, Bisgaard & Smith, LLP, General Counsel to Cru

## **Attachment I**

November 3, 2022

C. Gregory Sharer  
Vice President for Student Affairs  
SUNY Cortland  
P.O. Box 2000  
Cortland, NY 13045  
[greg.sharer@cortland.edu](mailto:greg.sharer@cortland.edu)

Student Government Association  
SUNY Cortland  
Corey Union, Room 217  
[sga@cortland.edu](mailto:sga@cortland.edu)

Dear Mr. Sharer and SGA leadership,

I am writing on behalf of the student leaders for the student organization of Cru at SUNY Cortland. The student organization is affiliated with the national organization of Cru as a recognized student led chapter. The chapter leadership sought to update their constitution in September of 2022 so that it would better reflect the way they function and would further clarify the purpose and religious identity of the chapter. They contacted me after they were told that their updated constitution was not acceptable.

While the student leaders for Cru are happy to make some adjustments and want to work with the SGA, they disagree with two of the requested changes. Legally, they should be allowed to retain those sections in the constitution. The first is a leadership qualification entitled "Knowledge Requirement" that focuses on ensuring that leaders have the required knowledge and skills to guide the chapter. It says "Officers must complete the Chapter's leadership application, which shall determine the applicant's skill in providing spiritual leadership for the Chapter and knowledge of the Chapter's core messages." Article V, section 2(B). The second is part of the description of the selection process. It is not a leadership qualification, but describes how applicants who have met the qualifications (making it to the pool of candidates) will be asked questions so that those voting can make an informed decision, considering the candidates holistically and keeping in mind the religious identity and integrity of the student organization. It says "During any election or selection process, applicants will be asked about their faith, beliefs and views. Qualified applicants may be asked about their willingness to model the Chapter's core messages through their behavior so that the messages are communicated with integrity." Article V, section 3(C).

When the Cru at SUNY Cortland president asked for more clarity, wishing to see the specific policy language that disallowed these sections, he was simply told again that "it goes against SGA and school policy" and that they could not "elect anyone based on religious beliefs."

Cm at SUNY Cortland respects and values nondiscrimination principles. It has no intention to discriminate, but merely wishes to ensure that its leaders are qualified to provide leadership to the religious group. A religious group should not have to risk diluting or losing its religious identity in order to become a registered student organization.

The SGA Constitution and Bylaws do not indicate that student organizations may not have standards to ensure that their leaders are qualified. In fact, the SGA bylaws state that clubs may have self-defined standards for active membership. *See SGA Bylaws*, §6.10

(<https://www2.cortland.edu/sga/>). The club planning forms, available at <https://www2.cortland.edu/student-life/clubs-and-organizations/sga/forms.dot>, also do not restrict leadership selection. The "Constitution Guidelines" do note that the Club Constitution Committee may oppose recognition if "It is discriminatory in any way ....(race, sex, religion, age, national origin, disability, or veteran status)," and then states that "membership may not be exclusive." This standard, however, does not justify rejecting a religious organization because it has leadership requirements that reference religion. This vague discrimination standard lacks clarity and guidance, should be revised, and must not be applied in a way that disadvantages religious organizations. It is very likely to result in arbitrary enforcement in its current form.

The presence and support of fraternities and sororities at SUNY Cortland reflects that their presence is not seen as a violation of campus nondiscrimination policies, despite the fact that they discriminate based on gender in their membership. *See*

<https://www2.cortland.edu/offices/campus-activities/fraternities-and-sororities.dot>. The *Greek Life Operations Manual* simply states that the recognized chapters must provide "a certification that the constitution, by-laws, policies, regulations and practices of the organization do not restrict membership on the basis of race, creed, national origin, sex, age, or disability, except as may be specifically exempted by Federal or State laws/regulations." *Greek Life Operations Manual*, §III(5). This statement's framing reflects that the goal of SUNY Cortland is to ensure that membership is free from discrimination in accordance with legal standards. We respectfully ask that the same care and focus on appropriate legal standards, not arbitrary application, be made in decisions about how religious groups are treated.

It is common sense for student organizations to have leadership requirements so that their student leaders are qualified by being aware of, knowledgeable about, and able to lead in pursuit of the beliefs and purposes that the group exists to promote. If any groups are allowed to have belief-based or agreement-based leadership expectations, then religious groups should not be treated differently just because their beliefs are religious. It is not religious discrimination for a religious group to want religiously qualified leaders, though it would be religious discrimination if a club focused on environmental advocacy had religious qualifications. This is because religious



groups' beliefs are inextricably linked to their shared religious status, causing a mention of religious beliefs to relate to the category of "religion" in the listed protected categories. That means that religious groups are singled out uniquely for disfavor, not because they have purposes or beliefs (which all groups do), but simply because their beliefs are religious. Therefore, a policy is not neutrally applied in practice- if it results in every group except religious groups being allowed to have leadership qualifications related to the groups' purposes and beliefs- even if it appears to be neutral in that all groups must agree to it.

Recent legal developments reinforce that religious student organizations have the right to maintain religious leadership requirements. I will briefly review some of the clear legal principles that support this conclusion.

1. It is grounded in the fundamental rights to speech and association.
2. It is supported by Free Exercise rights.
3. It is required by Federal regulations.

### **Speech and Association Rights**

The Supreme Court has clearly stated that religious groups should be given the same treatment as other groups. See *Widmar v. Vincent*, 454 U.S. 263 (1981). In addition, it is a violation of the Free Speech Clause to discriminate against religious viewpoints. *Rosenberger v. Rector & Visitors of Univ of Va.*, 515 U.S. 819 (1995).

The Circuit courts have applied this principle as well. For example, the Second Circuit noted that a religious group's "religious test for leadership positions has been made purely for expressive purposes--to guarantee that meetings include the desired worship and observance--rather than for the sake of exclusion itself." *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d 839, 859 (2d Cir. 1996) (decided based on the EAA, but describing Free Speech principles). The Eighth Circuit also recently found that it was clearly viewpoint discrimination when a religious group was told it could not have religious leadership requirements. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855, 864 (8th Cir. 2021). In fact, the court found that the law was clearly established such that they denied qualified immunity to university administrators. *Id.* at 867. Another recent case, out of the Eastern District of Michigan, addressed and considered the right of religious student organizations on public university campuses and also found the law to be clear. *E.g., Intervarsity Christian Fellowship v. Bd. of Governors of Wayne State Univ.*, 534 F.Supp.3d 785 (E.D. Mich, 2021) (finding violations to a religious student organization's "rights to internal management, free speech, freedom of association, freedom of assembly, and free exercise as a matter of law.").

### **Free Exercise Rights**

The Free Exercise clause is also implicated when religious groups are treated differently from other groups. The Supreme Court has said an organization should not be denied a benefit just



because it is religious. *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012 (2017). It also violates Free Exercise when the government dictates how a religious organization may select its leaders according to its religious tenets. See *Hosanna Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012); *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020) (affirming the right of "religious institutions to decide matters of faith and doctrine without government intrusion"). This principle of autonomy for religious organizations is critical to avoid government entanglement in religious practice.

In addition, the Ninth Circuit ruled this year that public school district officials likely violated the Free Exercise clause when they selectively enforced their nondiscrimination policy and refused to recognize a religious group because of its expectation that its leaders agree with its religious beliefs. *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 46 F.4<sup>th</sup> 1075, 1093 (9th Cir. 2022). The court noted that the government must respect religious beliefs and not selectively enforce laws against religious entities in a way that is different from how it treats secular entities. *Id.* at 1095.

The Supreme Court, also this year, specifically recognized that Free Speech and Free Exercise rights often interact and are layered upon one another. For that reason, it is particularly important to be aware of religious associations' rights because "the First Amendment doubly protects religious speech." *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2421 (2022).

It does not favor religion and does not violate the Establishment Clause when religious groups are allowed to participate in limited open forums. *Widmar*, 454 U.S. at 273 (stating that "an open forum in a public university does not confer any imprimatur of state approval on religious sects or practices"). The most important factor is neutrality; religious speech may not be favored or disfavored. Universities must distribute resources with "neutrality towards religion." *Rosenberger*, 515 U.S. at 839; see also *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000).

## Federal Regulations

Finally, there are two federal regulations that make it a material condition of any grant that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization "any right, benefit, or privilege that is otherwise afforded to other student organizations ... because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards." 34 C.F.R. § 75.500(d) & § 76.500(d).


## Conclusion

This precedent makes clear that a religious student association has the right to select its leaders based on its religious purpose, beliefs and practices. In addition, university administrators have a duty to recognize religious student organizations and allow them to uphold their religious beliefs.



The university may violate the First Amendment's Free Speech and Free Exercise clauses by participating in viewpoint discrimination and interfering with its ability to select qualified leaders.

The Cru at SUNY Cortland student chapter expects that its leaders will teach and uphold its beliefs and live consistently with those beliefs so that they are communicated with integrity. We respectfully request that you recognize the student chapter of Cru at SUNY Cortland, amend the policy, and adjust your interpretation of any policy that would prevent such recognition. Thank you for your time and attention to this matter.

Respectfully submitted,  
/s/ Lori D. Kepner  
Lori D. Kepner  
Legal Counsel  
Cru - General Counsel's Office  


Cc: Dennis Kasper, of Lewis, Brisbois, Bisgaard & Smith, LLP, General Counsel to Cru