



Docket ID ED-2022-OPE-0157

March 24, 2023

The Honorable Miguel A. Cardona
Secretary of Education
Dr. Nasser Paydar
Assistant Secretary for Postsecondary Education
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Submitted electronically to www.regulations.gov

Re: Written Comment re Direct Grant Programs, State-Administered Formula Grant Programs, NPRM 88 Fed. Reg. 10857 (Feb. 22, 2023); Docket ID ED-2022-OPE-0157; RIN 1840-AD72

Dear Secretary Cardona and Assistant Secretary Paydar:

Christian Legal Society opposes the Department of Education's proposal to rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d). By protecting religious student organizations on public college campuses, these regulations benefit all Americans: students of all faiths, all college students, public institutions of higher education, college administrators, taxpayers, and, ultimately, all Americans who desire to live in a free, respectful, and diverse society. As this comment will explain, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) create the ultimate win-win environment on college and university campuses.

There is no more basic right for any American student than the right to attend a public educational institution without being penalized for his or her religious beliefs. But for 50 years, religious students have been denied this right on numerous public university and college campuses nationwide.

Far too often, religious students are subjected to intimidation, harassment, or discrimination by college administrators or student governments simply because their organizations seek access to the same benefits that other student organizations enjoy. Religious student organizations do not seek "preferential" treatment: They just want respectful treatment and their fair share of the benefits that they pay for through their student activity fees and tuition. Religious student groups simply ask that other student groups "share the campus."

And the American public agrees. In a 2022 poll, 73% of Americans "agree[d] that a religious student group should not be kicked off campus for requiring its leadership to be members in

good standing of its faith community.”¹ The American public supports the common sense view that religious students should be welcome at public college campuses, not excluded because of their religious identities or their requirement that their leaders “be members in good standing of [their] faith community.”²

Some college administrators’ failure to comprehend that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) advance their best interest merely reinforces the need for the regulations’ preservation. These regulations prevent litigation by students against their colleges by providing clear guidance as to how administrators should treat religious student groups. These regulations help colleges avoid the significant costs incurred in litigation. For example, in 2021, the University of Iowa was ordered to pay \$1.9 million in attorney’s fees for revoking religious student groups’ recognition in two separate cases.³ Equally importantly, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) help college administrators themselves avoid *personal* liability for money damages.⁴

CLS has nearly five decades of hands-on experience working to protect its law student chapters and other religious student groups on public campuses nationwide. Based on its expertise on this issue, CLS submitted comments in 2020 urging adoption of 34 C.F.R. §§ 75.500 (d) and 76.500 (d).⁵ CLS law student chapters have directly benefited from the existence of 34 C.F.R. §§ 75.500 (d) and 76.500 (d), as the examples in Part III *infra* show. CLS has informed the Department in letters to the Secretary and meetings with Department officials in 2021 and 2022 of the importance of preserving 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to protect religious student groups on public college campuses. Nearly 40 other religious organizations have joined CLS in ensuring that the Secretary and other Department officials know that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) directly benefit religious student groups by protecting their ability to access the same benefits otherwise available to other student groups.

¹ Becket Fund for Religious Liberty, *2022 Religious Freedom Index: American Perspectives on the First Amendment*, 4th ed. (Dec. 2022), at 34 (finding 73% support in the university setting), at 34-35, <https://becketnewsite.s3.amazonaws.com/20221207155617/Religious-Freedom-Index-2022.pdf> (last visited Mar. 21, 2023).

² *Id.*

³ The University of Iowa was ordered to pay \$1,373,206.51 to a religious student group for revoking its recognition because of its religious leadership requirements. *Business Leaders in Christ, et al., v. The University of Iowa, et al.*, Case No. 3:17-cv-00080 (S.D. Iowa Nov. 10, 2021) (Order). In a second case, the University of Iowa was ordered to pay \$533,508 to another religious student group for threatening to revoke its recognition because of its religious leadership requirements. *See Intervarsity Christian Fellowship, et al. v. The University of Iowa, et al.*, Case No. 3:18-cv-00080 (S.D. Iowa, Nov. 18, 2021) (Order).

⁴ *See InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021) (holding that university officials forfeited qualified immunity by derecognizing a religious student group because of its religious leadership requirements); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F.Supp. 3d 785 (E.D. Mich. 2021) (same).

⁵ Christian Legal Society Comment Letter from Kimberlee Wood Colby to Ms. Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education, Department of Education, Re: Docket ID ED-2019-OPE-0080 (Feb. 18, 2020) (“2020 CLS Comment”) at 7-19, <https://www.regulations.gov/comment/ED-2019-OPE-0080-16196>.

I. Because Rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) Would Be Arbitrary and Capricious, the Department Should Preserve 34 C.F.R. §§ 75.500 (d) and 76.500 (d) Without Modification to Continue Their Protection of Religious Student Groups.

A. The Department’s claim that it “has not observed that [34 C.F.R. §§ 75.500 (d) and 76.500 (d)] have meaningfully increased protections of First Amendment rights for religious student organizations or campus administrators since the rule went into effect” is implausible.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) benefit hundreds of thousands of religious students on public college campuses annually, by incentivizing campus administrators to treat religious student groups fairly and provide them with benefits otherwise available to other student groups. The historical record of the past 50 years has been that too many public universities and colleges will threaten religious student groups with exclusion because of their beliefs, speech, policies, practices, and leadership or membership standards.

Just as CLS and other religious campus organizations provided numerous examples of religious student groups being denied benefits otherwise available to other student groups in their 2020 comments in support of the adoption of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) as final rules, CLS will provide in this comment concrete examples of how 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have benefited CLS chapters and other religious student groups in the short time that they have been in effect.

As detailed in Part II *infra*, throughout 2021 and 2022, CLS staff and representatives of other religious organizations, including religious campus organizations, communicated by letter and meetings with Department of Education and OIRA officials to discuss the protections that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have provided religious student groups, as well as the historical record supporting the need for their protections. CLS signed onto letters sent to Secretary Cardona and other high-ranking officials in the Department of Education to explain the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and to urge preservation of these vital protections for religious student groups. CLS staff and representatives of other religious organizations, including religious campus organizations, held several meetings with Department of Education officials in 2021 to stress the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). CLS staff attended a 12866 meeting in which OIRA and Department of Education officials were provided with evidence that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have benefited religious student groups. Other representatives of religious student groups similarly attended two other 12866 meetings with OIRA and Department of Education officials to provide evidence that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide essential protections to religious student groups on public campuses.

Despite CLS’s and other religious organizations’ outreach to the Department and OIRA, the Department claims that it “has not observed that [34 C.F.R. §§ 75.500 (d) and 76.500 (d)] have meaningfully increased protections of First Amendment rights for religious student organizations

or campus administrators since the rule went into effect.”⁶ *This claim is implausible.* The fact, as detailed in Part II *infra*, is that the Department has been told multiple times by several dozen organizations having specific, direct knowledge regarding religious student groups on public college campuses that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have meaningfully increased protections of First Amendment rights for religious student organizations.

Furthermore, the Department anchored its adoption of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) on numerous comments that demonstrated that religious student groups often are denied benefits otherwise available to other student groups because of the groups’ religious beliefs and speech.⁷ The Department now tries to ignore this record evidence. But the Department’s feigned ignorance cannot expunge the 2020 record. Nor can the Department erase the examples of religious student groups benefiting from 34 C.F.R. §§ 75.500 (d) and 76.500 (d) that were provided to it in 2021 and 2022. Department officials were made aware of these examples and the continued need for the protections of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) through letters,¹²⁸⁶⁶ meetings, and other meetings with Department officials that were attended by numerous representatives of religious organizations with knowledge of religious student groups on public college campuses.

The Department’s unwillingness to acknowledge the factual record of the past 50 years, including 2021 and 2022, which demonstrates that religious groups are often threatened with exclusion from their campuses because of their religious beliefs, speech, policies, practices, and leadership or membership standards, renders the Department’s proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious.

B. Rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) would be arbitrary and capricious given that the Department ignored the obvious steps of issuing a Request for Information or a Supplemental Notice of Proposed Rulemaking in order to obtain the substantive information the NPRM claims the Department lacks.

CLS respectfully requests that the Department issue a Supplemental Notice of Proposed Rulemaking in order to remedy its obvious deficiencies in the February 22, 2023, NPRM. This would allow the Department to do its due diligence and work with representatives of the religious student organizations of all faiths to gather the facts about the continued need for the protections that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide for those groups. The Department’s failure to perform its due diligence before issuing the NPRM on February 22, 2023, renders arbitrary and capricious any future rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d).

CLS would further note that the Department acted arbitrarily and capriciously when it failed to publish a Request for Information (RFI) regarding the benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) for religious student groups. The Department’s arbitrariness and capriciousness are driven home by the fact that the Department issued an RFI⁸ seeking information about the

⁶ 88 Fed. Reg. 10857, 10861 (Feb. 22, 2023).

⁷ 85 Fed. Reg. 59,916, 59,928-37 (Sept. 23, 2020).

⁸ 88 Fed. Reg. 10,857, 10,881 (Feb. 22, 2023).

benefits of 34 C.F.R. §§ 75.500 (b) & (c) and 76.500 (b) & (c) on the same day that it issued its NPRM proposing to rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d). Note that 34 C.F.R. §§ 75.500 (b) & (c) and 76.500 (b) & (c) and 34 C.F.R. §§ 75.500 (d) and 76.500 (d) were all issued in 2020 as part of the same rule, the Religious Liberty and Free Inquiry Rule.⁹ On February 22, 2023, the RFI—requesting more information about the benefits of 34 C.F.R. §§ 75.500 (b) & (c) and 76.500 (b) & (c)—was issued simultaneously with the NPRM proposing to rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d). This timing of the RFI and NPRM compound the arbitrariness and capriciousness of the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) based on the Department’s unfounded claim that it “has not observed that [34 C.F.R. §§ 75.500 (d) and 76.500 (d)] have meaningfully increased protections of First Amendment rights for religious student organizations or campus administrators since the rule went into effect.”¹⁰ The RFI published by the Department on February 22, 2023, offered the most effective avenue for obtaining the information that the Department claims it lacks if it were trying to understand the benefits to religious student organizations or campus administrators. Yet the Department utterly failed to avail itself of the RFI, which addressed other parts of the Religious Liberty and Free Inquiry Rule, to obtain the information it purported to lack about the part of the Rule protecting religious student groups.

The Department’s callous disregard for the religious beneficiaries of the Religious Liberty and Free Inquiry Rule while being solicitous for the Rule’s other beneficiaries exemplifies the unequal treatment that the Supreme Court has subjected to strict scrutiny under the Free Exercise Clause.¹¹ Strict scrutiny of government action is triggered “under the Free Exercise Clause, whenever [government regulations] treat *any* comparable activity more favorably than religious exercise.”¹²

The Department’s failure to include 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in the RFI is clear evidence that the Department does not actually want to find evidence regarding their benefits to religious student groups and college administrators. The Department’s failure to include 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in the RFI is itself arbitrary and capricious conduct on the part of the Department. At a bare minimum, the Department should withdraw its NPRM and publish instead a Request for Information seeking information about the benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) for religious student groups and public college administrators.

⁹ 85 Fed. Reg. 59,916.

¹⁰ 88 Fed. Reg. 10857, 10861.

¹¹ See, e.g., *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam) (public gathering restrictions were non-neutral toward religion “because they single out houses of worship for especially harsh treatment” compared with other comparable gatherings).

¹² *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (emphasis in original) (citing *Roman Catholic Diocese*, 141 S. Ct. at 67-68).

II. Contrary to the Department’s Claim that It Does not Know if Anyone Benefits from 34 C.F.R. §§ 75.500 (d) and 76.500 (d), the Department has been Informed Numerous Times by a Diverse Array of Knowledgeable Organizations of the Ways in Which These Protections Benefit Religious Student Organizations.

The Department claims that it “has not observed that [the regulations] have meaningfully increased protections of First Amendment rights for religious student organizations or campus administrators since the rule went into effect.”¹³ This claim is factually incorrect. The Department has been informed numerous times by a diverse variety of organizations of the importance of the regulation to protect religious student organizations on public college campuses. The Department has been provided with specific examples of the usefulness of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in protecting religious student groups from being excluded from campuses in the 2021-2022 and 2022-2023 academic years.

Should it proceed to rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d), the Department will act arbitrarily and capriciously because it necessarily will have ignored the evidence that has been presented to it multiple times by stakeholders familiar with the plight of religious student organizations on many public campuses. In addition, the Department will have ignored the evidence presented in this comment and other comments submitted by March 24, 2023, documenting how 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have provided meaningful protection for religious student organizations on public college campuses.

A. In response to the Department’s 2020 NPRM, CLS submitted a comment letter detailing numerous examples of religious student groups who had been denied benefits otherwise available to other student groups on public campuses and demonstrating the need for the protections offered by 34 C.F.R. §§ 75.500 (d) & 76.500 (d).

On January 17, 2020, the Department of Education published a Notice of Proposed Rulemaking¹⁴ that, among many proposed rules, would add, as 34 C.F.R. §§ 75.500 (d) and 76.500 (d), the following language: “A public institution shall not deny to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including full access to the facilities of the public institution and official recognition of the organization by the public institution) because of the beliefs, practices, policies, speech, membership standards, or leadership standards of the religious student organization.”¹⁵

¹³ 88 Fed. Reg. 10857, 10861.

¹⁴ *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program*, RIN 1840-AD45, Docket ID ED-2019-OPE-0080, 85 Fed. Reg. 3190 (Jan. 17, 2020).

¹⁵ This was the proposed language for § 75.500 (d). 85 Fed. Reg. 3190, 3223 (Jan. 17, 2020). The proposed language for § 76.500 (d) was essentially the same. *Id.* at 3226.

In response to the NPRM, on February 18, 2020, CLS submitted a lengthy comment letter (“2020 CLS Comment”), accompanied by three attachments containing supporting documentation, to the Department of Education.

The CLS 2020 Comment detailed the need for a regulation to protect religious student groups on public college campuses and their ability to access the same benefits that were available to other student groups.¹⁶ The CLS 2020 Comment explained that “[f]or nearly four decades, religious student groups have been threatened with exclusion from college campuses across the country.”¹⁷

The CLS 2020 Comment further explained that “[f]rom the 1970s to the mid-1990s, the Establishment Clause was used by some university administrators to justify discriminatory treatment of religious student groups.” But it then examined how the United States Supreme Court had removed the Establishment Clause as a justification for denying recognition and student activity fee funding to religious student groups in *Widmar v. Vincent*,¹⁸ and *Rosenberger v. Rector & Visitors of the University of Virginia*.¹⁹ In those cases, the Court held that religious student groups had free speech and expressive association rights to be recognized and obtain access to student activity fee funding on public university campuses. In both cases, the Supreme Court had further held that the Establishment Clause was not violated by religious student groups’ access to recognition and funding.

The CLS 2020 Comment then explained:

After the Supreme Court removed the Establishment Clause as a credible justification for excluding religious groups, some college administrators began to use college policies, including nondiscrimination policies, as their justification for excluding religious groups. Beginning in the mid-1990s, religious student groups, including CLS student chapters, began to encounter this *misuse* of college policies to exclude religious student groups from campus simply because they required their leaders to agree with their religious beliefs. Religious student groups are told they must remove from their governing documents any requirement that their leaders agree with the groups’ basic religious beliefs if they want to remain on campus as a recognized student group.

Religious student groups that have been recognized on a campus for decades with governing documents that require their leaders to agree

¹⁶ Christian Legal Society Comment Letter from Kimberlee Wood Colby to Ms. Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education, Department of Education, Re: Docket ID ED-2019-OPE-0080 (Feb. 18, 2020) (“2020 CLS Comment”) at 7-19, <https://www.regulations.gov/comment/ED-2019-OPE-0080-16196>.

¹⁷ *Id.* at 1.

¹⁸ 454 U.S. 263 (1981).

¹⁹ 515 U.S. 819 (1995). CLS 2020 Comment at 3-6.

with the groups' religious beliefs are abruptly told that they may no longer have such requirements. Basic religious freedom, however, requires that religious groups be free to choose leaders who agree with their religious beliefs and teachings. Indeed, it should be common ground—particularly for those who advocate a strict separation of church and state—that government officials, including public university administrators, should not interfere with religious groups' choice of their student leaders.²⁰

The CLS 2020 Comment then provided numerous examples of public colleges and universities that had denied religious student groups recognition and other benefits otherwise available to student groups. The examples detailed in the CLS 2020 Comment include the following public universities and colleges: California State University; Texas A&M University; Ohio State University; Temple University School of Medicine; Boise State University; University of South Carolina School of Law; Indiana University-Bloomington; University of Iowa; Wayne State University; Southeast Missouri State University; University of West Georgia; and University of North Texas Dallas College of Law.²¹

The CLS 2020 Comment contained supporting documentation for these examples.²² It also included a document listing scores of colleges and universities, public and private, where religious student organizations had been threatened with exclusion because of their beliefs, speech, practices, policies, or leadership or membership standards.²³ That list, which is a representative listing and not comprehensive, has been updated and included with this comment.²⁴

The University of Iowa example perfectly illustrates the need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and their retention. A CLS student chapter has been recognized at the University of Iowa College of Law since the 1980s. The CLS student chapter's constitution has consistently required that its leaders agree with its religious beliefs. Beginning in 1999, on at least 4 occasions, the university threatened to deny recognition if the CLS student chapter did not remove its religious leadership requirement from its constitution.

Often the university was responding to pressure from the student government to exclude CLS, relying on the university's nondiscrimination policy, its Human Rights Policy, as its justification. But in 2004, in response to CLS's potential legal action, the university sent CLS a

²⁰ *Id.* at 6 (footnotes omitted; emphasis in original).

²¹ *Id.* at 7-19.

²² Attachments to Christian Legal Society Comment Letter from Kimberlee Wood Colby to Ms. Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education, Department of Education, Re: Docket ID ED-2019-OPE-0080 (Feb. 18, 2020) ("CLS 2020 Comment") at 7-19, <https://www.regulations.gov/comment/ED-2019-OPE-0080-16196>.

²³ *Id.* at 89-103.

²⁴ Christian Legal Society, "When Colleges and Universities Exclude Religious Groups: A Serious Problem," Mar. 2023 (listing examples of campuses where religious student groups have experienced problems). The list is at <https://bit.ly/3Td9Q1O> and is Attachment 2023-A.

letter confirming that its religious leadership standards did not violate university policies. This did not end the episodic threats to the CLS student chapter's recognition, but it prevented litigation.

In 2017 and 2018, however, the University derecognized two religious student groups because they required their leaders to agree with their religious beliefs. The groups brought lawsuits in federal district court, before a judge appointed by President Obama. She twice ruled that university officials had misapplied its Human Rights Policy and engaged in viewpoint discrimination against the religious student groups.²⁵ Both cases were appealed to the Eighth Circuit, which affirmed that the university had engaged in unconstitutional viewpoint discrimination. The Eighth Circuit further held that the university officials had forfeited their qualified immunity and were, therefore, personally liable for money damages.²⁶ Eventually, the district court cumulatively awarded over \$1.9 million in attorney's fees to the student groups.²⁷

Remarkably, in the course of litigation, the university submitted a document to the district court listing the student groups that would be derecognized if the court ruled in favor of the university.²⁸ The 32 student groups on the chopping block were only religious groups and included Jewish, Muslim, Sikh, Baha'i, and Christian student groups.²⁹ The groups' offense was that they required their leaders to agree with the groups' religious beliefs.

The University of Iowa case shows that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) protect not only religious students *of all faiths*, but also college administrators. The regulations provide college administrators with clarity, protecting them from costly litigation that may result in their personal liability. Sadly, some college administrators' antagonism to religious student groups blinds them to the fact that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) is in their best interest.

²⁵ See *InterVarsity Christian Fellowship/USA v. University of Iowa*, 408 F.Supp. 3d 960 (S.D. Iowa 2019) (university officials' derecognition of a religious student group because of its religious leadership requirements unconstitutional); *Business Leaders in Christ v. University of Iowa*, 360 F.Supp. 3d 885 (S.D. Iowa 2019) (same).

²⁶ See *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021) holding that university officials forfeited qualified immunity by derecognizing a religious student group because of its religious leadership requirements); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same).

²⁷ See note 3 *supra*.

²⁸ The court document is at https://becketnewsite.s3.amazonaws.com/2019-02-01_UI-Notice_and_RSO-Registration-List.pdf and is Attachment 2023-B.

²⁹ The 32 religious groups targeted for exclusion were: Agape Chinese Student Fellowship; Athletes in Action; Bridges International (UI Chapter); Business Leaders in Christ; Campus Bible Fellowship; Campus Christian Fellowship; Chabad Jewish Student Association; Chi Alpha Christian Fellowship; Chinese Student Christian Fellowship; Christian Legal Society; Christian Medical Association; Christian Pharmacy Fellowship; Cru; Geneva Campus Ministry; Hillel (University of Iowa); Imam Mahdi Organization; International Neighbors at Iowa; InterVarsity Graduate Christian Fellowship; J. Reuben Clark Law Society; Latter-day Saint Student Association; Lutheran Campus Ministry; Multiethnic Undergrad Hawkeye InterVarsity; Muslim Students Association; Newman Catholic Student Center; Orthodox Christian Fellowship; Ratio Christi; The Salt Company; Sikh Awareness Club; St. Paul's University Center; Tau Omega Catholic Service Fraternity; Twenty Four Seven; and Young Life.

B. In adopting the final rule, the Department relied on numerous comments regarding real-life examples of religious student groups on public campuses being denied benefits otherwise available to other student groups because of their religious beliefs, speech, practices, policies, leadership, or membership standards.

When the Department adopted 34 C.F.R. §§ 75.500 (d) and 76.500 (d) as final rules on September 23, 2020, it relied on numerous comments regarding real-life examples of religious student groups on public campuses being denied benefits otherwise available to other student groups because of their religious beliefs, speech, practices, policies, and leadership or membership standards.³⁰ One comment cited by the Department was from someone “who worked with a Catholic student group on more than 100 campuses across the U.S.”³¹ The commenter described “how [the Catholic student groups] have encountered resistance while bringing viewpoint diversity to college campuses.”³² The Catholic student groups “had often been deprived from accessing campus facilities, funding, free speech, and even approval from the university based on their orthodox beliefs.”³³

Another of the many examples relied on by the Department was from a commenter who described how, for a year, a public law school delayed recognizing a religious student group because of its religious leadership requirements. The commenter continued:

The organization felt [its religious leadership requirement] was necessary because many of its board members’ duties outlined in the by-laws involved leading the group in prayer, worship, Bible studies, and fostering members’ spiritual growth.³⁴

Only two years ago, the Department understood the problems religious student groups faced and was moved to act to protect both students and administrators by adopting as final rules 34 C.F.R. §§ 75.500 (d) and 76.500 (d), which became effective November 23, 2020.

C. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) had been in effect for only 5 months when the Department indicated in court documents that they were likely to be rescinded.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) had barely gone into effect when the Department informed a federal district court that it was considering “regulatory options related to the Rule that [might] moot or limit the issues” in a legal challenge to the regulations on constitutional and statutory grounds.³⁵ Notably, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) had not yet even been in effect at the beginning of a single academic year, when recognition problems are most likely to

³⁰ 85 Fed. Reg. 59,916, 59,931-33.

³¹ *Id.* at 59932.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Joint Motion to Stay at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, No. 1:21-cv-00169 (D.D.C. Mar. 3, 2021), ECF No. 21.

arise for religious student organizations. Essentially, the Department made public its intention to rescind the rules without affording them a fair trial.

Less than 3 months after 34 C.F.R. §§ 75.500 (d) and 76.500 (d) became effective, on January 19, 2021, Americans United for Separation of Church and State and American Atheists Legal Center filed suit in federal district court on behalf of the Secular Student Alliance and one student. The complaint challenged 34 C.F.R. §§ 75.500 (d) and 76.500 (d) on constitutional and statutory grounds.³⁶

On February 18, 2021, a national religious student group, Ratio Christi, moved to intervene as defendant in the case. Ratio Christi's motion explained that Ratio Christi "is a religious group with student chapters on 123 college campuses across the country and *is a direct beneficiary of the challenged federal rule.*"³⁷ Ratio Christi asserted that "the outcome of this case may impair its interests, because Ratio Christi stands to lose the campus protections that the federal rule guarantees."³⁸

In its supporting memorandum and supporting declarations, Ratio Christi reiterated numerous times that it "is a *direct beneficiary* of the Department's rule."³⁹ Ratio Christi explained the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to itself and other religious student groups to the court and the Department:

Any student can attend Ratio Christi's events and join the organization. Miller Decl. ¶¶ 5, 41. But Ratio Christi requires that those who lead the Christian organization share its religious beliefs. Miller Decl. ¶¶ 22-30. As a result, several universities have denied its student chapters registered status, limiting or eliminating their access to funding, meeting and event space, administrative support, and the ability to advertise their meetings and events on campus. Miller Decl. ¶¶ 54-66. Sometimes these disputes are resolved after negotiations, but not always. In recent years, Ratio Christi was able to resolve a dispute with the university over campus access at least 30 times without litigation.

³⁶ *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Jan. 19, 2021), ECF No.1.

³⁷ Ratio Christi's Motion to Intervene as Defendant at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Feb. 18, 2021), ECF No. 6 (emphasis supplied). The court has yet to rule on the motion.

³⁸ *Id.* at 1-2.

³⁹ Memorandum in Support of Ratio Christi's Motion to Intervene as Defendant at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Feb. 18, 2021), ECF No.6-1 (emphasis supplied). *See also, id.* at 4 ("This case thus directly concerns the rights of religious groups like Ratio Christi, who directly benefit from the challenged rule."); *id.* at 5 ("Ratio Christi has a legally protected interest as the direct beneficiary of the Department's rule."); *id.* at 6 ("Because Ratio Christi is among the beneficiaries of the challenged rule, and thus would be harmed if the rule were eliminated, it has a substantial and specific interest in seeing it upheld."); *id.* at 7 ("This action seeks to negate a regulatory protection that benefits Ratio Christi in its particular situation of wishing to select its leaders according to its religious beliefs.").

Miller Decl. ¶¶ 60-61. But only through litigation were two of its student chapters able to access campus resources on equal terms. Miller Decl. ¶¶ 55-59.⁴⁰

Ratio Christi expressed its fears that if 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are “negated,” colleges “would be more cavalier about disregarding [religious students’ First Amendment rights], especially when facing pressure from opposing voices.”⁴¹ “The inevitable result” will be “that groups like Ratio Christi will continue to face rules that exclude them from campus, which would require Ratio Christi to undergo negotiations or pursue litigation for campus access, in a way that other secular groups need not.”⁴² Ratio Christi’s reply on March 11, 2021, reasserted multiple times that it “is a direct beneficiary of the rule.”⁴³

As Ratio Christi noted, the lawsuit itself indirectly “concede[s] that negating the rule would take away real protections from Ratio Christi.”⁴⁴ Otherwise, why the lawsuit?

Ratio Christi President Dr. Corey Miller’s declaration in support of its motion to intervene provided the Department with further evidence that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) directly benefit Ratio Christi and other religious groups. Dr. Miller declared that “[b]ecause of the Department’s rule [34 C.F.R. §§ 75.500 (d) and 76.500 (d)], public colleges and universities . . . are now required on condition of federal funding to respect religious student clubs and not implement policies that would exclude them from the benefits available to all other student clubs.”⁴⁵ Dr. Miller stated that without 34 C.F.R. §§ 75.500 (d) and 76.500 (d), “significant harms on Ratio Christi students who seek to continue to start new student chapters” will occur, and rescinding the regulations “would marginalize religious students and exclude religious student groups from campus benefits available to other students” and create a “disrespectful stigma[.]”⁴⁶ He explained that this would cause a “disproportionate harm to Ratio Christi members because many Christian students come from historically disadvantaged backgrounds,

⁴⁰ *Id.* at 3 (citing Declaration of Corey Miller, President of Ratio Christi, ECF No. 6- 2).

⁴¹ *Id.*

⁴² *Id.* at 7 (citations to Miller Declaration omitted).

⁴³ Ratio Christi’s Reply in Support of Its Motion to Intervene as Defendant, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (filed Mar. 11, 2021), Dkt. No. 17, at 1; *id.* at 1 (“Ratio Christi is an intended beneficiary of the challenged regulation. If the regulation is voided as Plaintiffs request, then Ratio Christi will lose the protections afforded by the regulation and will likely encounter more policies that exclude it from equal access to campus resources.”); (“Ratio Christi is an intended beneficiary of the challenged regulation”); *id.* at 2 (“[a]s a direct beneficiary of the Rule”); (“Ratio Christi directly benefits from the challenged rule and thus has important, legally protected interests at stake in this case.”); (“Ratio Christi has an interest because it is a direct beneficiary of the Rule.”); *id.* at 3 (“Ratio Christi has a direct interest in this litigation as a beneficiary of the Rule.”); *id.* at 6 (“This action seeks to negate a regulatory protection that benefits Ratio Christi in its particular situation— seeking to access the same campus resources as other student groups.”); (“Removing the regulation, as Plaintiffs request, would remove this protection that clearly and directly benefits Ratio Christi.”).

⁴⁴ *Id.* at 8. *See also, id.* at 11 (“Removing the protections of the challenged rule would remove the federal financial incentive for universities to promptly respect Ratio Christi’s First Amendment right to be on campus, returning Ratio Christi to a situation where it likely would need to have regular recourse to legal counsel, negotiations, or litigation to secure its rights.”).

⁴⁵ Declaration of Corey Miller at 17, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Feb. 18, 2021), ECF No. 6- 2. Dr. Miller’s Declaration is Attachment 2023-C.

⁴⁶ *Id.*

especially immigrant, poor, and rural backgrounds.”⁴⁷ He concluded that “repealing the rule . . . will mean that universities will be more likely to violate Ratio Christi students’ First Amendment rights by denying them viewpoint-neutral access to campus resources and by affording preferential access to all other groups.”⁴⁸

The Department filed its opposition to Ratio Christi’s motion to intervene on March 18, 2021. As of that date, if not earlier, the Department was aware of at least one direct beneficiary of 34 C.F.R. §§ 75.500 (d) and 76.500 (d), Ratio Christi. Indeed, the Department told the court, “Ratio Christi, a religious student organization, seeks to intervene as a defendant in this case, claiming that invalidation of the Rule would necessarily result in denied access to campus benefits at public colleges and universities across the country.”⁴⁹ And Ratio Christi’s reply on March 25, 2021, to the Department’s opposition asserted yet again that it is “an explicit beneficiary of the Rule.”⁵⁰

On April 20, 2021, in a Joint Motion to Stay, the Department informed the court that “[o]n January 20, 2021, new leadership assumed responsibility for ED” and “ED . . . is considering regulatory options related to the Rule that may moor or limit the issues in this litigation.”⁵¹ The case was stayed on April 21, 2021.

On August 20, 2021, in their Joint Status Report to the court, the parties stated, “[o]n August 19, 2021, ED published a blog post entitled ‘Update on the Free Inquiry Rule.’” <https://blog.ed.gov/2021/08/update-on-the-free-inquiry-rule/>. Therein, the Department stated that, “[f]ollowing completion of [its] review” of the aspects of the Rule codified in 34 CFR parts 75 and 76, it “anticipate[s] publishing a notice of proposed rulemaking in the Federal Register to propose rescinding parts of the Free Inquiry Rule.”⁵² Thereafter, the parties filed joint status reports periodically, tracking the events leading up to the NPRM’s publication on February 22, 2023.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Memorandum of Points and Authorities in Opposition to Ratio Christi’s Motion to Intervene as Defendant at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Mar. 18, 2021), ECF No. 18.

⁵⁰ Ratio Christi’s Reply to Defendants and in Support of Motion to Intervene as Defendant at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Mar. 18, 2021), ECF No. 19. *See also, id.* at 1 (“Rule . . . explicitly protects Ratio Christi”); (“beneficiaries of a rule like Ratio Christi”); *id.* at 2 (“Ratio Christi is a direct beneficiary of the Rule, and it has presented ample evidence that it will suffer substantial harm if the Rule is vacated.”); (“Ratio Christi has a legally protected interest because it is among the entities explicitly protected by the Rule.”); (“Ratio Christi’s chapters are intended beneficiaries of the Rule. That makes Ratio Christi’s case for intervention by right a simple one, because granting Plaintiffs the relief they request removes a direct benefit to Ratio Christi.”); *id.* at 3 (“Ratio Christi’s chapters are direct beneficiaries explicitly given protection in the Rule: ‘religious student organization[s].’”); *id.* at 4 (“Ratio Christi directly ‘benefits from agency action’”).

⁵¹ Joint Motion to Stay at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Mar. 3, 2021), ECF No. 21.

⁵² Joint Status Report at 2, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Aug. 20, 2021), ECF No. 24.

D. As part of his confirmation proceedings, Secretary Cardona was asked to assure that he would implement 34 C.F.R. §§ 75.500 (d) and 76.500 (d).

In a question for the record in the HELP Committee confirmation hearing for Secretary Cardona, Senator Tim Scott identified 34 C.F.R. §§ 75.500 (d) and 76.500 (d) as rules to protect religious student groups from “public college administrators’ . . . discriminat[ion] against student groups because of their sincerely held religious beliefs, speech, and leadership standards.”⁵³ Senator Scott asked Secretary Cardona to “assure [him] that the Department will work to implement these regulations and ensure that religious students feel welcome and respected on the campuses of public colleges that receive federal grants.”⁵⁴

The Secretary responded that he would “consult with staff at the Department to learn more about these specific regulations *and gather the necessary information prior to determining the appropriate regulatory stance.*”⁵⁵ The Secretary further stated his belief that “we must ensure that learning environments, including college campuses, are places free of discrimination and harassment for all students, including those of all religious faiths.”⁵⁶ 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are necessary to ensure that all public college campuses are free of discrimination and harassment for students of all religious faiths.

Contrary to the Secretary’s record response, by proposing rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d)—while simultaneously admitting in the NPRM that the Department lacks basic information about whether they have benefited students—the Department decidedly has not “gather[ed] the necessary information prior to determining the appropriate regulatory stance.”

In response to the Department’s court filing indicating that it was considering regulatory action related to 34 C.F.R. §§ 75.500 (d) and 76.500 (d), Senator Roy Blunt, Senator James Lankford, and Senator Tim Scott sent a letter on May 20, 2021, advising Secretary Cardona that “[i]t was imperative that the Department of Education uphold regulatory protections for faith-based student groups, particularly for groups that maintain leadership requirements based on sincerely held religious beliefs.”⁵⁷ The letter quoted the Secretary’s response to Senator Scott’s question for the record at his confirmation hearing and observed that “incidents in more than 30 states over the past decade show that faith-based student groups in particular have suffered unequal access to campus resources because of the sincerely held religious beliefs that inspire their association.”⁵⁸

⁵³ *Hearing on the Nomination of Dr. Miguel Cardona for Secretary of Department of Education Before the S. Comm. on Health, Education, Labor, and Pensions*, 117th Cong., 1st Sess. (Feb. 3, 2021) (Questions for the Record at 29). Senator Scott’s QFRs and the Secretary’s responses are at <https://bit.ly/3JzAf5u> and in Attachment 2023-D.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Letter from Senators Blunt, Lankford, and T. Scott to Secretary Cardona 1 (May 20, 2021), <https://bit.ly/40zCGfo>. The letter is Attachment 2023-E.

⁵⁸ *Id.*

E. Within weeks of the new Administration, various organizations began communicating to the Department leadership that C.F.R. §§ 75.500 (d) and 76.500 (d) were needed to protect religious student groups on public college campuses.

On March 3, 2021, representatives of CLS and the Southern Baptists' Ethics & Religious Liberty Commission met with officials in the White House Office of Faith-based and Neighborhood Partnerships. CLS provided the officials with information about issues that religious groups had encountered at the University of Iowa, Indiana University, California State University, Texas A&M, Boise State University, and Wayne State University, as well as a list of over 60 colleges where problems had arisen. CLS and ERLC were recommended to seek meetings with Suzanne Goldberg, Acting Assistant Secretary for the Office of Civil Rights at the Department of Education.

On March 25, 2021, representatives of CLS, the United States Conference of Catholic Bishops, InterVarsity Christian Fellowship/USA, and Ethics and Religious Liberty Commission of the Southern Baptist Convention met with Department of Education officials in the Office of Civil Rights, including Acting Assistant Secretary Suzanne Goldberg. The representatives of religious student groups informed Department officials of the continued need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and their usefulness in protecting religious student groups who are of concern to their organizations.

On June 1, 2021, 21 representatives of a diverse spectrum of religious organizations sent a letter to Secretary Cardona to ask him “to preserve the legal protections provided in 34 C.F.R. §§ 75.500 (d) and 76.500 (d) for individual students and religious student organizations so that students of all faiths will continue to feel welcome on their public college campuses.”⁵⁹ The letter stressed that “in spite of these constitutional protections, student groups on some college and university campuses are denied the right to require that their leadership affirm the religious convictions of the organizations.”⁶⁰ The 20 signatories were: Christian Legal Society; United States Conference of Catholic Bishops; Southern Baptists' Ethics & Religious Liberty Commission; Agudath Israel of America; Islam and Religious Freedom Action Team of the Religious Freedom Institute; National Association of Evangelicals; Queens Federation of Churches; The Church of Jesus Christ of Latter-Day Saints; Center for Public Justice; Institutional Religious Freedom Alliance; The Lutheran Church—Missouri Synod; Seventh-day Adventist Church—North American Division; The Wesleyan Church; 1st Amendment Partnership; World Assemblies of God Fellowship; Assemblies of God USA; Council for Christian Colleges & Universities; Asma T. Uddin; Jewish Coalition for Religious Liberty; and a former Executive Director of the U.S. Commission on International Religious Freedom.

⁵⁹ Letter from 21 Religious Organizations and Individuals to Secretary Cardona (June 1, 2021), <https://bit.ly/3JJ7naR>. The letter is Attachment 2023-F. Copied on the letter were the Acting Assistant Secretary for the Office of Postsecondary Education, the Acting Assistant Secretary of the Office for Civil Rights, the Principal Deputy General Counsel and Acting General Counsel of the Department of Education, and the Senior Advisor to the President and Director of the White House Office of Faith-based and Neighborhood Partnerships.

⁶⁰ *Id.*

On June 3, 2021, representatives of 22 religious campus organizations wrote Secretary Cardona to ask that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) be preserved.⁶¹ The letter explained that the regulations “help[] ensure that faith-based student organizations will be treated like other student organizations. It is necessary because colleges often discriminate against religious clubs, including those of many minority faiths, just because they have religious expectations for leaders.”⁶² The letter described the fact that “[t]he regulations address a problem that has existed for four decades on too many public college and university campuses: Religious student groups too frequently are subjected to discriminatory treatment because of their religious beliefs, speech, and leadership standards.”⁶³ The religious campus organizations signing the letter were: Cru; Illinois Muslim Civic Coalition; The Church of Jesus Christ of Latter-day Saints; InterVarsity Christian Fellowship/USA; Fellowship of Catholic University Students; Asian American Christian Fellowship; The Navigators; Coptic Medical Association of North America; Beta Upsilon Chi; Christian Legal Society; Church of the Nazarene; ReJOYce in Jesus Campus Fellowship; CCO (Coalition for Christian Outreach); Christian Medical & Dental Associations; Fellowship of Christian University Students; 1st Amendment Partnership; Ratio Christi; Sigma Alpha Omega Christian Sorority; Reformed University Fellowship; Young Life College & University; and Fellowship of Christian Athletes.

On June 21, 2021, representatives from numerous religious organizations met with Department officials, including Dr. Michelle Asha Cooper, Acting Assistant Secretary for Postsecondary Education, and Suzanne Goldberg, Acting Assistant Secretary for the Office of Civil Rights, regarding the continued need to preserve 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and its vital importance for religious student groups on public campuses. Representatives of the following 14 religious organizations were present at the meeting to urge the regulations’ preservation: Christian Legal Society; United States Conference of Catholic Bishops; Jewish Coalition for Religious Liberty; Islam and Religious Freedom Action Team of the Religious Freedom Institute; National Association of Evangelicals; The Church of Jesus Christ of Latter-day Saints; Institutional Religious Freedom Alliance; 1st Amendment Partnership; World Assemblies of God Fellowship; Assemblies of God USA; General Conference of Seventh-day Adventists; Council for Christian Colleges & Universities; Agudath Israel of America; and Southern Baptists’ Ethics & Religious Liberty Commission.

On June 30, 2021, representatives of several religious campus organizations met with Dr. Michelle Asha Cooper, Acting Assistant Secretary of the Office of Postsecondary Education, to explain the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and their benefit to religious student organizations. Representatives from the following campus organizations attended: Cru;

⁶¹ Letter from 22 Religious Campus Organizations to Secretary Cardona (June 3, 2021), <https://bit.ly/42wMmch>. The letter is Attachment 2023-G. Copied on the letter were the Acting Assistant Secretary of the Office of Postsecondary Education, Acting Assistant Secretary of the Office for Civil Rights, Principal Deputy General Counsel and Acting General Counsel, Senior Advisor to the President and Director of the White House Office of Faith-based and Neighborhood Partnerships, White House Senior Advisor for Public Engagement and Deputy Director of the White House Office of Faith-based and Neighborhood Partnerships, and a Program Specialist at the U.S. Department of Health and Human Services Partnership Office.

⁶² *Id.* at 1.

⁶³ *Id.* at 3.

InterVarsity Christian Fellowship/USA; The Impact Movement; Christian Medical and Dental Associations; ReJOYce in Jesus Campus Fellowship; and The Navigators. A Cru student leader who graduated from University of California Davis in 2021 also appeared to give a recent graduate's perspective on the need to preserve the regulations.

The representatives provided specific examples of the need for C.F.R. §§ 75.500 (d) and 76.500 (d), as well as specific examples of how the regulations had helped religious student groups in the short time they had been in effect. The representatives stressed that they would be happy to continue to be a resource on the need for continued preservation of the regulations. The representatives explained why the regulations are important to religious student groups, particularly noting the significant challenges to, and negative impact on, students' college experiences when their religious student organizations are prevented from fully participating in student life merely because they, as religious organizations, have faith-based leadership expectations. The representatives noted their desire to allow anyone to explore the faith that the groups represent and that religious student organizations have no desire to exclude other students and no interest in being at the center of a polarizing debate. They merely wish to have an authentic presence on campus, serving and caring for their fellow students while fulfilling their faith-based purposes and missions. Religious student organizations seek to have a meaningful presence on public campuses and to be treated with the same dignity and respect accorded other student organizations.

F. In response to the Department's blogpost announcing it was conducting a review of the Religious Liberty and Free Inquiry regulations, religious organizations continued to ask the Department to preserve 34 C.F.R. §§ 75.500 (d) and 76.500 (d).

On August 19, 2021, the Department posted on its blog⁶⁴ the announcement that it was "currently conducting a review" and "anticipate[d] publishing a notice of proposed rulemaking . . . to propose rescinding parts of the Free Inquiry Rule."⁶⁵

In response, religious organizations continued to communicate the need for preservation of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). In a letter to Secretary Cardona dated September 23, 2021, representatives of religious organizations "respectfully repeat[ed] [their] request that the Department preserve the important legal protections provided in 34 C.F.R. §§ 75.500 (d) and 76.500 (d) for individual students and religious student organizations so that students of all faiths will feel welcome on their public college campuses."⁶⁶ The 19 signatories warned that

⁶⁴ Dr. Michelle Asha Cooper, Acting Assistant Secretary for Office of Postsecondary Education, Deputy Assistant Secretary for Higher Education Programs, Department of Education, *Update on the Free Inquiry Rule*, Aug. 19, 2021, at <https://blog.ed.gov/2021/08/update-on-the-free-inquiry-rule/>.

⁶⁵ Interestingly, the actual title of the rule is "*Religious Liberty and Free Inquiry Rule*." 34 C.F.R. §§ 75.500 (d) and 76.500 (d) were not specifically mentioned in the blog post, which did not specify which parts of the [Religious Liberty and] Free Inquiry Rule it proposed to rescind.

⁶⁶ Letter from 19 Religious Organizations to Secretary Cardona 1 (Sept. 23, 2021), <https://bit.ly/42DMtCF>. The letter is Attachment 2023-H. Copied on the letter were the Acting Assistant Secretary of the Office of Postsecondary Education, the Acting Assistant Secretary of the Office of Civil Rights, the Principal Deputy General Counsel and

“[r]evision of these regulations would send a message to religious student groups that they are not welcome on public campuses.”⁶⁷

The letter was signed by representatives of the following: Christian Legal Society; United States Conference of Catholic Bishops; Southern Baptists’ Ethics & Religious Liberty Commission; Agudath Israel of America; Islam and Religious Freedom Action Team of the Religious Freedom Institute; National Association of Evangelicals; Queens Federation of Churches; Jewish Coalition for Religious Liberty; The Church of Jesus Christ of Latter-Day Saints; Center for Public Justice; Institutional Religious Freedom Alliance; The Lutheran Church—Missouri Synod; Seventh-day Adventist Church—North American Division; 1st Amendment Partnership; World Assemblies of God Fellowship; Assemblies of God USA; Council for Christian Colleges & Universities; and a former Executive Director of the U.S. Commission on International Religious Freedom.

Again in response to the August 19 blogpost, religious campus organizations added their voices to urge the preservation of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). In a letter to Secretary Cardona dated September 29, 2021, representatives of 19 religious campus organizations “respectfully ask[ed]—as you continue to review this rule, especially 34 C.F.R. §§ 75.500 (d) and 76.500 (d)—that you commit to uphold protections in the Rule that ensure religious student organizations’ ability to have an authentic religious presence on public college and university campuses free from discrimination.”⁶⁸

The organizations explained that “[t]he current rule is necessary and ensures that religious organizations have the same opportunities given to other groups.”⁶⁹ According to the organizations, “Unfortunately, these First Amendment Freedoms have not adequately been ‘worked out’ by universities, students and the courts, making the rule all the more critical. A number of universities continue to misapply First Amendment principles related to religion. In fact, many religious groups continue to be targeted and singled out for different treatment. Some are singled out for derecognition simply because of their leadership requirements that leaders agree with and model the faith and beliefs of the group, a commonsense expectation that ensures a consistent religious identity from year to year.”⁷⁰ The organizations pointed to the University of Iowa and Wayne State University situations as examples where, after years of litigation,

Acting General Counsel, and the Senior Advisor to the President and Director of the White House Office of Faith-based and Neighborhood Partnerships.

⁶⁷ *Id.*

⁶⁸ Letter from 19 Religious Campus Organizations to Secretary Cardona 1 (Sept. 29, 2021), <https://bit.ly/40xpYh3>. The letter is Attachment 2023-I. Copied on the letter were the Acting Assistant Secretary of the Office of Postsecondary Education, the Acting Assistant Secretary of the Office of Civil Rights, the Principal Deputy General Counsel and Acting General Counsel, the Senior Advisor to the President and Director of the White House Office of Faith-based and Neighborhood Partnerships, the White House Senior Advisor for Public Engagement and Deputy Director of the White House Office of Faith-Based and Neighborhood Partnerships, and the Program Specialist at the U.S. Department of Health and Human Services Partnership Office.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.*

courts have found that universities have targeted and singled out religious student groups for exclusion.⁷¹

The letter also articulated the crux of the issue:

A [nondiscrimination] policy is not ‘neutral’ just because it has the same words applying to every group, if those words by definition uniquely impact one group differently and result in disparate treatment. This is true when the word ‘religion’ in a nondiscrimination statement is unreasonably applied to religious organizations’ selection of their leaders. *That term means, applied to nonreligious groups, that they may not distinguish based on religious identity, but they may expect their leaders or members to agree with their groups’ non-religious purposes and beliefs. Yet applied to a religious group, it means that they may neither distinguish based on religious identity nor expect their leaders or members to agree with their purposes and beliefs, because those beliefs are religious.* In the enumerated statuses, religion is the only one that results in this unequal treatment, because it is the only listed category where status and belief are intertwined and inseparable.⁷²

The 19 religious campus organizations signing the letter were: Cru; The Church of Jesus Christ of Latter-day Saints; InterVarsity Christian Fellowship/USA; Asian American Christian Fellowship; The Navigators; Coptic Medical Association of North America; Christian Legal Society; Church of the Nazarene; ReJOYce in Jesus Campus Fellowship; CCO (Coalition for Christian Outreach); Christian Medical & Dental Associations; Fellowship of Christian University Students; 1st Amendment Partnership; Ratio Christi; Sigma Alpha Omega Christian Sorority; Reformed University Fellowship; Young Life College & University; Fellowship of Christian Athletes; and Chi Alpha Campus Ministries, U.S.A.

G. Organizations representing religious student groups met with Department and OIRA officials in several 12866 meetings to explain how 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide meaningful protection for religious student groups on public college campuses.

Religious campus organizations met with Department of Education and OIRA officials in three meetings on March 1, 2022, March 10, 2022, and April 4, 2022. At each of these meetings, the organizations continued to provide Department and OIRA officials with empirical evidence of the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to the protection of vulnerable religious student groups.⁷³

⁷¹ *Id.*

⁷² *Id.* (emphasis supplied).

⁷³ A list of the four 12866 meetings, their participants, and the documents provided is Attachment 2023-J.

1. March 1, 2022, 12866 Meeting

On March 1, 2022, the President and CEO of Ratio Christi and its legal counsel, Alliance Defending Freedom, had a 12866 meeting with Department and OIRA officials to discuss proposed rulemaking regarding the Religious Liberty and Free Inquiry Rule.⁷⁴ As already discussed, Ratio Christi “is a religious group with student chapters on 123 college campuses across the country and *is a direct beneficiary of the challenged federal rule.*”⁷⁵ In its memorandum in support of its motion to intervene in the lawsuit challenging 34 C.F.R. §§ 75.500 (d) and 76.500 (d), Ratio Christi explained that “the outcome of this case may impair its interests, because Ratio Christi stands to lose the campus protections that the federal rule guarantees.”⁷⁶

In conjunction with the 12866 meeting, Ratio Christi and Alliance Defending Freedom submitted written comments (“Ratio Christi’s 12866 Comment”) as part of the public record during the OIRA process.⁷⁷

Ratio Christi’s 12866 Comment noted that “[r]eligious discrimination is on the rise on college campuses, with 1 in 4 students experiencing either discrimination or intolerance because of their religious beliefs”⁷⁸ and that “[t]he current regulation assists in eliminating religious discrimination and intolerance on college campuses.”⁷⁹

Ratio Christi’s 12866 Comment urged the Department to calculate the cost of losing the numerous benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). The Department failed to do so in the February 22, 2023, NPRM. The Department’s failure to calculate the cost of losing the numerous benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) for religious student groups, other students, colleges, college administrators, taxpayers, and American civil society renders rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious.

Ratio Christi’s 12866 Comment specifically asked the Department to calculate the cost of losing the following benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d):

⁷⁴ Office of Information and Regulatory Affairs, Office of Management and Budget, “View E.O. 12866 Meeting—1840-AD70,” <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=121424&acronym=1840-ED/OPE> (last visited Mar. 20, 2023).

⁷⁵ Ratio Christi’s Motion to Intervene as Defendant at 1, *Secular Student Alliance, et al. v. U.S. Department of Education, et al.*, 1:21-cv-00169 (D.D.C. Feb. 18, 2021), ECF No. 6 (emphasis supplied).

⁷⁶ *Id.* at 1-2.

⁷⁷ Matthew S. Bowman and Mallory Rechtenbach, Alliance Defending Freedom and Corey Miller, President/CEO Ratio Christi, E.O. 12866 Meeting Religious Liberty and Free Inquiry Rule, Rulemaking RIN: 1840-AD72, “ADF-Ratio Christi Comment Free Inquiry Rule—1840-AD72,” Mar. 1, 2022, <https://mobile.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=121424&acronym=1840-ED/OPE> (last visited Mar. 20, 2023). Ratio Christi’s 12866 Comment is Attachment 2023-K.

⁷⁸ *Id.* at 1 (citing Kevin Fosnacht & Cindy Broderick, *The Role of Religion and Institution Type in Seniors’ Perceptions of the Religious and Spiritual Campus Climate*, 19 J. of Coll. & Character 244 (Feb. 2018)).

⁷⁹ *Id.* at 2.

1. “the benefit of student free speech, intellectual diversity, and religious nondiscrimination”;
2. “the degree to which repealing this regulation would lead to further discrimination, intolerance, and marginalization of religious students on campus, particularly those who are members of minority religions”;
3. “the financial impact on national religious student organizations, chapters of organizations on individual campuses, and individual student members”;
4. “the economic prospects of the national organization through a substantial loss of dues and members” if the regulation’s repeal leads to their chapters being “decertified by universities”;
5. the cost to religious student groups if they are decertified and denied access to the mandatory student activity fees which their student members are required to pay but cannot access, which will lead to religious student groups’ loss of reimbursement for expenses and lost speech opportunities, as well as “a disparate negative impact on those organizations’ ability to gather and speak in comparison to other student organizations”; and
6. the cost to religious student groups if, as a result of decertification, “they would have to pay anywhere from \$200-\$1000 to rent space for each meeting.”⁸⁰

The Department’s failure to include even these cost calculations in its decision to propose rescinding 34 C.F.R. §§ 75.500 (d) and 76.500 (d) is arbitrary and capricious. Ratio Christi’s 12866 Comment asked the Department to consider the burdens and costs resulting from repeal of 34 C.F.R. §§ 75.500 (d) and 76.500 (d).⁸¹ The Department’s failure to do so is arbitrary and capricious.

Ratio Christi’s 12866 Comment further asked the Department to assess “the number of religious student organizations likely to be expelled from campuses or student group resources that currently have protection under [34 C.F.R. §§ 75.500 (d) and 76.500 (d)].”⁸² The Department’s failure to do so is arbitrary and capricious.

Ratio Christi’s 12866 Comment observed that “[r]epealing [34 C.F.R. §§ 75.500 (d) and 76.500 (d)] would open up religious students to further marginalization and discrimination.”⁸³ Ratio Christi noted that at the University of Iowa only religious groups were threatened with exclusion, even though 356 student groups were not in compliance with the university’s policy. Understandably, some religious students “reported feeling ‘intimidated’ by what the university’s accusations and deregistration of their organization meant for their education and future job prospects, particularly because the university was also the employer for some of these students.”⁸⁴ Ratio Christi’s 12866 Comment provided other support for the negative impact that

⁸⁰ *Id.* at 2-3.

⁸¹ *Id.* at 3.

⁸² *Id.*

⁸³ *Id.* at 4.

⁸⁴ *Id.* (citing Eboo Patel, *Should Colleges De-Register Student Groups*, Inside Higher Ed, Sept. 28, 2018, <https://www.insidehighered.com/blogs/conversations-diversity/should-colleges-de-register-student-groups>).

the religious discrimination likely will have on religious students if 34 C.F.R. §§ 75.500 (d) and 76.500 (d) is repealed. *Id.* at 3. The Department’s failure to measure the costs of marginalization, harassment, intimidation, and discrimination on religious students and on religious student groups on public college campuses is arbitrary and capricious.

Ratio Christi’s 12866 Comment also observed that “[f]orming and joining student organizations has a significant positive impact on student outcomes and mental health” and asked the Department to “consider the negative impact on students’ development and mental health if religious organizations are removed from campus.”⁸⁵ Ratio Christi’s 12866 Comment pointed to several studies confirming that participation in student organizations is an important factor in students’ well-being and academic motivation, which is especially important after the pandemic during which students’ mental and emotional health suffered.⁸⁶ The Comment specifically quoted one study that observed, “Religious participation on campus is itself a form of social integration. Faith communities are instrumental in the formation of friendships and intimacy with other people, and these supportive networks, in turn, provide a wide range of psychological and spiritual benefits.”⁸⁷ The Comment noted, “Stanford researchers have found that ‘good academic performance is also driven by habits learned through religious adherence,’ because they cultivate conscientiousness and cooperation.”⁸⁸ Additionally, the Comment noted that “Studies have shown that first generation college students most frequently utilized two programs to aid in success: departmental organizations and religious organizations.”⁸⁹ These are reinforced by the findings of Professor Ilana Horwitz and her 2022 book, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*.⁹⁰

The Department’s failure to measure the benefits that religious student groups provide their participants, including first-generation students, on public college campuses is arbitrary and capricious. The Department’s failure to measure the benefits that religious student groups provide to public institutions of higher education by providing a sense of belonging and encouraging various character qualities, as well as mental and emotion health, that contribute to their participants’ academic success is arbitrary and capricious.

Ratio Christi’s 12866 Comment asked the Department “to provide a sufficient analysis to assess and certify the impact on religious organizations—both parent organizations of student groups, and the student groups themselves—on removing the current regulatory protections for those organizations.” The Department’s failure to measure the cost of rescission of 34 C.F.R. §§

⁸⁵ *Id.* at 5.

⁸⁶ *Id.* & notes 16-25.

⁸⁷ *Id.* note 19, citing Alyssa N. Bryant, *The Effects of Involvement in Campus religious Communities on College Student Adjustment and Development*, 8 J. of College & Character 1 (2007).

⁸⁸ *Id.* note 24 (citing Carrie Spector, *Religiously engaged adolescents demonstrate habits that help them get better grades, Stanford scholar finds*, Stanford Research Stories, Apr. 15, 2018. Spector was reporting on findings by Professor Ilana Horwitz, who has since published her findings in her book, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*, Oxford University Press (2022).

⁸⁹ *Id.* note 25 (citing Erica Irlbeck et al., *First Generation College Students: Motivations and Support Systems*, 55 J. of Ag. Ed. 154 (2014), <https://files.eric.ed.gov/fulltext/EJ1122313.pdf>).

⁹⁰ Ilana M. Horwitz, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*, Oxford University Press (2022).

75.500 (d) and 76.500 (d) on religious organizations—both parent organizations of student groups and the student groups themselves—under the rubric of small businesses as defined in the Regulatory Flexibility Act is arbitrary and capricious.

In summary, Ratio Christi’s 12866 Comment asked the Department to assess the benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in several specific ways, as well as the costs of rescinding 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in several specific ways. The Department’s failure to calculate these specific costs and benefits in its NPRM on February 22, 2023, proposing to rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d), is arbitrary and capricious.

2. March 10, 2022, 12866 Meeting

Representatives of several of the largest national religious campus organizations had a 12866 meeting on March 10, 2022, with Department and OIRA officials.⁹¹ The national religious campus organizations explained the importance of the protections provided by 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to their thousands of religious student chapters. Representatives of Cru, InterVarsity Christian Fellowship/USA, The Navigators, Christian Medical & Dental Association, and Impact Movement explained the positive benefits that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have had on their student chapters.

InterVarsity informed the officials of the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) protecting its student chapter at the University of New Mexico in 2020. Cru informed the officials of the importance of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) in protecting its student chapters in 2021.

All five representatives affirmed that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) protect their chapters on public college campuses nationwide. The five representatives also provided the officials with specific examples of threatened exclusion of their chapters before 2020, which would have been resolved more easily had 34 C.F.R. §§ 75.500 (d) and 76.500 (d) been on the books.

Specifically, the InterVarsity representative informed the officials of the cost to students, minority religious student groups, and university administrators when litigation is necessary to protect religious student groups’ access to public college campuses, such as occurred when the University of Iowa targeted an InterVarsity student chapter for exclusion from campus. InterVarsity was forced to turn to litigation to remain on campus despite its students’ reluctance to sue their university. The students endured years of litigation which consumed the majority of their college years and cast a somber tone over their college experience. During the litigation, the university threatened to derecognize 32 other religious student groups, including Jewish, Muslim, Sikh, Baha’i, and Christian student groups. The InterVarsity representative provided the Department and OMB officials with the court document listing the 32 religious groups that the

⁹¹Office of Information and Regulatory Affairs, Office of Management and Budget, “View E.O. 12866 Meeting—1840-AD70,” March 10, 2022, <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=122473&acronym=1840-ED/OPE> (last visited Mar. 20, 2023).

university had produced during litigation.⁹² The list attests to the extremism religious student groups encounter: A major public university was willing to decimate the religious student groups on its campus simply because they required their leaders to agree with their faith.⁹³

After years of litigation, the federal district court found that the university was liable for over \$1.9 million in legal fees. A federal appellate court found that university administrators had lost their qualified immunity and were personally liable for the student organizations' money damages. Had 34 C.F.R. §§ 75.500 (d) and 76.500 (d) been in effect in 2017 when the litigation began, it is reasonable to expect that the cost (at a conservative estimate of \$2.5 million) to students, religious student groups, university administrators, and the university itself would have been avoided.

Cru informed the Department and OIRA officials of Indiana University's threat in 2015-2016 to exclude religious student organizations that had religious leadership standards from campus. Cru provided a letter to the university from 19 religious student organizations at Indiana University opposing the university's threatened exclusion.⁹⁴ The 19 groups included students from the Jewish, Christian, and Muslim faiths.

The organizations also provided the Department and OIRA officials with two letters to Secretary Cardona explaining the importance of preserving 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to protect religious student groups on campus. The letters, dated June 3, 2021, and September 29, 2021, were signed by 22 religious campus organizations and 19 religious campus organizations, respectively.⁹⁵

Cru also conveyed two booklets to the Department and OIRA officials. Interfaith Youth Core's booklet reviewed student survey information from 2020 addressing how public and private institutions of higher education can better facilitate college students' knowledge and willingness to work with persons of other faiths.⁹⁶ The authors asserted that colleges and universities have long made concerted efforts to advance diversity in the areas of race, gender,

⁹² The 32 groups are listed at note 29 *supra* and Attachment 2023-B.

⁹³ Office of Information and Regulatory Affairs, Office of Management and Budget, "University of Iowa Religious Group Watchlist 2019," Office of Information and Regulatory Affairs, Office of Management and Budget, "View E.O. 12866 Meeting—1840-AD70," March 10, 2022, <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=122473&acronym=1840-ED/OPE> (last visited Mar. 20, 2023).

⁹⁴ The letter was signed by representatives of 19 religious student organizations at Indiana University: The Navigators; Adventist Christian Fellowship; Baptist Collegiate Ministry; Bridges International; Campus Outreach; Chabad House; Chi Alpha; Christian Legal Society Chapter at IU; Christian Life Fellowship; Christian Student Fellowship; Clearnote; Connexion; Cru; Hoosier Catholic Students; InterVarsity Christian Fellowship; University Lutheran Church (Lutheran Church—Missouri Synod; Muslim Student Association; Redeemer at IU; Reformed University Fellowship. The letter is Attachment 2023-L.

⁹⁵ These letters are Attachments 2023-F and 2023-H *supra*.

⁹⁶ Alyssa N. Rockenbach, Matthew J. Mayhew, Mary Ellen Giess, Shauna M. Morin, B. Ashley Staples, Benjamin P. Correia-Harker, & Associates, *IDEALS (Interfaith Diversity Experiences & Attitudes Longitudinal Survey): Bridging Religious Divides through Higher Education*, Interfaith Youth Core (2020), <https://www.interfaithamerica.org/research/bridging-religious-divides-through-higher-education/> (last visited March 22, 2023).

and sexual orientation; however, religion has been continuously de-prioritized as an aspect of diversity work on most campuses.”⁹⁷ One suggestion was to encourage the formation of religious student groups on campus.⁹⁸ Particularly pertinent was the finding that “half of all Christian students did not believe their campuses were receptive to religious diversity overall. Perhaps surprisingly, evangelical (23%) and Catholic (22%) students felt pressured to limit expression of their religious beliefs almost as often as their Jewish and Muslim peers did.”⁹⁹

The Cru booklet is replete with examples of the good works that religious student groups perform on their campuses, in surrounding communities, and on national and international on trips. It elucidates the valuable contributions that religious student organizations bring to their campuses:

Student organizations provide safe spaces for students to find support and to flourish as they enter adulthood, explore their identity, and formulate their values. Students need community to develop into healthy, responsible citizens. Religious community in particular, by caring for the emotional and spiritual aspects of life, provides that support as students deal with the stresses of college, such as pressure to succeed or relational stress, which can lead to isolation and despair. The spiritual side of life is especially important for many — they either desire to explore new faith perspectives or want to find a faith community similar to the one they were raised in. They should have the opportunity to do so, right on campus.¹⁰⁰

The booklet discussed a sampling of the campuses where religious student groups have been threatened with exclusion, including Indiana University, California State University, University of Northern Colorado, Minnesota State University—Mankato, and Southeast Missouri State University.¹⁰¹ A map showed that the problem has occurred on numerous campuses nationwide.¹⁰²

The Department’s failure to engage with the benefits that religious student groups bring to their campuses makes the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious. The Department’s failure to engage with the numerous examples presented by these national religious campus organizations of the threatened exclusion of

⁹⁷ *Id.* at 5.

⁹⁸ *Id.* at 27.

⁹⁹ *Id.* at 15.

¹⁰⁰ Cru, *Protecting the Presence of Religious Student Organizations* (2018), at 6, Office of Information and Regulatory Affairs, Office of Management and Budget, “University of Iowa Religious Group Watchlist 2019,” Office of Information and Regulatory Affairs, Office of Management and Budget, “View E.O. 12866 Meeting—1840-AD70,” March 10, 2022, <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=122473&acronym=1840-ED/OPE> (last visited Mar. 20, 2023) (last visited Mar. 22, 2023).

¹⁰¹ *Id.* at 10-21.

¹⁰² *Id.* at 14-15.

religious student groups makes the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious. The Department's failure to engage with these national campus religious organizations to learn the scope and depth of the problems their student chapters have encountered, and continue to encounter, makes the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious. The Department's failure to calculate the cost of losing the numerous benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) makes the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d), as addressed by these representatives of national religious campus organizations, arbitrary and capricious.

3. April 4, 2022, 12866 Meeting

Representatives of three national religious organizations attended a 12866 meeting on April 4, 2022, with Department and OIRA officials. The national religious organizations' representatives explained the importance of the protections provided by 34 C.F.R. §§ 75.500 (d) and 76.500 (d) to their student chapters, churches, and state legislators.¹⁰³ The representatives were from the National Association of Evangelicals, Christian Legal Society, and 1st Amendment Partnership. The National Association of Evangelicals represents 40 denominations and over 40,000 churches. CLS has law student chapters on 140 law school campuses. CLS's Center for Law & Religious Freedom has 50 years of experience in working to protect religious student groups on public college campuses. 1st Amendment Partnership works in the states to protect religious freedom, including protecting religious student groups on public college campuses.

CLS submitted to the Department and OIRA officials two documents regarding a situation at the University of Virginia in August 2021. The University of Virginia Student Council conditioned access to the Fall Activities Fairs for student organizations, on their completion of a novel "Identity Inclusion Disclosure Form."¹⁰⁴ The form required that a student group's leader indicate whether the group was "a religious or political organization." If so, the student leader must indicate whether it "restricted its membership, leadership, programs, or activities on the basis of" 15 different classifications. The form stated that a student group could be derecognized for "misrepresentation" on the form. The form also required that a student leader answer the questions "[o]n your honor," which meant that the leader could be charged with a violation of the University Honor Code if the Student Council determined there was "misrepresentation." This could be understood to mean that a student leader could be dismissed from the university if she provided an answer that the Student Council deemed to be a "misrepresentation."

Motivated by this harassing threat to religious groups' student leaders, CLS sent a letter to the university referencing Regulations 34 C.F.R. §§ 75.500(d) & 76.500(d).¹⁰⁵ Within days, the student government withdrew its form as a condition for participation in the Fall Activities Fairs.

¹⁰³Office of Information and Regulatory Affairs, Office of Management and Budget, "View E.O. 12866 Meeting—1840-AD70," April 4, 2022, <https://mobile.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1840-AD72&meetingId=128374&acronym=1840-ED/OPE> (last visited Mar. 22, 2023).

¹⁰⁴ Office of Information and Regulatory Affairs, Office of Management and Budget, "View E.O. 12866 Meeting—1840-AD70," "Student Council Identity Inclusion Disclosure Form," April 4, 2022, <https://bit.ly/3lwngxZ> (last visited Mar. 20, 2023). The form is Attachment 2023-M.

¹⁰⁵ Office of Information and Regulatory Affairs, Office of Management and Budget, "View E.O. 12866 Meeting—1840-AD70," Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to President

The representative from 1st Amendment Partnership shared with the Department and OIRA officials the fact that since 2010, 17 states have enacted laws that protect religious student groups.¹⁰⁶ Often these laws were passed in response to religious student groups being threatened with exclusion from public university campuses in those states.

The Department's failure to engage with the examples that these representatives of national religious campus organizations provided of the continued need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d) makes their rescission arbitrary and capricious. The Department's failure to engage with these national campus religious organizations to ascertain the scope and depth of the problems their student chapters have encountered, and continue to encounter, makes the proposed rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious. The Department's failure to calculate the cost to religious student groups and national religious campus organizations of losing the benefits of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) make rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) arbitrary and capricious.

Throughout 2021 and 2022, national religious organizations and national religious campus organizations consistently told the Department of the continued need for the protections and benefits provided by 34 C.F.R. §§ 75.500 (d) and 76.500 (d), and the costs that their rescission would impose on religious students, all students, colleges, college administrators, taxpayers, and American civil society. But the Department refused to perform its due diligence and refused to objectively evaluate the evidence offered it by the organizations most familiar with the continued threats to deny religious student groups access to the same benefits afforded to other student groups. If the Department rescinds 34 C.F.R. §§ 75.500 (d) and 76.500 (d), its action would be arbitrary and capricious.

III. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have meaningfully increased protections for religious student organizations.

A. In the past two years, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have positively benefited religious student groups on numerous public university and college campuses.

Jim Ryan, University of Virginia (Aug. 12, 2021), <https://bit.ly/3LOMwFT> (last visited Mar. 20, 2023). The letter is Attachment 2023-N.

¹⁰⁶ 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); Ind. Code 21-39-8-1 et seq. (religious, political, and ideological 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 Ann. § 20-25-518 (religious, political, or ideological); N.C. Gen. Stat. Ann. § 116-40.12 (religious and political student groups); N.D. § 15-10.4-02(h) (student organizations' beliefs); 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).

In the NPRM, the Department said that it “welcomes evidence from the public regarding whether maintaining a condition specifically for institutions that receive Department grants has provided any additional protections of the First Amendment rights of religious student organizations at public institutions.” Part II *supra* demonstrates that the Department was given such evidence repeatedly in 2021 and 2022 by over 40 national religious organizations, including national religious campus organizations, through letters to the Secretary, meetings with various Department officials, and 12866 meetings with Department officials. Senators have also advised the Department of the importance of these regulations to religious student organizations.

In Part III, CLS will highlight some of the campus situations in which 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have protected religious student organizations on major university campuses in 2021 and 2022. This part also reviews the four decades of situations that the Department considered in adopting 34 C.F.R. §§ 75.500 (d) and 76.500 (d). The Department would be acting arbitrarily and capriciously if it ignored this evidence of the historical, as well as the current, need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and instead rescinded the regulations.

To begin, it is, of course, reasonable to presume that federal regulations affect the behavior of institutions of higher education and their administrators. It would be unreasonable to ignore the fact that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) incentivize institutions of higher education and their administrators to provide religious student groups with the benefits that the institutions otherwise make available to other student groups.

As an empirical matter, we know that several public universities that threatened to derecognize religious student groups refrained from doing so after receiving letters citing 34 C.F.R. §§ 75.500 (d) and 76.500 (d). These examples represent only the situations of which CLS staff are aware. It is reasonable to assume that many administrators who might have denied religious student organizations recognition and its benefits did not do so because of the regulations’ existence. Good regulations preempt problems, often merely by their existence. And from decades of practical experience, we know that individual religious student organizations often never report to the national organizations with which they are affiliated the actual problems they encounter.

CLS knows that CLS student chapters on the following campuses were recognized, without resort to litigation, after university administrators received correspondence from our office that relied on 34 C.F.R. §§ 75.500 (d) and 76.500 (d). The Department should note that the University of Wisconsin situation, described below, by itself demonstrates the continued need for the regulations because the university provided only “provisional” registration of the CLS chapter, thereby reserving the right to withdraw the CLS chapter’s registration in the future. The university’s insistence that registration of the CLS chapter is “provisional” provides concrete evidence of the continued need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d).

1. University of Wisconsin-Madison—Fall 2022

The CLS law student chapter at the University of Wisconsin-Madison (“CLS-UW”) has been a registered student organization since at least 1991. For the 2022-2023 academic year, the

university lists 982 registered student groups,¹⁰⁷ and the law school lists 42 student organizations.¹⁰⁸

In summer 2022, the CLS students submitted their chapter's application for re-registration for the 2022-2023 academic year, using the same constitution it had used since 2010. But on August 24, 2022, the university's Center for Leadership & Involvement denied CLS-UW's application for re-registration.¹⁰⁹ University staff claimed that CLS-UW's "leadership requirements are in conflict with the UW-System non-discrimination policy."¹¹⁰ Explaining the basis for its refusal, the Center wrote the CLS students: "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."¹¹¹

As this sentence demonstrates, university members are not confused by 34 C.F.R. §§ 75.500 (d) and 76.500 (d); *they are confused by their own university policies*. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide university administrators with clear guidance regarding how they should treat religious student groups. Contrary to the Department's claim that the regulations create confusion for university administrators, the reality is that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) clarify administrators' confusion and help them avoid litigation.

In 2006, the University of Wisconsin Board of Regents adopted Regent Policy 30-6, which allows student organizations to "select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs)[.]"¹¹² The Board of Regents adopted Policy 30-6 as part of the settlement of a lawsuit filed by InterVarsity Christian Fellowship after the university threatened to deny it registration because of its religious leadership standards.

Sixteen years after Policy 30-6 was adopted, university staff re-interpreted the policy to prohibit a religious group's religious leadership standards. Remarkably, university staff re-interpreted its policy when dealing with the re-registration of a religious student group (CLS) that had been a registered group since 1991.

Legal counsel for CLS-UW sent two letters to the university administration explaining that the university would be in violation of 34 C.F.R. §§ 75.500(d) & 76.500(d) if CLS-UW was not

¹⁰⁷ Wisconsin Involvement Network, "Organizations," at <https://win.wisc.edu/organizations> (last visited Mar. 12, 2023).

¹⁰⁸ Law School University of Wisconsin, "Student Organizations," at <https://law.wisc.edu/current/orgs.html> (last visited Mar. 14, 2023).

¹⁰⁹ Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to Quinn Williams, General Counsel, University of Wisconsin System 8 (Sept. 9, 2022) (attaching email from University of Wisconsin's Center for Leadership & Involvement to CLS-UW), <https://bit.ly/42gMk7Y>. The letter is Attachment 2023-O.

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.*

¹¹² University of Wisconsin System, Board of Regents, Regents Policies, Policy 30-6, "Recognition of Student Organizations," at <https://www.wisconsin.edu/regents/policies/recognition-of-student-organizations/> (last visited Mar. 12, 2023).

re-registered.¹¹³ Eventually, the university agreed to restore recognition to CLS-UW for the 2022-2023 academic year, *but it characterized CLS-UW's registration as "provisional."*¹¹⁴ The university's insistence that CLS-UW's registration is "provisional" is concrete evidence that CLS-UW students would be harmed if 34 C.F.R. §§ 75.500(d) & 76.500(d) were rescinded.

In summary, the University of Wisconsin's threatened exclusion of CLS-UW demonstrates that:

- a. C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to protect CLS-UW and other religious student organizations. The university re-registered CLS-UW only after it received two letters from legal counsel, which cited the regulations.
- b. C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to continue to provide vital protection to CLS-UW students because the university emphasized that its re-registration was "provisional."
- c. Litigation is not a long-term solution to the problem religious student groups face because university staff re-interpreted the Board of Regents' policy *sixteen years* after the policy had been adopted (as part of a settlement agreement in a lawsuit brought by another religious student organization that had been denied recognition because of its religious leadership standards). Typically, staff and students are not aware of litigation that occurred in previous years.
- d. The source of the university administrators' confusion is not the federal regulations but ambiguous university policies, whereas C.F.R. §§ 75.500 (d) and 76.500 (d) are plainly written, straightforward, and succinct.
- e. If a complaint is filed, the Department's investigation will not be burdensome because the university's original denial was explicit that it was denying CLS-UW recognition because of its leadership standards and that the university considered CLS-UW's recognition to be "provisional."
- f. Because C.F.R. §§ 75.500 (d) and 76.500 (d) exist, the CLS-UW student chapter did not need to file litigation in order to obtain registration, a benefit to the students, university administrators, and taxpayers.
- g. The economic cost to the CLS-UW students is reflected in the fact that the CLS-UW leaders spent 7 weeks, from August 24, 2022, until October 13, 2022, working to achieve re-registration, which took significant time away from their legal studies and jobs.

¹¹³ Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to Quinn Williams, General Counsel, University of Wisconsin System (Sept. 9, 2022), <https://bit.ly/42gMk7Y>; Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to Quinn Williams, General Counsel, University of Wisconsin System (Sept. 26, 2022), <https://bit.ly/3TfjAIR>. The letters are Attachments 2023-O and 2023-P, respectively.

¹¹⁴ An email on September 28, 2022, from the University of Wisconsin to CLS stated that CLS was being registered as a UW-Madison registered student organization (RSO) "on a provisional basis" for the 2022-2023 academic year.

2. University of New Hampshire Franklin Pierce School of Law—Fall 2022

In fall 2022, the CLS law student chapter at University of New Hampshire Franklin Pierce School of Law (“CLS-UNH”) filed the necessary documents to be affiliated as an officially recognized student organization. The University of New Hampshire lists over 300 student organizations,¹¹⁵ and the law school lists 29 student organizations.¹¹⁶

Instead of treating the CLS students fairly and with respect, the Student Body Association (SBA) at the law school delayed recognizing CLS-UNH. At a public meeting on October 12, 2022, the SBA Board subjected CLS’s student leader to an interrogation regarding the group’s religious beliefs, particularly its religious leadership requirements. Many SBA Board members made clear that they opposed CLS-UNH’s recognition because of its religious beliefs. Some expressed the view that the CLS religious leadership requirements violated the law school’s and SBA’s diversity, equity, and inclusion policies. Evidently, the SBA failed to see the irony in *excluding* CLS students in the name of *inclusion*.

At least one SBA member urged the law school to explore adopting an “all-comers” policy in order to exclude the CLS student chapter. The SBA twice tabled a vote on granting affiliation to the CLS student chapter.

Legal counsel for CLS-UNH sent two letters, dated October 24 and October 25, to the law school administration, explaining that the law school would be in violation of 34 C.F.R. §§ 75.500(d) and 76.500(d) if the SBA failed to recognize the CLS chapter.¹¹⁷ Finally, at its meeting on October 25, 2022, the SBA recognized CLS-UNH.

In November 2022, a separate student organization, Free Exercise Coalition, sought affiliation as a recognized student group at the law school. Like CLS, the Free Exercise Coalition was subjected to an inquisition by the SBA that led its faculty advisor to withdraw from serving as advisor to the student group.¹¹⁸ The SBA also delayed recognition of the Free Exercise Coalition. Legal counsel for the Free Exercise Coalition sent a letter to university administrators. On January 24, 2023, the university administration recognized the Free Exercise Coalition.¹¹⁹

¹¹⁵ University of New Hampshire, Wildcat Link, Memorial Union & Student Activities, Organizations, at <https://wildcatlink.unh.edu/organizations> (last visited Mar. 12, 2023).

¹¹⁶ University of New Hampshire Franklin Pierce School of Law, Student Life, Student Organizations, at <https://law.unh.edu/student-life/student-organizations> (last visited Mar. 12, 2023). The 29 recognized student organizations at the law school include: Asian Pacific American Law Association; Black Law Student Association; Diversity Coalition; Environmental Law Society; Federalist Society; Hispanic and Latinx Student Association; Lambda; Secular Student Alliance; UNH Law Democrats; Veteran’s Law Society; and Women’s Law Student Association.

¹¹⁷ Letter from Laura Nammo, Center for Law & Religious Freedom, Christian Legal Society, to Dean Shane Cooper, University of New Hampshire Franklin Pierce School of Law (Oct. 24, 2022), <https://bit.ly/3mTkPkW>. The letter is Attachment 2023-Q. Letter from Laura Nammo, Center for Law & Religious Freedom, Christian Legal Society, to Dean Shane Cooper, University of New Hampshire Franklin Pierce School of Law (Oct. 24, 2022), <https://bit.ly/3FlvQlp>. The letter is Attachment 2023-R.

¹¹⁸ Free Exercise Coalition, at <https://www.freeexercisecoalition.com/> (last visited Mar. 12, 2023)..

¹¹⁹ Letter from Jeremy Dys, Senior Counsel, First Liberty, to Dean Shane Cooper, University of New Hampshire Franklin Pierce School of Law (Dec. 12, 2022), <https://bit.ly/3TDMTFE>. The letter is Attachment 2023-S.

While CLS-UNH is relieved that C.F.R. §§ 75.500 (d) and 76.500 (d) helped it achieve recognition, it is concerned by the university counsel's subsequent testimony before the House Education Committee of the New Hampshire General Court. At a February 24, 2022, hearing, the university opposed state legislation that protected a range of student expression on campus, including protection for religious student groups.

The University of New Hampshire Franklin Pierce School of Law SBA's inquisition of the CLS-UNH student leader and its delay in granting affiliation to the CLS student chapter demonstrates that:

- a. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to protect religious student organizations. The SBA recognized CLS-UNH only after university counsel received two letters from legal counsel for CLS, citing 34 C.F.R. §§ 75.500 (d) and 76.500 (d).
- b. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) continue to provide vital protection to CLS-UNH students that is necessary, in part, because university counsel testified in opposition to state legislation that would protect student expression, including religious student groups, in a hearing before the New Hampshire General Court House Education Committee on February 24, 2023.
- c. The source of the university administrators' confusion is not 34 C.F.R. §§ 75.500 (d) and 76.500 (d) but the student government's actions and ambiguous policies.
- d. Opponents of religious groups often attempt to adopt a so-called "all-comers" policy in order to exclude religious student groups even though such policies are impossible to enforce uniformly.
- e. Because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are straightforward, this situation was resolved without the need for a complaint to be filed with the Department.
- f. Even if a complaint were filed, the Department's investigation would not be burdensome because the student government was explicit that it was denying two religious student groups recognition because of their religious leadership standards.
- g. Because the regulations exist, the students did not need to file a lawsuit in order to obtain recognition, which benefits the students, university administrators, and taxpayers.
- h. The CLS-UNH student leader incurred economic costs because he spent significant time on gaining recognition that could have been spent on his legal studies. In addition, the emotional toll on the student leader as a result of being interrogated by the student government was significant.

3. University of Idaho School of Law—Fall 2021 & Spring 2022

In fall 2021, the CLS chapter at the University of Idaho School of Law ("CLS-Idaho") applied for recognition. The law school's Student Board Association (SBA) delayed recognizing the CLS chapter and instead interrogated the CLS leaders about their religious beliefs at two public meetings of the SBA. The questions that SBA Board members asked the CLS student

leaders made clear that CLS's religious beliefs were unpopular with many SBA Board members and also with some administrators.

On November 8, 2021, legal counsel for CLS-Idaho sent a letter to the university president, explaining that the university would be in violation of 34 C.F.R. §§ 75.500(d) & 76.500(d) if CLS-Idaho was not recognized.¹²⁰ A few days later, CLS-Idaho was recognized.

Unfortunately, the hostility toward CLS students' religious beliefs and speech continued the following semester. On April 1, 2022, the law school "held a 'moment of community' in response to an anti-LGBTQ+ slur that had been left anonymously on a whiteboard in one of its classrooms in Boise, Idaho. Students, faculty, and staff from the law school gathered in front of the Moscow, Idaho, campus to express support for all students."¹²¹ CLS students "gathered in prayer . . . in a showing of support for the LGBTQ+ community."¹²² A law student came up to the CLS students and asked about CLS's religious beliefs. The CLS students respectfully answered her question. Later, the CLS president left her a note inviting her to talk further if she wished.¹²³ At an event regarding the ABA's accreditation of the law school, some law students "raised concerns about CLS and its members" and their religious beliefs. A CLS member who was present "defended CLS and stated that the biggest instance of discrimination he had seen on campus was actually against CLS and the administration's failure to timely recognize and register it as a group."¹²⁴ On April 7, the university's Office of Civil Rights & Investigations issued no-contact letters against three CLS members. Eventually, the university also issued a limited contact letter against the law professor who was CLS's advisor.¹²⁵ One of the CLS members had to report that he had received a no-contact letter as part of his application to be admitted to the bar.¹²⁶

On June 30, 2022, a federal district court granted the CLS students' motion for a preliminary injunction, finding that they had shown a likelihood of success on the merits for violations of their freedom of speech, free exercise of religion, and due process rights. The court concluded its opinion by explaining: "Some may disagree with [the CLS students'] religious beliefs. Such is each person's prerogative and right. But none should disagree that [the students] have a right to express their religious beliefs without fear of retribution. The Constitution makes that clear."¹²⁷

The *Perlot* case exemplifies the hostility that many religious students face on public university campuses solely due to their religious beliefs and demonstrates the need for the protections that 34 C.F.R. §§ 75.500(d) and 76.500(d) provide. No students at an American public university should be subject to harassment for their religious beliefs. Yet the CLS students

¹²⁰ Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to President C. Scott Green, University of Idaho (Nov. 8, 2021), <https://bit.ly/3yFrPEX>. The letter is Attachment 2023-T.

¹²¹ *Perlot v. Green*, 609 F. Supp.3d 1106, 1113 (D. Idaho 2022).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 1114.

¹²⁵ *Id.*

¹²⁶ *Id.* at 1124.

¹²⁷ *Id.* at 1126.

suffered such harassment at the University of Idaho School of Law in 2021-2022 from both their fellow students and the administration.

The threatened exclusion of the CLS student chapter and subsequent harassment of CLS students for holding traditional religious beliefs at the University of Idaho School of Law demonstrates that:

- a. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to protect religious student organizations. The university recognized CLS-Idaho only after it received a letter from legal counsel for CLS-Idaho.
- b. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) continue to provide vital protection to CLS-Idaho students because of the demonstrated hostile educational environment surrounding CLS students' religious beliefs even after it was a recognized student organization, as documented in the federal district court's decision in *Perlot v. Green*.¹²⁸ In the events of Spring 2022, it was clear that the administrators issued no-action letters based solely on the CLS students' religious beliefs and speech, demonstrating the continued need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d).
- c. The source of university administrators' confusion is not 34 C.F.R. §§ 75.500 (d) and 76.500 (d), but the student government's hostility toward fellow students' religious beliefs, as well as many university administrators' unwillingness to enforce nondiscrimination policies that are intended to protect religious students from exclusion, penalization, and harassment because of their religious beliefs and speech.
- d. Because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are plainly written and straightforward, CLS-Idaho obtained recognition without filing a complaint with the Department in the Fall 2021. However, the events of the following semester suggest that the SBA may again harass the CLS student chapter in the future and, therefore, filing a complaint in the future may be a prudent course of action.
- e. Even if a complaint had been filed, the Department's investigation would not have been burdensome because the SBA was explicit that it was denying CLS recognition because of its religious beliefs. In the events of Spring 2022, it was clear that the administrators issued no-action letters based solely on the content and viewpoint of the CLS students' religious beliefs and speech.
- f. Because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) exist, the students did not need to file litigation in order to obtain recognition, which benefits the students, university administrators, and taxpayers. The administrators' subsequent actions led to litigation that the university lost. The university paid \$90,000 as a result of the litigation.¹²⁹

¹²⁸ 609 F. Supp.3d 1106, 1113 (D. Idaho 2022).

¹²⁹ See Alliance Defending Freedom, Media Statement, *Perlot v Green*, <https://adfmedia.org/case/perlot-v-green> (last visited Mar. 14, 2023).

- g. The economic cost to the CLS-Idaho students is reflected in the fact that the CLS-Idaho leaders spent weeks in Fall 2021 working to achieve recognition, which took significant time away from their legal studies and jobs. In addition, the students suffered an emotional cost from being interrogated and stigmatized by the student government for their religious beliefs.

4. University of Virginia—Fall 2021

At the University of Virginia, the Fall Activities Fairs are key events at which student organizations make incoming students aware of their existence and activities. They are a primary means of recruiting new members.

In August 2021, the University of Virginia Student Council conditioned access to the Fall Activities Fairs on completion of a novel “Identity Inclusion Disclosure Form.”¹³⁰ The form required that a student group’s leader indicate whether the group was “a religious or political organization.” If so, the student leader must indicate whether it “restricted its membership, leadership, programs, or activities on the basis of” 15 different classifications. Failure to complete the form meant the student group could not participate in the Fall Activities Fairs. Participation in the 2021 fairs was particularly important for all student organizations who needed to rebuild after the pandemic.

The form stated that a student group could be derecognized for a “misrepresentation” on the form. The form also required that a student leader answer the questions “[o]n your honor,” which raised the specter of the student leader being charged with a violation of the University Honor Code if the Council determined there was a “misrepresentation” on the form she had signed. This could result in a student leader being dismissed from the university for a “wrong” answer on the form.

A letter was sent to the university referencing Regulations 34 C.F.R. §§ 75.500(d) & 76.500(d) and their protection of religious student groups.¹³¹ A few days later, the student government withdrew its requirement that the form be completed in order to participate in the Fall Activities Fairs.

The student government’s harassment of religious student groups and their student leaders for holding traditional religious beliefs at the University of Virginia demonstrates that:

- a. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to protect religious student organizations. The student government dropped its requirement that religious and political student groups complete the form in order to participate in the Fall

¹³⁰ Office of Information and Regulatory Affairs, Office of Management and Budget, “View E.O. 12866 Meeting—1840-AD70,” “Student Council Identity Inclusion Disclosure Form,” April 4, 2022. The form is Attachment 2023-M.

¹³¹ Office of Information and Regulatory Affairs, Office of Management and Budget, “View E.O. 12866 Meeting—1840-AD70,” Letter from Kim Colby, Center for Law & Religious Freedom, Christian Legal Society, to President Jim Ryan, University of Virginia (Aug. 12, 2021). The letter is Attachment 2023-N.

Activities Fairs immediately after the university received a letter that cited 34 C.F.R. §§ 75.500(d) & 76.500(d).

- b. The source of confusion is not 34 C.F.R. §§ 75.500 (d) and 76.500 (d), but the student government's hostility toward fellow students' religious beliefs. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) helped make clear for the university what the right thing to do would be.
- c. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) helped the university avoid mistreatment of religious student leaders by the student council and the potential of costly litigation.
- d. Had a complaint become necessary, the Department's investigation would not have been burdensome because the student council's form was explicitly aimed at religious and political groups and their leadership policies.
- e. Because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) exist, the religious student groups did not need to file litigation, which benefits not only the students but also the university, university administrators, and taxpayers.

5. Arizona State University—Fall 2022

In 2022, the Christian Legal Society Student Chapter at Arizona State University ("CLS-ASU") was initially denied re-registration because of its leadership and membership standards. CLS sent a letter to the university general counsel, citing 34 C.F.R. §§ 75.500 (d) and 76.500 (d).¹³² Within two weeks, CLS-ASU was re-registered.

The situation at Arizona State University College of Law illustrates yet another reason that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) protect religious student organizations in ways better than litigation. As the February 22, 2023, NPRM recognizes, a case determines the law between the parties based on the facts of the case at the time. For that reason, religious student groups that prevail in litigation against a university prevail as to the factual context at the time of the case. But if the facts change, even in relatively small ways, it becomes possible for the university to claim that the religious student groups no longer can rely on the court decision in their favor. Litigation imposes a strait jacket on the religious student groups, preventing them from making any material changes in their beliefs, speech, policies, practices, and leadership or membership standards, even should they wish to do so.

The situation at Arizona State University illustrates this dilemma. CLS-ASU has been a registered student organization at Arizona State University since at least 1991. In 2004-2005, CLS-ASU had to go to court to obtain the re-registration of CLS-ASU as a student organization. In the 2005 Settlement Agreement, CLS-ASU agreed to dismiss its lawsuit in exchange for the university: 1) adding language to a nondiscrimination policy to protect religious student organizations from denial of registration because they limited membership or leadership positions to students who share the groups' religious beliefs; 2) providing a letter from its Vice

¹³² Letter from Kim Colby, Christian Legal Society, to Lisa S. Loo, Senior Vice President and General Counsel, Arizona State University, September 9, 2022, <https://bit.ly/3TE2owR>. The letter is Attachment U.

President for Student Affairs, confirming that religious student groups would not be denied registration because they limited membership or leadership positions to students who share the religious groups' religious beliefs and also confirming that certain beliefs and practices of CLS-ASU did not violate the nondiscrimination policy; and 3) agreeing to grant registration to CLS-ASU using the constitution that CLS-ASU submitted on May 6, 2005.

Three times recently, in 2018, 2020, and 2022, CLS-ASU's application for re-registration was initially denied by the Office for Student Affairs based on CLS-ASU's leadership and membership standards. Each time, a CLS staff lawyer wrote to the university general counsel on behalf of CLS-ASU to remind the university of the 2005 settlement agreement and to secure CLS-ASU's re-registration.

Each time, dealings between CLS and the university general counsel have been amicable. Each time, the general counsel has suggested that CLS-ASU update its 2005 constitution to reflect that CLS law student chapters no longer require student chapter members, only student leaders, to agree with the CLS statement of faith. But CLS-ASU is afraid that any change to its constitution would forfeit the protection of the 2005 Settlement Agreement. If it were certain that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) would not be rescinded, the concern about making changes to the 2005 constitution would be ameliorated. But as long as there is any question about the continued viability of 34 C.F.R. §§ 75.500 (d) and 76.500 (d), the risk is too great to make changes that both CLS and the university administration would like to be made.

The Arizona State University situation demonstrates that:

- a. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are needed to protect religious student organizations.
- b. Even where a religious student group has had registration issues that resulted in a favorable litigation outcome, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) affirm the protections available to the student group.
- c. The source of university administrators' confusion is not 34 C.F.R. §§ 75.500 (d) and 76.500 (d), but the fact that the staff in the Student Affairs Office who are tasked with registration of student organizations do not fully understand the university's policies and history. As a result of the 2005 settlement agreement, Arizona State University has a policy that protects religious student organizations from denial of registration because they limit membership or leadership positions to students who share the groups' religious beliefs. Nonetheless, the staff in the Student Affairs Office student often are unaware of the university's own policy regarding religious student groups. This may be due to staff turnover or oversight in training new staff. It may be due to staff disagreement with the policy. Whatever the source of the problem, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) clarify the confusion in a way that is helpful to both the students and the university administrators.

- d. Because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are straightforward, situations can be resolved without the need for a complaint to be filed with the Department.
- e. Even if a complaint is necessary, the Department's investigation will not be burdensome because the Student Affairs Office's denial was explicitly based on the religious student groups' religious leadership standards.
- f. When religious student groups prevail in litigation with the university, they may be locked into policies and practices that they wish to change but cannot without risking the protection of a court order. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) allow the religious groups more flexibility than do court orders in their interactions with university administrators.

6. William & Mary College School of Law—Winter 2021

In February 2021, the CLS law student chapter at William & Mary Law School hosted a virtual meeting at which a guest speaker, a California lawyer, spoke about his work defending religious freedom.¹³³ The lawyer never stepped foot on the William & Mary Law School campus but instead spoke from California via Zoom. The meeting also was virtual for the CLS students at William & Mary. The chapter invited all law students to attend its virtual meeting.

The open invitation triggered a hostile response from other law students. A few days before the meeting, many William & Mary student groups published an open letter to the law school, urging the CLS student chapter to disinvite its speaker due to his work on religious freedom cases. CLS students also received disturbing and harassing comments from their fellow law students.

Fortunately, in an email to the law school community, the law school administration explained that student groups were allowed to invite speakers, even those speakers whose views other students disliked. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) had just gone into effect. CLS believes that the regulations helped William & Mary administrators resist the other student groups' strong pressure against the CLS student chapter. As a result, the virtual meeting was attended by a significant number of students, many of whom were opposed to the speaker, but who may have left the meeting better informed about the importance of religious freedom and the value of listening to those with whom they disagreed.

B. Regulations 34 C.F.R. §§ 75.500(d) & 76.500(d) Were Adopted to Redress Over Forty Years of Discrimination Against Religious Student Groups at Many Public Colleges.

Regulations 34 C.F.R. §§ 75.500(d) & 76.500(d) were based on empirical evidence that religious student groups had been targeted for discriminatory exclusion for over 40 years based

¹³³ William & Mary Featured Events, [Past Event] CLS Speaker Series: Kevin Snider, Religious Liberties Lawyer, Feb. 17, 2021, <https://events.wm.edu/event/view/wm/120812> (last visited Mar. 22, 2023).

on their religious beliefs, speech, policies, practices, and leadership and membership standards. This empirical evidence was found in numerous comments submitted in 2020 in support of adoption of 34 C.F.R. §§ 75.500(d) & 76.500(d). The empirical evidence remains unchanged in the short time since 2020; therefore, any changes to the regulations are arbitrary and capricious and not based on empirical evidence.

1. As documented in students' written statements that are part of a congressional subcommittee's hearing record, public colleges frequently threaten to exclude religious student groups because of their religious beliefs and leadership standards.

In 2015, many former college students submitted written statements to the United States House of Representatives Committee on the Judiciary's Subcommittee on the Constitution and Civil Justice. In these first-hand accounts, the former students document the stigma they felt and the harm to their organizations that occurred when their religious organizations were excluded, or threatened with exclusion, from campus.¹³⁴ Unfortunately, their experiences exemplify the experiences of too many other religious students on college campuses.

a. California State University: Should the Nation's Largest University System Teach Students to Censor Other Students?

With over 430,000 students on 23 campuses, Cal State is the largest 4-year university system in the country. In 2015, Cal State administrators implemented a new policy under which it withdrew recognition for religious organizations that had religious leadership requirements. Religious groups that had had religious leadership requirements for over 60 years were abruptly derecognized.

1) Religious groups must pay prohibitive rental fees for previously free space.

Religious student groups no longer had the same access to free meeting space and channels of communication that other student groups enjoyed. Without recognition, it became difficult, if not nearly impossible, for a student group to maintain its existence on campus. For example, the university told a predominantly Black religious group of about 20 students that it would no longer be allowed to reserve free meeting space.¹³⁵ Instead, the university would charge it the hourly rental rate that non-university groups paid to rent university facilities. Basically, the group would have to pay \$200 per week to use a previously free classroom for its weekly meetings.

¹³⁴ These letters were submitted in conjunction with CLS's testimony before the Subcommittee. *First Amendment Protections on Public College and University Campuses: Hearing Before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary House of Representatives*, 114th Cong. 39-58 (June 2, 2015) (testimony of Kimberlee Wood Colby, Director, Center for Law & Religious Freedom, Christian Legal Society). The letters are found in the supplemental hearing record, <http://docs.house.gov/meetings/JU/JU10/20150602/103548/HHRG-114-JU10-20150602-SD003.pdf> (hereinafter "Supp. Hrg. Rec."), at 48-75.

¹³⁵ Letter from Patrick H. Bailey, Dir. Off. Student Involvement and Development, to Cinnamon McCellan (Jan. 20, 2015) is Attachment 2023-V.

This was prohibitively expensive for the modest-sized group of students. For a much larger religious group, which held weekly meetings in an auditorium, the rental rate jumped from free to over \$1000 each week.

In her letter, Ms. Cinnamon McCellen, who was student president of Rejoyce in Jesus Campus Fellowship (“RJCF”) at the California State University Northridge campus from 2013-2015, explained that when the university derecognized her group, it “reluctantly” left the campus because it “could not pay the weekly rental fee of \$200 that CSU said we would have to pay to keep meeting in the room that we had held our weekly meetings in for free.” On behalf of the religious student group, she concluded, “We feel that CSU is engaging in religious discrimination by excluding religious student groups from campus solely because they exercise their basic religious liberty to choose their leaders according to their religious beliefs.” She objected, “To call this discrimination is ridiculous.”¹³⁶

2) A double standard exempts fraternities and sororities while excluding religious student groups.

Applying a double standard, Cal State permitted fraternities and sororities to discriminate on the basis of sex in their selection of both their members and leaders but refused to permit religious groups to select their leaders on the basis of religion. Ms. Bianca Travis, student president of the Chi Alpha group at the California State University Stanislaus campus from 2014-2015, noted, “[F]or the first time in almost 40 years, our student group was kicked off campus by the university’s administrators, all because of our religious identity.” She concluded, “That continued discrimination makes the opportunity you are providing [i.e., receiving their letters] all the more important to us: it helps ensure we won’t be forgotten.”¹³⁷

3) Encouraging students to censor other students’ religious beliefs teaches both American and international students the wrong lesson.

Most troubling, the university actually trained students to censor other students. To process the constitutions of the thousands of student organizations on the 23 Cal State campuses, the university enlisted students to read the constitutions of student organizations and “edit” them to conform to the university’s new policy. The “edited” constitutions were then returned to the student organizations with a warning that they would not be recognized unless they made the changes.

What does this mean for a free society when our public universities are training students in censorship? What lesson do the students learn other than that censorship of other students’ speech is their prerogative—or at least the prerogative of the State? All Americans will reap a society that is intolerant of minority religious beliefs and practices if this lesson continues to be taught on public college campuses.

¹³⁶ Letter from Ms. Cinnamon McCellan to Chairman Trent Franks (June 10, 2015) (Supp. Hrg. Rec. at 48-49) and is Attachment 2023-W.

¹³⁷ Letter from Ms. Bianca Travis to Chairman Trent Franks (June 9, 2015) (Supp. Hrg. Rec. at 50) and is Attachment X.

And what of international students who come to observe American self-government and take home instead lessons in censorship? American colleges should exemplify the values of free speech and religious freedom with the hope that international students will return home inspired to improve protections for these most basic human rights. American universities should not teach international students that free speech and religious freedom are mere ideals to which only lip service is due.

Eventually, Cal State retreated from its position by claiming, in an ambiguously worded letter, that religious groups would be allowed, in certain circumstances, to question leadership candidates regarding their religious beliefs. But the official policy continues to prohibit religious leadership requirements, and the religious groups remain on campus solely at the discretion of university administrators. Furthermore, in the past two years, some religious groups have again experienced problems obtaining recognition on individual campuses within the Cal State system.

b. Texas A&M University: How much should religious students be required to pay to choose their leaders?

Dr. Ra'sheedah Richardson credits participation in the religious student group, ReJoyce in Jesus Campus Fellowship (RJCF) with "encourag[ing] me to pursue academic excellence and to develop character traits like integrity, wisdom, composure and faithfulness that have been essential for a successful professional career." She participated in RJCF during her undergraduate and graduate years at Texas A&M ("TAMU"). In 2011, university administrators placed pressure on RJCF to remove its religious requirements for its leaders and voting members if it wished to remain a recognized student organization. Dr. Richardson explained:

Without student group recognition, we would not have been able to continue to meet freely on campus to encourage each other in our growth both spiritually and academically. According to TAMU policy, non-recognized student groups are required to pay \$100 per instance for each room reservation. It would have cost our group up to \$7,000 per academic year to continue to operate on campus. This is far too great a hardship for a small student group like RJCF to maintain.¹³⁸

Only after legal counsel intervened on RJCF's behalf did the university allow it to retain recognition while maintaining its religious requirements.

c. The Ohio State University: Should religious students' free exercise of religion and free speech be put to a vote by other students?

¹³⁸ Letter from Dr. Ra'sheedah Richardson to Chairman Trent Franks (June 10, 2015) (Supp. Hrg. Rec. at 58-59) and is Attachment Y.

2003-2004: In 2003-2004, a law student demanded that the OSU Moritz College of Law derecognize the CLS student chapter because it had religious requirements for its leaders and voting members. Mr. Michael Berry, who was the student president of the CLS chapter, described the harm to CLS that derecognition would have caused:

The consequences of such action would have been devastating. Without the ability to meet on campus, to receive financial assistance, or to even exist as a recognized organization, I am certain CLS would have ceased to continue its ministry at The Ohio State University. Those of us for whom CLS provided a meaningful and important vehicle through which we could use our legal education for the greater good would be relegated to second-class citizens simply because of our sincerely held beliefs.¹³⁹

Mr. Berry then recounted the personal consequences that he experienced as a result of belonging to a religious organization that required its leaders to be religious. He found himself the subject of a hostile education environment in which he was “often the subject of name-calling, gossip, and rumor-mongering,” was “verbally admonished” by classmates for his religious beliefs, and was “warned by upperclassmen not to take courses by certain professors who were not likely to give [him] fair evaluations.”

Only after CLS sought protection in court did the university revise its policy to state explicitly that religious student organizations could have religious leadership and membership requirements. As a result, CLS met without incident from 2004 to 2010.

2010-2012: But in 2010, the university asked the student government whether the university should discard its policy and no longer allow religious student groups to have religious leadership and membership requirements. Sadly, the student government urged the university to drop its protection for religious student groups, declaring “that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those organizations.”

In 2011, the Ohio Legislature prohibited public institutions of higher education from denying recognition to religious student organizations because of their religious leadership and membership requirements.¹⁴⁰

d. Vanderbilt University: Should a public university punish a religious student group because it expects the students who lead its Bible studies, prayer, and worship to “hold certain beliefs”?

34 C.F.R. §§ 75.500(d) and 76.500(d) apply to public institutions of higher education, not private, and therefore would not apply to Vanderbilt University. However, Vanderbilt’s

¹³⁹ Letter from Michael Berry to Chairman Trent Franks (June 5, 2015) (Supp. Hrg. Rec. at 62-64) and is Attachment Z.

¹⁴⁰ Ohio Rev. Code § 3345.023.

exclusion of 14 religious groups because of their religious leadership requirements is an apt illustration of the mindset that religious students face on many public university campuses.

In August 2011, Vanderbilt told the CLS student chapter that it was “religious discrimination” to state in its constitution that it expected its leaders to lead its Bible study, prayer, and worship. According to Vanderbilt, this was forbidden because it indicated that CLS expected its leaders to “hold certain beliefs.” Nor could CLS require that its leaders agree with its basic religious beliefs.¹⁴¹

Even more jaw-dropping, Vanderbilt told a small student group, which met for worship one night a week, that it must delete 5 words from its constitution’s leadership requirements in order to remain on campus: “personal commitment to Jesus Christ.”¹⁴² The group had worked with the university administrators to revise its constitution so that it could remain on campus and given in to all the administrators’ requests. But after the final demand was made to delete “personal commitment to Jesus Christ,” the group left campus rather than recant.

1) Vanderbilt applied a double standard favoring fraternities and sororities and disfavoring religious student groups.

Justin Gunter, student president of the CLS chapter at Vanderbilt in the 2011-2012 academic year, described the university’s treatment of the 14 religious groups:

In spring 2012, our chapter, along with thirteen other religious groups, were removed from Vanderbilt. Through this process, Vanderbilt once again redefined its policy as an “all-comers” policy – a policy purporting to require that any student group must allow anyone to be a leader regardless of whether they support (or are even hostile to) the group’s basic beliefs. Despite this sweeping policy, Vanderbilt only removed Christian student groups. In fact, Vanderbilt specifically exempted groups that discriminate on the basis of sex from its policy.

As Mr. Gunter observed, Vanderbilt’s policy “contradict[s] the American ideal of a pluralistic society – where individuals and associations may express their opinions and beliefs freely without being censored by a university administrator or government executive.”¹⁴³

2) “The Wrong Kind of Christian.”

Tish Harrison Warren is now a New York Times columnist. But in 2011-2012, she served as a staff member with InterVarsity Christian Fellowship at Vanderbilt and was a self-described “progressive evangelical.” Warren wrote a powerful essay to convey her disconcerting

¹⁴¹ The Vanderbilt emails are Attachment 2023-AA at 1.

¹⁴² The email is Attachment 2023-AA at 2.

¹⁴³ Letter from Mr. Justin Gunter to Chairman Trent Franks (Supp. Hrg. Rec. at 60-61). The letter is Attachment BB.

realization that “the student organization I worked for at Vanderbilt University got kicked off campus for being the wrong kind of Christians.” She explained:

In effect, the [university’s] new policy privileged certain belief groups and forbade all others. Religious organizations were welcome as long as they were malleable: as long as their leaders didn’t need to profess anything in particular; as long as they could be governed by sheer democracy and adjust to popular mores or trends; as long as they didn’t prioritize theological stability. Creedal statements were allowed, but as an accessory, a historic document, or a suggested guideline. They could not have binding authority to shape or govern the teaching and practices of a campus religious community.¹⁴⁴

In an attempt to find a compromise, Ms. Warren met several times with university administrators but to no avail, as she records:

The word *discrimination* began to be used—a lot—specifically in regard to creedal requirements. It was lobbed like a grenade to end all argument. Administrators compared Christian students to 1960s segregationists. I once mustered courage to ask them if they truly thought it was fair to equate racial prejudice with asking Bible study leaders to affirm the Resurrection. The vice chancellor replied, “Creedal discrimination is still discrimination.”

It didn’t matter to them if we were politically or racially diverse, if we cared about the environment or built Habitat homes. It didn’t matter if our students were top in their fields and some of the kindest, most thoughtful, most compassionate leaders on campus. There was a line in the sand, and we fell on the wrong side of it.¹⁴⁵

e. Temple University School of Medicine: Should a public university punish medical students for requiring their religious group’s leaders to agree “to live according to biblical morality”?

Ryan Finigan, a Second Lieutenant in the United States Air Force, was a third-year medical student and a leader in the Christian Medical and Dental Association (“CMDA”) chapter. The CMDA student chapter required its leaders to agree to live according to biblical morality. University administrators informed the group that it “would very likely have its official status

¹⁴⁴ Tish Harrison Warren, *The Wrong Kind of Christian*, Christianity Today 54, Vol. 58, No. 7 (Sept. 2014), <http://www.christianitytoday.com/ct/2014/september/wrong-kind-of-christian-vanderbilt-university.html?start=2>. The article is Attachment 2023-CC.

¹⁴⁵ *Id.*

revoked because” CMDA was “discriminating in [its] selection of leader by having [its] leader contract to lead a life according to biblical morality.” Mr. Finigan explained that religious student groups should be protected “not only because we should be allowed to practice our faith on our school campus, but also because the CMDA has played a critical role in the training of American physicians.”¹⁴⁶

f. Boise State University: Should a student government be permitted to punish a Christian student group because it requires its leaders to “exhibit a lifestyle that is worthy of a Christian?”

2008-2009: In 2008, the Boise State University (“BSU”) student government derecognized several religious groups because they had religious leadership requirements. For example, the student government informed one religious group that its requirement that its leaders “be in good moral standing, exhibiting a lifestyle that is worthy of a Christian as outlined in the Bible” violated student government policy. The group’s constitution cited Matthew 18:15-17 (where Jesus instructs His disciples on internal dispute resolution), which the student government said also violated its policy.¹⁴⁷

The student president of Cornerstone Ministry at BSU at the time, Mr. Justin Ranger, explained:

Cornerstone Ministry could not withhold the statement of belief from our constitution since it is what determines our identity and the purpose of the club. Although, we were assured that it was unlikely that anyone who did not agree with our beliefs or the purposes of the club would attempt to run for an office in our club, it was a matter of honesty, integrity, and transparency to be upfront with the criteria by which officers would be considered. Since BSU would not accept our criteria for officers before the settlement agreement, we were forced to be de-recognized.¹⁴⁸

Mr. Jesse Barnum attempted to secure recognition for another religious student group, the Veritas Forum, which would invite speakers to “explore life’s hardest questions . . . like what is morality, and why is there suffering and pain in our lives and in the world” from a Christian perspective at events open to the entire campus. Despite the fact that the Veritas Forum’s first event drew 240 students and faculty, the university denied it recognition because it required its leaders to agree with its religious beliefs. He wrote:

Religious student organizations have a vital role in university life. Not only do they support those students who are part of a particular religion, they increase the cross-section of ideas present on

¹⁴⁶ Letter from Mr. Ryan Finigan to Chairman Trent Franks (Supp. Hrg. Rec. 65) and is Attachment DD.

¹⁴⁷ The emails are Attachment 2023-EE.

¹⁴⁸ Letter from Mr. Justin Ranger to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 70-71) and is Attachment FF.

campus. Without the presence and articulate expression of these ideas on campus, the quality and success of a university education diminishes.¹⁴⁹

2012-2013: In order to settle a court challenge brought by several religious student groups, the university agreed to allow religious organizations to maintain religious criteria for leaders. But in 2012, the university informed the religious organizations that it intended to adopt a new policy, which would have the effect of excluding religious organizations with religious leadership requirements from campus. In response, the Idaho Legislature enacted legislation to protect religious student groups at public universities.¹⁵⁰

g. University of South Carolina School of Law: Should public universities deny religious student groups access to student activity fee funding like nonreligious groups have?

In 2008, the CLS student chapter was denied access to student activity fee funding that was available to other student groups solely because it was religious. As the CLS student president at the time, Mr. Robert S. “Trey” Ingram III, explained to the Subcommittee, after the group challenged the policy in court, the university adopted a new policy that allowed all student groups to be funded on the same terms.¹⁵¹ Of course, this is the result required by the Supreme Court’s decision in *Rosenberger*.¹⁵²

2. Additional problems continue to surface on campuses nationwide.

After these letters were submitted in 2015, the problem continued to repeat itself on other campuses and provided further evidence of the need of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). Also accompanying these comments is a list of scores of situations. The list is representative, not comprehensive.¹⁵³

a. Indiana University

In August 2015, the university announced that it intended to change its policy so that student groups could no longer require their leaders to agree with the groups’ beliefs. As at other campuses, this proposed change would deny recognition to religious groups, many of which had met for decades at IU while requiring their leaders to agree with their religious beliefs. Indiana University—Bloomington recognizes approximately 800 student organizations.¹⁵⁴

¹⁴⁹ Letter from Mr. Jesse Barnum to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 72-73) and is Attachment GG.

¹⁵⁰ Idaho Code § 33-107D.

¹⁵¹ Letter from Mr. Robert S. “Trey” Ingram III to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 74-75) and Attachment HH.

¹⁵² 515 U.S. 819 (1995).

¹⁵³ See Attachment 2023-A at note 24.

¹⁵⁴ Indiana University Bloomington, Hoosier Life, Student Organizations, <https://beinvolved.indiana.edu/organizations>.

**1) While fraternities and sororities are exempted,
religious groups are not.**

In an FAQ explaining its new policy, the university forthrightly admitted that “a chapter of a religious student alliance would not be permitted to forbid someone of a different religion, or someone non-religious, from running for a leadership position within the SGSO.” (“SGSO,” the acronym for “self-governed student organization,” is the university’s term for recognized student organizations.) The FAQ asked, “May SGSOs require students seeking to serve in leadership positions to be members of a particular religion?” The FAQ answered, “No.” But, predictably, the FAQ stated that fraternities and sororities would be allowed to continue to discriminate on the basis of sex in their selection of members and leaders.¹⁵⁵

**2) Christian, Jewish, and Muslim groups protest the
policy change.**

Nineteen religious student groups, including Catholic, Muslim, Jewish, and Christian student groups, sent a letter to the administration expressing their concerns about the proposed new policy and its impact on religious groups’ ability to choose their leaders according to their religious beliefs.¹⁵⁶

The student president of the CLS chapter at IU-Bloomington wrote about the unfairness of the burden that fell on religious, but not other, student groups: “The IU policy was what is sometimes referred to as a ‘laundry list policy,’ which prohibits discrimination only based on certain factors. In other words, the vegan group could turn away those who enjoyed hunting animals and the Republican students could turn away those who supported Democratic candidates, but the Christian group could not restrict its leadership to only those who shared their faith.”¹⁵⁷

She also described the toll that standing up to the university took on students: “Around the middle of the school year, I started to feel the toll of the amount of time I was devoting to this project in addition to my regular class load, law journal, moot court, and on-campus interviews for summer clerkships. It seemed that no matter how hard we worked, the university remained firm in its determination to enact the policy.”

After almost the entire academic year had passed with persistent communication from students, alumni, donors, and political leaders, the university announced that it would not revise its policy. As a result, religious student groups have continued to be recognized despite having religious leadership requirements; however, nothing prevents the university from announcing a revised policy at any time.

¹⁵⁵ Indiana University, “Frequently Asked Questions about SGSOs and Indiana University’s Non-Discrimination Policy, is Attachment 2023-II.

¹⁵⁶ The letter is Attachment 2023-L.

¹⁵⁷ Julia C. Payne, Answering God’s Call for Christian Leadership, *The Christian Lawyer*, Fall 2018, 25-26, https://christianlegalsociety.org/sites/default/files/2018-10/TCL%20Fall%202018_Updated_Web2.pdf.

If they had been in effect at the time, 34 C.F.R. § 75.500(d) and § 76.500(d) would have directly benefited the religious student groups and the college administrators. Administrators would have immediately known that they were required to respect religious student groups and provide them with the same benefits available to other student groups.

b. University of Iowa: The epitome of how 34 C.F.R. § 75.500(d) and § 76.500(d) benefit both religious student groups and college administrators.

CLS has had a chapter at the University of Iowa College of Law since at least 1991. Throughout that time, the CLS constitution has required that its leaders agree with its religious beliefs. On at least four occasions since 1999, often under pressure from the student government, the university has threatened to deny recognition if CLS did not remove its leadership requirement from its constitution. In 2005, however, the university sent CLS a letter confirming that its religious leadership standards did not violate university policies.¹⁵⁸

But in 2018, the university derecognized two religious groups because they required their leaders to agree with their religious beliefs. The groups turned to federal court. During the litigation, the university produced a court document in which it highlighted 32 religious student groups, including CLS, that it intended to derecognize because of their religious leadership standards.¹⁵⁹ The university listed groups from the Jewish, Muslim, Sikh, Baha'i and Christian faiths.

In 2019, the federal district court ruled that the university had unconstitutionally excluded the religious groups based on their religious viewpoints, which violated the Free Speech Clause of the First Amendment, as well as the Free Exercise Clause.¹⁶⁰

Both cases were appealed to the Eighth Circuit, which affirmed that the university had engaged in unconstitutional viewpoint discrimination. The Eighth Circuit further held that the university officials had forfeited their qualified immunity and were, therefore, personally liable for money damages.¹⁶¹ Eventually, the district court cumulatively awarded over \$1.9 million in attorney's fees to the student groups.¹⁶²

While the case was on appeal, the Iowa Legislature enacted Iowa Code § 261H.3(3), to protect religious student groups on public university campuses and to protect taxpayer funds

¹⁵⁸ CLS filed an *amicus* brief in the district court, describing the problems it experienced at the University of Iowa over the past 20 years. Proposed Brief of Proposed Amicus Curiae Christian Legal Society in Support of Plaintiff's Motion for Summary Judgment, *Business Leaders in Christ, et al. v. University of Iowa, et al.*, 3:17-cv-00080 (S.D. Iowa Nov. 26, 2018), ECF No. 93.

¹⁵⁹ The university's document is Attachment 2023-B. The 32 groups are listed in note 29.

¹⁶⁰ *Business Leaders in Christ v. University of Iowa*, 360 F. Supp.3d 885 (S.D. Iowa 2019); *InterVarsity Christian Fellowship v. University of Iowa*, 408 F. Supp.3d 960 (S.D. Iowa 2019).

¹⁶¹ See *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021) holding that university officials forfeited qualified immunity by derecognizing a religious student group because of its religious leadership requirements); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same).

¹⁶² See note 3 *supra*.

from being wasted in the litigation that occurs when college administrators move to exclude religious student groups from campus.

The Eighth Circuit's holdings that college administrators may be personally liable for damages when a public college revokes a religious student group's recognition demonstrates that 34 C.F.R. § 75.500(d) and § 76.500(d) are necessary to protect college administrators as well as the religious student groups. The regulations provide college administrators with much needed clarity as to the fact that they cannot exclude religious student groups because they require their leaders to be religious.

c. Wayne State University

InterVarsity Christian Fellowship serves over 1000 student-led chapters on approximately 700 campuses. The majority of all InterVarsity students are non-white or international students. InterVarsity welcomes all students to participate in its activities and to join its groups as members. InterVarsity has served students at Wayne State University in Detroit, Michigan, since the early 1940s. Wayne State recognizes over 500 student groups.¹⁶³

In October 2017, Wayne State derecognized the InterVarsity chapter and cancelled its room reservations because it deemed InterVarsity's leadership requirements to be "discriminatory." InterVarsity requires its leaders to affirm a statement of core religious beliefs. After a lengthy attempt to get the University to reconsider its decision, InterVarsity sought court protection.¹⁶⁴

Four years later, the federal district court ruled that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements.¹⁶⁵ 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."¹⁶⁶

If they had been in effect at the time, 34 C.F.R. § 75.500(d) and § 76.500(d) would have directly benefited the religious student groups and the college administrators. Administrators would have immediately known that they were required to respect religious student groups and provide them with the same benefits available to other student groups.

But four years equals the entirety of many students' college careers, which is why 34 C.F.R. § 75.500(d) and § 76.500(d) are better than litigation for protecting students' religious expression

¹⁶³ Dean of Student Office, 2022-2023 Registered Student Organizations, <https://getinvolved.wayne.edu/organizations?branches=195268> (last visited Mar. 23, 2023).

¹⁶⁴ Ingrid Jacques, *WSU Errs in Ousting Christian Group*, The Detroit News, Mar. 12, 2018, <https://www.detroitnews.com/story/opinion/columnists/ingrid-jacques/2018/03/12/editors-note-wsu-errs-ousting-christian-group/32875005/>. The article is Attachment JJ.

¹⁶⁵ *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021).

¹⁶⁶ *Id.* at 835.

on college campuses. The InterVarsity students at Wayne State operated under a cloud the entire time. For students, it is often true that justice delayed is justice denied.

d. Southeast Missouri State University

In the 2015-2016 academic year, the student government denied a religious student group recognition because it required its leaders to agree with its religious beliefs. The group worked hard to persuade the administration and the student government to adopt a policy that would respect religious groups' ability to choose their leaders. But in April 2016, the student government voted *against* adopting such a policy. Several more religious groups then sent a letter to the university stating that they would not be able to remain on campus if they could not require their leaders to agree with their religious beliefs. In October 2016, the university and student government agreed that religious student groups could keep their religious requirements for leaders.

If they had been in effect at the time, 34 C.F.R. § 75.500(d) and § 76.500(d) would have directly benefited the religious student groups and the college administrators. Administrators would have immediately known that they were required to respect religious student groups and provide them with the same benefits available to other student groups.

e. University of West Georgia

In 2014, a Christian women's religious student group sought recognition as an official student group at the University of West Georgia. Legal assistance was required for it to gain recognition because university administrators insisted that it submit "original documentation for [Title IX] exemption directly from the U.S. Department of Education." The university continued to insist on such a document even after regional Department of Education officials told the university that it never provides such documents. Eventually, the group was given recognition.

In August 2019, university officials revoked the group's recognition. After initially being approved for the 2019-2020 academic year, the students were told that their group would not be recognized because it consisted of Christian women. In discussions, an administrator indicated that she was "unsure why [the group] would limit itself to just Christians" even though religious belief is the core around which the group was formed. Once again, legal assistance was required to regain recognition. These constant legal battles distract the chapter and its members from doing the spiritual and charitable work that is their purpose in gathering.

If they had been in effect at the time, 34 C.F.R. § 75.500(d) and § 76.500(d) would have directly benefited the religious student groups and the college administrators. Administrators would have immediately known that they were required to respect religious student groups and provide them with the same benefits available to other student groups.

f. University of North Texas Dallas College of Law

The CLS student chapter at the University of North Texas Dallas College of Law sought recognition in Fall 2016. The Student Bar Association claimed that the CLS chapter's requirement

that its leaders agree with its religious beliefs violated the SBA's policy. The CLS officers spent much of the 2016-2017 academic year in discussions with the SBA and the law school administration as to whether it would be recognized, eventually gaining recognition in the second semester.

If they had been in effect at the time, 34 C.F.R. § 75.500(d) and § 76.500(d) would have directly benefited the religious student groups and the college administrators. Administrators would have immediately known that they were required to respect religious student groups and provide them with the same benefits available to other student groups.

3. The Department's claim that enforcing 34 C.F.R. §§ 75.500 (d) and 76.500 (d) is too burdensome is so flimsy as to render the proposed rescission of the regulations to be arbitrary and capricious.

The Department of Education's Office of Civil Rights budget request for fiscal year 2022 was for an annual budget of approximately \$ 130 million dollars and over 500 full-time employees.¹⁶⁷ The request estimated that in 2022 the Office would receive 10,500 complaints and resolve 13,500 complaints.¹⁶⁸

The Department itself admits it "has not received any complaints regarding alleged violations of" the regulations protecting religious student groups.¹⁶⁹ But that is because 34 C.F.R. §§ 75.500 (d) and 76.500 (d) have proven to be largely self-enforcing. During problems on several campuses in 2020 and 2021, college administrators have decided not to exclude a religious student organization when they are informed of the existence of 34 C.F.R. §§ 75.500 (d) and 76.500 (d). While there certainly may be a handful of investigations in future years, the evidence is that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) pre-empt problems before a complaint needs to be lodged with the Department. This further supports the need for 34 C.F.R. §§ 75.500 (d) and 76.500 (d) and that their rescission would be arbitrary and capricious.

IV. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) Have Meaningfully Increased Protections for College Administrators.

A. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) protect college administrators from being held personally liable for damages in litigation.

The benefits that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide college administrators have only become more obvious in the two years they have been in effect. Indeed, the failure of some college administrators' and organizations representing institutions of higher education to

¹⁶⁷ Department of Education, Office for Civil Rights, Fiscal Year 2022 Budget Request, at BB-1, BB-13, <https://www2.ed.gov/about/overview/budget/budget22/justifications/bb-ocr.pdf> (last visited Mar. 24, 2023).

¹⁶⁸ *Id.* at BB-21-22.

¹⁶⁹ 88 Fed. Reg. 10863.

perceive the regulations' benefits for their institutions and employees is disheartening and seems to indicate a complete disregard for, if not hostility to, the religious students on their campuses.

After 34 C.F.R. §§ 75.500 (d) and 76.500 (d) went into effect, three federal court decisions have held that college administrators 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.¹⁷⁰ 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.¹⁷¹ Similarly, in the *BLinC* case, the Eighth Circuit held that three university officials lost their qualified immunity on the religious student group's free-speech and expressive-association claims.¹⁷² 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.¹⁷³ 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."¹⁷⁴

B. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide college administrators with clarity by relieving them of the need to determine which of various policies apply to their treatment of religious student groups.

As this comment has detailed, for fifty years, religious student groups have encountered challenges to their meeting on campuses. As this letter has shown, often the challenges arise because college administrators or their staff make mistakes in interpreting their universities' policies. The straightforward language of 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provides clarity that would prevent such mistakes.

Sometimes, staff are not aware that they have a policy that permits religious student groups to have religious leadership requirements and deny recognition to a religious student group, as in

¹⁷⁰ *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ ("BLinC") v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021).

¹⁷¹ *InterVarsity*, 5 F.4th at 861.

¹⁷² *BLinC*, 991 F.3d at 972.

¹⁷³ *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021).

¹⁷⁴ *Id.* at 835.

the situation at Arizona State University. The University of Minnesota has also at times in the past forgotten that it has a policy that protects religious student groups.¹⁷⁵

Other times, a staff member decides to disregard those policies, or re-interpret existing policies, and refuse recognition to religious student groups that have been meeting peaceably at the university for decades. The University of Iowa cases are excellent examples of a nondiscrimination policy abruptly being re-interpreted to exclude 32 religious groups on campus.¹⁷⁶ Many had been recognized student groups with religious leadership requirements for decades. CLS had been a recognized student group with religious leadership standards since the 1980s, only to face derecognition, along with 31 other religious student groups, in 2018 because the university's longstanding nondiscrimination policy was re-interpreted. InterVarsity had been a recognized student group with religious leadership requirements at Wayne State University since the 1940s. Then in 2017, college administrators said it must lose its recognition because of its religious leadership requirements. Cru had been a recognized student group with a religious leadership requirement on most Cal State campuses since the 1950s. Then in 2014, Cal State re-interpreted its policy with the aim of derecognizing all religious student groups that require their leaders to agree with their religious beliefs.

And sometimes, university administrators decide to change their policies to exclude religious student groups from campus. Indiana University administrators considered this for an entire academic year in 2015-2016, but withdrew the proposed change when religious student groups of all faiths objected and worked against the change for most of the academic year.¹⁷⁷

In many situations, a student government decides to interpret the university's policy in a novel way without input from the administration. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide administrators with an easy explanation to provide to their student government as to why religious student groups must be treated respectfully and provided with the same benefits available to other student groups.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide college administrators with a clear rule that saves them from the financial consequences of excluding religious student groups from campus and also relieves them of any need to worry about what policies to apply. To be clear, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) does not dictate what policy a college must have. It only requires that whatever policy a college has must be applied so that religious student groups receive the same benefits available to other student groups. Not having 34 C.F.R. §§ 75.500 (d) and 76.500 (d) leads to confusion, which is why the Department's proposed rescission would be arbitrary and capricious.

¹⁷⁵ The University of Minnesota policy provides: "Religious student groups may require their voting members and officers to adhere to the organization's statement of faith and its rules of conduct." University of Minnesota, Student Unions and Activities, Student Engagement Activities, Student Groups, Policies, "Compliance," <https://sua.umn.edu/engage/student-groups/student-group-policies> (last visited Mar. 23, 2023).

¹⁷⁶ The 32 groups are listed in Attachment B and note 29.

¹⁷⁷ See Attachment L.

C. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) clarify some administrators’ confusion regarding the *Martinez* decision and are entirely consistent with it.

34 C.F.R. §§ 75.500(d) and 76.500(d) are completely consistent with the decision in *Christian Legal Society v. Martinez*¹⁷⁸ and clarify the confusion that many college administrators seem to have as to its scope. Often misunderstood and mischaracterized, *Martinez* was an extremely limited and narrow ruling that addressed only one specific type of policy, an “all-comers” policy, which essentially is nonexistent in the real world.

Professor Michael Paulsen is lead co-author of a major law school textbook on constitutional law,¹⁷⁹ as well as more than ninety published scholarly articles. He has characterized 34 C.F.R. §§ 75.500(d) and 76.500(d) as “a valuable clarification of religious and student group freedom of speech and freedom of expressive associational liberty under the First Amendment to the U.S. Constitution and, further, seeks faithfully to implement these constitutional principles in the context of certain federal grant programs.”¹⁸⁰

In his 2020 comment letter in support of the regulations, Professor Paulsen noted that the regulations “build[] upon earlier landmark Supreme Court decisions protecting First Amendment liberties,” including *Widmar v. Vincent*,¹⁸¹ *Rosenberger v. Rector and Visitors of University of Virginia*,¹⁸² and *Trinity Lutheran Church of Columbia, Inc. v. Comer*.¹⁸³

Professor Paulsen explained that 34 C.F.R. §§ 75.500(d) and 76.500(d) “in no way contradicts [*Martinez*]; it simply provides protection, by a proper federal rule, for rights that *Christian Legal Society v. Martinez* did not deem required as a constitutional matter.” And he observed that *Martinez* was decided before *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*,¹⁸⁴ which upheld a religious organization’s right to determine its leaders even when the leader claimed her rights under a federal nondiscrimination had been violated.

¹⁷⁸ 561 U.S. 661 (2010).

¹⁷⁹ Michael Stokes Paulsen, Michael W. McConnell, Samuel L. Bray, & William Baude, *The Constitution of the United States* (5th ed. 2023).

¹⁸⁰ Professor Michael Stokes Paulsen Comment, Docket ID ED-2019-OPE-0080 (Feb. 18, 2020). The letter is Attachment KK.

¹⁸¹ 454 U.S. 263 (1981). The Court held that religious student groups had free speech and expressive association rights to be a recognized student organization on public university campus (University of Missouri), and the Establishment Clause was not violated by recognition.

¹⁸² 515 U.S. 819 (1995). The Court held that recognized religious student groups had a free speech right to access student activity fees otherwise available to other student organizations on public university campus (University of Virginia), and the Establishment Clause was not violated by religious student group accessing several thousand dollars in student activity fees funding.

¹⁸³ 137 S. Ct. 1022 (2017). The Court ruled, yet again, that a religious organization cannot be denied access to a generally available benefit program because of its religious nature.

¹⁸⁴ 565 U.S. 171 (2012).

Professor Paulsen concluded:

Because *Christian Legal Society* nonetheless continues to create confusion for college administrators, the proposed rule is helpful to accomplish the goal of fully protecting campus student religious groups from exclusion or discrimination attributable to such a group's doctrinal views, affiliations, self-understanding, or standards of conduct for its members or leaders.¹⁸⁵

Of course, in *Hosanna-Tabor*, the unanimous Court declared:

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. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.¹⁸⁶

In their concurrence, Justices Alito and Kagan agreed that “[r]eligious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith.”¹⁸⁷

Many college administrators mistakenly believe that *Martinez* held that a public law school could use a *nondiscrimination* policy to deny recognition to a religious student group because it required its leaders to agree with its religious beliefs. Not so. Indeed, all nine justices in the 5-4 decision agreed that the majority opinion had not ruled on nondiscrimination policies.¹⁸⁸ Instead, the Court decided only that a law school had the *discretion*, but was not *required*, to apply an *all-comers policy* to *all* student groups on its campus. The Court further ruled that only if a public college applied the all-comers policy to all student groups could it apply the policy to religious student groups.¹⁸⁹

34 C.F.R. §§ 75.500(d) and 76.500(d) are completely consistent with the *Martinez* decision. Nothing in the decision prohibits the federal government from conditioning federal funds on a public college agreeing not to enforce any policy that results in the denial to religious groups of benefits that are otherwise available to other student groups. That is just basic fairness. The regulations protect public college administrators by providing clear guidance regarding the fair way to treat religious student groups.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 196.

¹⁸⁷ *Id.* at 200-201 (Alito, J., concurring, joined by Kagan, J.).

¹⁸⁸ 561 U.S. at 678; *id.* at 698 (Stevens, J., concurring); *id.* at 704 (Kennedy, J., concurring); *id.* at 707 (Alito, J., dissenting).

¹⁸⁹ 561 U.S. at 694, 697-98; *id.* at 703-704 (Kennedy, J., concurring).

V. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) Directly Benefit Public Institutions of Higher Education.

A. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) respect and reinforce separation of church and state.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) codify two landmark Supreme Court decisions, *Widmar* and *Rosenberger*. By protecting religious student organizations’ right to be a recognized student group, to meet on public college campuses, and to be eligible for activity fee funding that is otherwise available to other student groups, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) codify the free speech and expressive association holdings of those decisions.

But 34 C.F.R. §§ 75.500 (d) and 76.500 (d) also reinforce the holding in *Widmar* and *Rosenberger* that the Establishment Clause is not violated when religious student groups are officially recognized, meet on campus, and receive student activity fee funding. The regulations heed the Court’s warnings in *Widmar* and *Rosenberger* that there is a greater risk of violating the Establishment Clause when college administrators interfere with religious groups than when they leave the groups alone to function according to their core religious beliefs.

It should be common ground with even the most ardent proponents of strict separation of church and state that government officials, including college administrators, should not penalize a religious group because of its beliefs, practices, speech, or mission. Nor should government officials be interfering in religious groups’ internal governance, particularly their choice of their leaders. “According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.”¹⁹⁰

B. Religious student groups promote students’ academic success, as well as students’ emotional and mental well-being.

Colleges are eager to find ways to help their students recover their emotional and mental well-being after the pandemic’s severe impact. Excluding religious student groups from campus does not advance students’ mental or emotional health or academic success.

Briefly, as to students’ emotional and mental well-being, “extensive research focused on student involvement in college suggest[s] that quality involvement leads to higher levels of student learning and development.”¹⁹¹ One study concluded that “[r]eligious participation on campus is itself a form of social integration. Faith communities are instrumental in the formation

¹⁹⁰ *Hosanna-Tabor*, 565 U.S. at 188-89.

¹⁹¹ Cindy A. Kilgo et. Al., *The Estimated Effects of College Student Involvement on Psychological Well-Being*, 57 J. of Coll. Student Dev. 1043 (Nov. 2016), <https://muse.jhu.edu/article/638565>.

of friendships and intimacy with other people, and these supportive networks, in turn, provide a wide range of psychological and spiritual benefits.”¹⁹²

Recent research also has shown that for many students, religious involvement improves their academic performance. Stanford researchers have found that “good academic performance is also driven by habits learned through religious adherence.”¹⁹³ Professor Ilana Horwitz expands on her findings in her 2022 book, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*.¹⁹⁴ Additionally, studies show that involvement in religious organizations benefits first generation college students.¹⁹⁵

34 C.F.R. §§ 75.500 (d) and 76.500 (d) are needed even more post-pandemic than when they were first adopted. To ignore their benefit to student well-being and instead rescind 34 C.F.R. §§ 75.500 (d) and 76.500 (d) is a giant step backward and arbitrary and capricious.

C. The exclusion of religious student groups impoverishes college campuses by decreasing their diversity of ideas, values, and viewpoints.

It is self-evident that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) contribute to the diversity of college campuses, which is always recognized as a benefit both to the student body and the institution itself. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) automatically increase campus diversity, which is something colleges work hard to cultivate.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) allow religious student groups to thrive on public college campuses. In doing so, the regulations increase the likelihood that students will not only be able to explore their own spiritual ideas and values, but also will be exposed to students of other faiths. Such exposure grows students in new ways and prepares them to work with persons of other cultures and faiths.¹⁹⁶ According to the authors of one study, “colleges and universities have long made concerted efforts to advance diversity in the areas of race, gender, and sexual orientation; however, religion has been continuously de-prioritized as an aspect of diversity work

¹⁹² Alyssa N. Bryant, *The Effects of Involvement in Campus religious Communities on College Student Adjustment and Development*, 8 J. of College & Character 1 (2007), <https://www.tandfonline.com/doi/abs/10.2202/1940-1639.1178>.

¹⁹³ Carrie Spector, *Religiously engaged adolescents demonstrate habits that help them get better grades, Stanford scholar finds*, Stanford Research Stories, Apr. 15, 2018, <https://ed.stanford.edu/news/religiously-engaged-adolescents-demonstrate-habits-help-them-get-better-grades-stanford-scholar>. Spector was reporting on findings by Professor Ilana Horwitz, who has since published her findings in her book, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*, Oxford University Press (2022).

¹⁹⁴ Ilana M. Horwitz, *God, Grades, and Graduation: Religion’s Surprising Impact on Academic Success*, Oxford University Press (2022).

¹⁹⁵ Erica Irlbeck et al., *First Generation College Students: Motivations and Support Systems*, 55 J. of Ag. Ed. 154 (2014), <https://files.eric.ed.gov/fulltext/EJ1122313.pdf>.

¹⁹⁶ See, e.g., Alyssa N. Rockenbach, Matthew J. Mayhew, Mary Ellen Giess, Shauna M. Morin, B. Ashley Staples, Benjamin P. Correia-Harker, & Associates, *IDEALS (Interfaith Diversity Experiences & Attitudes Longitudinal Survey): Bridging Religious Divides through Higher Education*, Interfaith Youth Core (2020), <https://www.interfaithamerica.org/research/bridging-religious-divides-through-higher-education/> (last visited March 22, 2023).

on most campuses.”¹⁹⁷ They recommend that colleges encourage the formation of religious student groups on campus.¹⁹⁸

34 C.F.R. §§ 75.500 (d) and 76.500 (d) are an important component to increasing diversity on campus. It is arbitrary and capricious for the Department to insist that colleges invest heavily in efforts to increase campus diversity while simultaneously rescinding regulations that increase intellectual, spiritual, and cultural diversity on campus.

D. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) directly benefit institutions of higher education by helping them avoid costly litigation.

As seen in Part III *supra*, 34 C.F.R. §§ 75.500 (d) and 76.500 (d) help colleges and their students avoid litigation. It would seem a self-evident proposition that it is good for colleges to avoid litigation where possible. Avoiding litigation is also good for college administrators (as discussed in Part IV *supra*), as well as taxpayers and all students—not just religious student groups.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) assist colleges in prudent risk management. By providing clear guidance in a legal area that has given rise to many lawsuits for decades, the regulations help colleges avoid costly litigation. And the economic costs alone of such litigation has been high for many universities. The University of Iowa paid \$1.9 million in attorney’s fees to the religious student group plaintiffs in two cases in 2021.¹⁹⁹ That figure does not include the cost to taxpayers of the University’s and state attorney general’s time and expenses in defending the lawsuits. Nor does it include the time that university administrators were distracted from performing their actual duties by the demands of litigation.

34 C.F.R. §§ 75.500 (d) and 76.500 (d) prevent costly litigation for college and universities, their taxpayers, as well as for students in the form of higher tuition bills. The failure of some college administrators and their advocacy groups to accept the gift that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) are to them is puzzling. But the Department should not let this lack of perception cloud the Department’s objective assessment of the many benefits 34 C.F.R. §§ 75.500 (d) and 76.500 (d) provide. Otherwise, the Department will act arbitrarily and capriciously if it rescinds 34 C.F.R. §§ 75.500 (d) and 76.500 (d).

VI. 34 C.F.R. §§ 75.500 (d) and 76.500 (d) Directly Benefit Other Students, including Other Student Organizations, at Public Institutions of Higher Education.

For the same reasons that 34 C.F.R. §§ 75.500 (d) and 76.500 (d) benefit colleges, they benefit the student bodies at public colleges and universities. Religious, cultural, and ideological diversity benefits the entire student body as well as the college. As discussed in Part V *supra*, religious student groups contribute overall to student well-being. Religious student groups in

¹⁹⁷ *Id.* at 5.

¹⁹⁸ *Id.* at 27.

¹⁹⁹ See note 3 *supra*.

particular seem to aid the academic success of many students, including first generation students. But there are other practical benefits to students.

A. Nonreligious student organizations benefit from 34 C.F.R. §§ 75.500 (d) and 76.500 (d) by disincentivizing the adoption of all-comers policies and increasing the likelihood that a student activity fees system will withstand constitutional challenge.

1. 34 C.F.R. §§ 75.500 (d) and 76.500 help protect student activity fees systems.

In *Board of Regents of the University of Wisconsin System v. Southworth*,²⁰⁰ the Supreme Court upheld the constitutionality of compelling public college students to pay activity fees. But there was an important constitutional caveat. The allocation of student activity fees must be viewpoint neutral—or the allocation system must cease. Specifically, the 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.”²⁰¹

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.*”²⁰²

The frequently heard argument that students are harmed when some portion of their mandatory student activity fees go to student groups with religious beliefs they don’t like is obviously completely contrary to the Court’s holding in *Southworth*. Only if student activity fees go to student groups with viewpoints with which some students disagree is a student activity fee system viewpoint neutral and, therefore, constitutional. This is particularly true where a majority of students disagree with the viewpoints of certain student groups, as the *Southworth* Court made clear.

If unpopular student groups do not have receive some portion of student activity fees, then the activity fee system is unconstitutional. Either the allocation system must become viewpoint neutral and fund unpopular student groups, or it must cease.

If one assumes that mandatory student activity fee systems are beneficial to colleges and their students, then it is in everyone’s best interest for the allocation of student activity fees to be inclusive of all student groups, regardless of the popularity of their viewpoints or beliefs. As a

²⁰⁰ 529 U.S. 217 (2000).

²⁰¹ *Id.* at 221.

²⁰² *Id.* at 235.

matter of constitutional principle, students and student governments do not have the right to pick and choose subjectively which viewpoints and beliefs are funded.

This is also true as a matter of fairness. All students pay the mandatory student activity fee, including the religious students, so all student groups should be given access to student activity fee funding, including the religious students' groups.

34 C.F.R. §§ 75.500 (d) and 76.500 protect these basic principles of constitutionality and fairness for all students and prevent student governments and colleges from jeopardizing their student activity fees systems by excluding religious student groups from access to them.

2. 34 C.F.R. §§ 75.500 (d) and 76.500 help protect other student groups from exclusion.

As seen most clearly in the remarkable document that the University of Iowa filed in federal district court,²⁰³ other student groups are at risk of exclusion when a university moves to exclude a religious student group because of its religious leadership requirements. At the district judge's request, the university highlighted the groups it would derecognize if it won a lawsuit brought by a religious group that it had derecognized. The list showed that 32 groups would be derecognized – all religious groups, including Muslim, Jewish, Sikh, Catholic, and Protestant groups.

In other words, religious student groups of all faiths are put at risk when a university proposes to exclude one religious student group. Many religious groups have religious leadership requirements that surface once college administrators realize that they have to exclude all religious groups with leadership requirements if they wish to exclude a particular religious group. Otherwise, the university will be in violation not only of free speech and free exercise of religion, but also the Establishment Clause.²⁰⁴

But nonreligious student groups also are at risk of exclusion because a university cannot selectively enforce any policy, including its nondiscrimination policy. A university cannot exempt fraternities and sororities from its nondiscrimination policy's prohibition on sex discrimination without exempting religious groups from its nondiscrimination policy's prohibition on religious discrimination.²⁰⁵ That would be the epitome of selective enforcement. The same is true of exceptions for single-sex organizations, including but not limited to single-sex a cappella groups and club sports teams.

²⁰³ See Attachment B *supra*.

²⁰⁴ See *Larson v. Valente*, 456 U.S. 228 (1982) (the Establishment Clause absolutely prohibits governmental preference among religions).

²⁰⁵ Title IX's exemption for fraternities and sororities acts only to exempt them from Title IX; it does not exempt them from any other state or local nondiscrimination policies, contrary to what many college administrators mistakenly believe.

Universities have learned that they cannot selectively enforce their nondiscrimination policies against religious student groups while exempting favored student organizations, such as Greek organizations.²⁰⁶

3. 34 C.F.R. §§ 75.500 (d) and 76.500 help protect other student groups from the implementation of an all-comers policy that would require a college to prohibit every student group from requiring its leaders or members to agree with the group's core beliefs.

University administrators often have a mistaken belief that an all-comers policy allows them to exclude disfavored religious groups while keeping the status quo as to other student groups. This is incorrect. All-comers policies are only constitutionally permissible if they are applied *uniformly* to *all* groups. To date, no university with hundreds of recognized student groups has successfully implemented an all-comers policy. For one reason, an all-comers policy cannot co-exist with a Greek system. Most colleges are unwilling to shut down fraternities and sororities in order to exclude religious student groups, once they understand that all-comers policies are only permissible if uniformly applied to *all* student groups.²⁰⁷

An *all-comers* policy is quite different from a *nondiscrimination* policy. An all-comers policy prohibits *any* and *all* student groups from having *any* belief-based requirements. That is, an all-comers policy requires a Muslim group to allow a Hindu individual to lead its worship, a Democratic group to allow a Republican to set its agenda, an environmental group to allow a climate denier to be its principal spokesperson, and so forth.

Even if a college has an all-comers policy, it is permitted to apply it to religious groups only if it also *applies* it to all groups, which never happens. The Court was clear that an all-comers policy both 1) had to exist and 2) had to be applied evenly to *all* student groups.²⁰⁸ It could not be applied just to religious groups, which is what happens, in reality, when a college claims to be applying an all-comers policy. In *Martinez* itself, the Court remanded the case for further proceedings on whether the all-comers policy in that case had actually been applied even-handedly. But the Ninth Circuit never ruled on that question because of a procedural issue. No one actually knows whether the all-comers policy in *Martinez* itself was ultimately permissible because the courts never determined whether it had been applied even-handedly.

The unfortunate fact is that, since *Martinez*, the threat of a college adopting an all-comers policy has been used to target religious student groups for exclusion from campus. As a realistic matter, national religious student organizations are unaware of any college that has a true all-comers policy evenhandedly applied to all student groups. This is obviously because an all-

²⁰⁶ See *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021) (holding that university officials unconstitutionally selectively enforced their nondiscrimination policies when they derecognized a religious student group because of its religious leadership requirements while exempting other student groups from the nondiscrimination policy); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021) (same); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F.Supp. 3d 785 (E.D. Mich. 2021) (same).

²⁰⁷ *Martinez*, 561 U.S. at 694, 697-98; *id.* at 703-704 (Kennedy, J., concurring).

²⁰⁸ *Id.*

comers policy means that a college would have to prohibit all sororities, both social and professional, from requiring their leaders and/or members to be female. Fraternities could not be male-only. Single-sex choral groups or club sports teams would be prohibited. An environmental group could not require its leaders to agree that climate change is occurring or is bad. An animal rights group could not require its leaders to denounce hunting or wearing fur. College Democrats could not require their leaders to agree with the Democratic Party's platform. A veterans' group could not require that its leaders be veterans, and a pacifist group could not require its leaders not have served in the military.

An all-comers policy is toxic for a healthy campus ecosystem for all student groups. And as an empirical fact, when a college has claimed to implement an all-comers policy, only religious groups have been targeted for exclusion.

B 34 C.F.R. §§ 75.500 (d) and 76.500 help ensure that international students learn what religious freedom looks like in a free society.

International students make up a significant portion of the student body on many college and university campuses. Many international students find a home on campus in the religious student groups, particularly the many religious groups whose specific mission is to welcome international students and help them acclimate to American life. Religious groups provide not only emotional support for these persons, who are far from home, but they also provide academic support for students who are unfamiliar with American approaches to education or who struggle to keep up with lectures and reading that are not in their first language.

Many international students, whether they are religious or nonreligious, are from countries where religious freedom is not respected by their government or their society. It is essential that these students observe religious freedom practiced robustly on public college campuses. If they observe government officials excluding religious groups from campus, they will take home the lesson that government officials can exclude religious groups from the public square.

For our colleges to be exporting this dangerous lesson is unacceptable. And it is an unacceptable to allow that lesson to infect American civil society. The genius of America's experiment in religious freedom is that it protects everyone's human right to live their lives in accordance with their deepest religious convictions—no matter how unfashionable or unpopular those convictions are. When we abandon religious freedom for all persons, including on public college campuses, then the freedom of speech and belief so vital to sustaining our political and religious freedoms will soon cease to exist.

34 C.F.R. §§ 75.500 (d) and 76.500 are integral to protecting religious speech and belief on college campuses. For the many reasons found throughout this letter, the Department's rescission of 34 C.F.R. §§ 75.500 (d) and 76.500 would be arbitrary and capricious. 34 C.F.R. §§ 75.500 (d) and 76.500 should be preserved.

Respectfully submitted,

David Nammo
Executive Director & CEO
Christian Legal Society

Laura Nammo
Interim Director
Center for Law & Religious Freedom
Christian Legal Society

Kim Colby
Of Counsel
Center for Law & Religious Freedom
Christian Legal Society

ATTACHMENT AA

----- Forwarded message -----

From: [redacted]

Date: Tue, Aug 9, 2011 at 10:40 PM

Subject: RE: Christian Legal Society status

To: [redacted]

Cc: [redacted]

Dear [redacted],

Thank you for submitting your new Constitution for the Christian Legal Society. In reviewing it, there are some parts of it that are in violation of Vanderbilt University's policies regarding student organizations; they will need to be addressed before the Office of Religious Life can endorse CLS's approval.

Article III states that, "All officers of this Chapter must subscribe to the Christian Legal Society Statement of Faith." Vanderbilt's policies do not allow any student organization to preclude someone from a leadership position based on religious belief. Only performance-based criteria may be used. This section will need to be rewritten reflecting this policy.

The last paragraph of Section 5.2 states that "Each officer is expected to lead Bible studies, prayer and worship at Chapter meetings as tasked by the President." This would seem to indicate that officers are expected to hold certain beliefs. Again, Vanderbilt policies do not allow this expectation/qualification for officers.

Section 9.1 regarding Amendments to the Constitution should include language stating that any amendment must also be in keeping with Vanderbilt University's policies on student organizations and must be approved by the University before taking effect.

Please make these few changes and submit a copy of the amended Constitution to me so we can proceed with the approval process.

Also, we do not have in hand a copy of the revised Officer and Advisor Affirmation Form, as requested in the initial deferral. Specifically, we need a clean document without the handwritten text that seems to be an exclusionary clause advocating for partial exemption from the University's non-discrimination policy. Please forward us a copy of this as well.

Thank you. Please let me know of any questions you may have.

Best,

[redacted]

[redacted]

----- Forwarded message -----

From: vanderbiltcollegiatelink

<noreply@collegiatelink.net<mailto:noreply@collegiatelink.net><mailto:noreply@collegiatelink.net<mailto:noreply@collegiatelink.net>>>

Date: Tue, Apr 17, 2012 at 11:53 AM

Subject: Registration Status Update: [redacted name of Christian student group]

To: [redacted name of student]

The registration application that you submitted on behalf of [redacted name of Christian student group] <[https://vanderbilt.collegiatelink.net/organization/\[redacted\]](https://vanderbilt.collegiatelink.net/organization/[redacted])> has not been approved and may require further action on your part. Please see the reviewer's comments below or access your submission now<[https://vanderbilt.collegiatelink.net/organization/\[redacted\]/register/Review/650475](https://vanderbilt.collegiatelink.net/organization/[redacted]/register/Review/650475)>.

Thank you for submitting your registration application. Vanderbilt appreciates the value of its student organizations. Your submission was incomplete or requires changes, thus we are not able to approve your application at this time. Please re-submit your application including the following items or changes: - Please change the following statement in your constitution:

"Article IV. OFFICERS

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, **personal commitment to Jesus Christ**, commitment to the organization, and demonstrated leadership ability."

CHANGE TO:

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, commitment to the organization, and demonstrated leadership ability.

We are committed to a timely review of every complete application received and to letting you know the status of your application as soon as possible.

ATTACHMENT BB

Justin P. Gunter

660 Ralph McGill Blvd. NE, Apt. 2509, Atlanta, GA 30312

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks,

Thank you for the opportunity to provide this letter for the record in the Subcommittee's hearing "First Amendment Protections on Public College and University Campuses." Thank you also for your, and the Subcommittee's, attention to the threats to the First Amendment taking place on college and university campuses across our nation.

As a brief introduction, from 2011–2012 I served as President of the Vanderbilt Student Chapter of the Christian Legal Society while studying at the Vanderbilt University Law School. This letter briefly summarizes my experiences during this time. The Christian Legal Society is a national organization that facilitates student chapters at law schools across our nation. Our particular chapter at Vanderbilt focused primarily on promoting student spiritual well-being and encouraging the discussion of diverse viewpoints. For many students, law school is an intense and stressful experience. In this environment, our Christian Legal Society Chapter promoted student's spiritual well-being by providing group prayer meetings, Bible studies, and a safe-place for students to discuss the difficulties of law school with their peers. Additionally, the law school education is designed not only to teach students legal principles, but also to expose them to a diverse group of people and ideas—exposure which serves future lawyers well when they must represent diverse clients or create policies that take into account the needs of diverse communities. At Vanderbilt, this task was filled in large part by student groups, whether they be groups dedicated to environmental concerns, business policy, animal rights, or political views (both Republican and Democrat). In this eclectic mix, our Christian Legal Society Chapter sought to encourage discussion of Christian viewpoints. To do so, we regularly invited speakers to come to Vanderbilt and speak on topics of special important to Christians in our nation.

For years the our chapter of the Christian Legal Society was recognized as a student group at Vanderbilt—all the while supporting student's spiritual needs and promoting discussions of diverse viewpoints on campus. However, in summer 2012, the leadership of our chapter was informed that we would not be allowed to continue in the following school year. After engaging Vanderbilt administrators to ascertain the rationale for this sudden change, we were told by Vanderbilt administrators that Vanderbilt had instituted a new policy that did not allow religious groups to ask their leaders to agree with the group's basic beliefs and did not

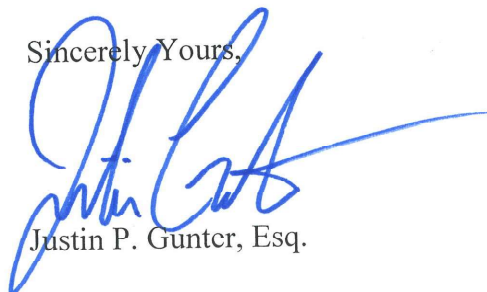
allow requirements that leaders should hold prayer meetings or Bible studies. In short, Vanderbilt's policy stated that a Christian group could not ask that its leader believe in Christianity—even if the group (like the Christian Legal Society) welcomed all students to be members and attend its events regardless of their religious beliefs.

The leadership of our Christian Legal Society Chapter, and many other religious groups on campus tried to no avail to reason and work with the Vanderbilt administrators. In spring 2012, our chapter, along with thirteen other religious groups, were removed from Vanderbilt. Through this process, Vanderbilt once again redefined its policy as an “all-comers” policy—a policy purporting to require that any student group must allow anyone to be a leader regardless of whether they support (or are even hostile to) the group's basic beliefs. Despite this sweeping policy, Vanderbilt only removed Christian student groups. In fact, Vanderbilt specifically exempted groups that discriminate on the basis of sex from its policy.

For many college students, the activities and time they spend on their college or university campus constitutes the vast majority of their college experience. A student group that is removed from campus loses many abilities to support and engage students. At Vanderbilt specifically, our removal meant that we could no longer promote our events on campus except by word of mouth, were not allowed to participate in Vanderbilt events (such as student organizational fairs), were deprived of funding to sponsor speakers, and were allowed space to meet at Vanderbilt only at the lowest priority. Similarly situated groups at public universities face even more severe sanctions—including being banned altogether.

The idea that a group could be banned at colleges and universities in the United States of America for nothing more than seeking to express a specific viewpoint is contrary to both the text and the principles enshrined in the First Amendment to our Constitution. Policies, like those implemented by Vanderbilt, contradict the American ideal of a pluralistic society—where individuals and associations may express their opinions and beliefs freely without being censored by a university administrator or government executive. As the drafters of the First Amendment recognized, this basic freedom is essential to a free society. I thank the subcommittee for its attention to this important issue and once again thank the subcommittee for allowing me to submit this letter.

Sincerely Yours,

A handwritten signature in blue ink, appearing to read "Justin P. Gunter", with a long horizontal flourish extending to the right.

Justin P. Gunter, Esq.

ATTACHMENT CC


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February 20, 2018

The following article is located at: <http://www.christianitytoday.com/ct/2014/sepember/wrong-kind-of-christian-vanderbilt-university.html>

Christianity Today, August, 2014
 HIGHER EDUCATION | CT MAGAZINE

The Wrong Kind of Christian

I thought a winsome faith would win Christians a place at Vanderbilt's table. I was wrong.
TISH HARRISON WARREN / POSTED AUGUST 27, 2014



Image: Kevin Vandiver / Genesis

I thought I was an acceptable kind of evangelical.

I'm not a fundamentalist. My friends and I enjoy art, alcohol, and cultural engagement. We avoid spiritual clichés and buzzwords. We value authenticity, study, racial reconciliation, and social and environmental justice.

Being a Christian made me somewhat weird in my urban, progressive context, but despite some clear differences, I held a lot in common with unbelieving friends. We could disagree about truth, spirituality, and morality, and remain on the best of terms. The failures of the church often made me more uncomfortable than those in the broader culture.

Then, two years ago, the student organization I worked for at Vanderbilt University got kicked off campus for being the wrong kind of Christians.

In May 2011, Vanderbilt's director of religious life told me that the group I'd helped lead for two years, Graduate Christian Fellowship—a chapter of InterVarsity Christian Fellowship—was on probation. We had to drop the requirement that student leaders affirm our doctrinal and purpose statement, or we would lose our status as a registered student organization.

I met with him to understand the change. During the previous school year, a Christian fraternity had expelled several students for violating their behavior policy. One student said he was ousted because he is gay. Vanderbilt responded by forbidding any belief standards for those wanting to join or lead any campus group.

In writing, the new policy refers only to constitutionally protected classes (race, religion, sexual identity, and so on), but Vanderbilt publicly adopted an "all comers policy," which meant that no student could be excluded from a leadership post on ideological grounds. College Republicans must allow Democrats to seek office; the environmental group had to welcome climate-change skeptics; and a leader of a religious group could not be dismissed if she renounced faith midyear. (The administration granted an exception to sororities and fraternities.)

Like most campus groups, InterVarsity welcomes anyone as a member. But it asks key student leaders—the executive council and small group leaders—to affirm its doctrinal statement, which outlines broad Christian orthodoxy and does not mention sexual conduct specifically. But the university saw belief statements themselves as suspect. Any belief—particularly those about the authority of Scripture or the church—could potentially constrain sexual activity or identity. So what began as a concern about sexuality and pluralism quickly became a conversation about whether robustly religious communities would be allowed on campus.

In effect, the new policy privileged certain belief groups and forbade all others. Religious organizations were welcome as long as they were malleable: as long as their leaders didn't need to profess anything in particular; as long as they could be governed by sheer democracy and adjust to popular mores or trends; as long as they didn't prioritize theological stability. Creedal statements were allowed, but as an accessory, a historic document, or a suggested guideline. They could not have binding authority to shape or govern the teaching and practices of a campus religious community.

At first I thought this was all a misunderstanding that could be sorted out between reasonable parties. If I could explain to the administration that doctrinal statements are an important part of religious expression—an ancient, enduring practice that would be a given for respected thinkers like Thomas Aquinas—then surely they'd see that creedal communities are intellectually valid and permissible. If we could show that we weren't homophobic culture warriors but friendly, thoughtful evangelicals committed to a diverse, flourishing campus, then the administration and religious groups could find common ground.

When I met with the assistant dean of students, she welcomed me warmly and seemed surprised that my group would be affected by the new policy. I told her I was a woman in the ordination process, that my husband was a PhD candidate in Vanderbilt's religion department, and that we loved the university. There was an air of hope that we could work things out.

Line in the Sand

But as I met with other administrators, the tone began to change. The word *discrimination* began to be used—a lot—specifically in regard to creedal requirements. It was lobbed like a grenade to end all argument. Administrators compared Christian students to 1960s segregationists. I once mustered courage to ask them if they truly thought it was fair to equate racial prejudice with asking Bible study leaders to affirm the Resurrection. The vice chancellor replied, "Creedal discrimination is still discrimination."

Feeling battered, I talked with my InterVarsity supervisor. He responded with a wry smile, "But we're moderates!" We thought we were nuanced and reasonable. The university seemed to think of us as a threat.

For me, it was revolutionary, a reorientation of my place in the university and in culture.

I began to realize that inside the church, the territory between Augustine of Hippo and Jerry Falwell seems vast, and miles lie between Ron Sider and Pat Robertson. But in the eyes of the university (and much of the press), subscribers to broad Christian orthodoxy occupy the same square foot of cultural space.

The line between good and evil was drawn by two issues: creedal belief and sexual expression. If religious groups required set truths or limited sexual autonomy, they were bad—not just wrong but evil, narrow-minded, and too dangerous to be tolerated on campus.

It didn't matter to them if we were politically or racially diverse, if we cared about the environment or built Habitat homes. It didn't matter if our students were top in their fields and some of the kindest, most thoughtful, most compassionate leaders on campus. There was a line in the sand, and we fell on the wrong side of it.

We liked being in pluralistic settings, mining for truth in Nietzsche and St. Benedict alike. But if Christian orthodoxy was anathema in a purportedly broad-minded university, where did that leave us?

My husband and I love the idea of the university, a place of libraries and lawns, a space set aside to grapple with the most vital questions of truth, where many different voices gather to engage in respectful conversation. Both of us had invested considerable time and money into pursuing advanced degrees. He was preparing to be a professor.

We liked being in pluralistic settings, mining for truth in Nietzsche and St. Benedict alike. But if Christian orthodoxy was anathema in this purportedly broad-minded university, where did that leave us? What did that mean for our place in the world and how we interacted with culture?

And what did that mean for all the PhD candidates in my student group who were preparing for a life of service in the secular university? Did we need to take a slightly more Amish route of cultural engagement?

And what did all this mean for the university?

Facing an Impasse

A culture of fear seemed to be growing on campus. There were power plays and spin. A group of professors penned a thoughtful critique of the new policy, but remained silent when sympathetic department heads warned that going public could be "career damaging."

As a private university, Vanderbilt had the right to adopt particular beliefs and exclude certain religious groups. What bothered me was that they didn't own up to what they were doing. I wanted them to be truthful, to say in their brochure, "If you are a creedal religious person, don't expect to find a campus group here." I wanted intellectual honesty and transparency about their presuppositions.

Instead, top officials seemed blind to their assumptions, insisting all religious groups were welcome while gutting our ability to preserve defining beliefs and practices.

Those of us opposed to the new policy met with everyone we could to plead our case and seek compromise. We published essays and held silent protests with signs calling for pluralism and religious liberty. Hundreds of students and some faculty respectfully objected to the new policy. Catholic and Protestant students, low-church and high-church, met together daily in front of the administration building to pray.

As a writer and pastor, I value words, love careful argument, and believe good ideas prevail. I believed that if we cast a vision of principled pluralism, showed how value-laden presuppositions are inherent in any worldview, and reiterated our commitment to Vanderbilt and avoided the culture wars, the administration would relent.

But as spring semester ended, 14 campus religious communities—comprising about 1,400 Catholic, evangelical, and Mormon students—lost their organizational status.

A year later, my family and I moved to a different state to plant a new InterVarsity chapter. It was painful to leave beloved faculty, students, and ministry colleagues with the campus conflict unresolved. There was no happy ending, no triumphant reconciling moment. After that long and disorienting year, I left not in confident, defiant protest, but in sadness. What I thought was a misunderstanding turned out to be an impasse.

We Are Here

What's happening at Vanderbilt is happening at other universities. Increasingly, orthodox beliefs and practices are forbidden as those in power forfeit a robust understanding of religious pluralism.

Our task moving forward is to resist bitterness, cynicism, or retaliation, demonizing the university or the culture. As Aleksandr Solzhenitsyn said, the line between good and evil runs through every human heart, a reality that makes everything more complex. We have to forgive and to look squarely at places in our own heart that require repentance. In community, we must develop the craft of being both bold and irenic, truthful and humble.

And while we grieve rejection, we should not be shocked or ashamed by it. That probationary year unearthed a hidden assumption that I could be nuanced or articulate or culturally engaged or compassionate enough to make the gospel more acceptable to my neighbors. But that belief is prideful. From its earliest days, the gospel has been both a comfort and an offense.

We need not be afraid;
the gospel is as
unstoppable as it is
unacceptable.

N. T. Wright points out in *Paul: In Fresh Perspective* that the unlikely message of a crucified Jew raised from the dead "was bound to cause hoots of derision, and, if Acts is to be believed, sometimes did." Throughout history and even now, Christians in many parts of the world face not only rejection but violent brutality. What they face is

incomparably worse than anything we experience on U.S. college campuses, yet they tutor us in compassion, courage, and subversive faithfulness.

We need not be afraid; the gospel is as unstoppable as it is unacceptable. Paul persisted, proclaiming that Jesus was, in fact, the world's true Lord. And, as Wright notes, "people (to their great surprise, no doubt) found this announcement making itself at home in their minds and hearts, generating the belief that it was true, and transforming their lives with a strange new presence and power."

After we lost our registered status, our organization was excluded from new student activity fairs. So our student leaders decided to make T-shirts to let others know about our group. Because we were no longer allowed to use Vanderbilt's name, we struggled to convey that we were a community of Vanderbilt students who met near campus. So the students decided to write a simple phrase on the shirts: WE ARE HERE.

And they are. They're still there in labs and classrooms, researching languages and robotics, reflecting God's creativity through the arts and seeking cures for cancer. They are still loving their neighbors, praying, struggling, and rejoicing. You can find them proclaiming the gospel in word and deed, in daily ordinariness. And though it is more difficult than it was a few years ago, ministry continues on campus, often on the margins and just outside the gates. God is still beautifully at work. And his mercy is relentless.

Tish Harrison Warren is a priest in the Anglican Church in North America and works with InterVarsity at the University of Texas–Austin. For more, see TishHarrisonWarren.com.

ATTACHMENT DD

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice
The Judiciary Committee of
the United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks:

My name is Ryan Finigan, I am a 3rd year medical student at Temple School of Medicine and a 2nd Lt in the United States Air Force, and I am deeply concerned about recent events that have taken place on my medical school campus. I am writing to inform you of the situation happening on our campus, and also to appeal for your help in protecting religious freedom at our school and many others across the country. I do not want to waste your valuable time so I will detail the events succinctly as follows.

During my second year I was asked to be a leader in the Christian Medical and Dental Association at my campus chapter. As part of that process I was required to sign a contract which stated that I conduct my life according to biblical morality and that I would be held accountable by my peers to do so. This combination of morality and accountability, as the Bible details, has been a cornerstone of the Christian faith centuries before this nation even began.

Shortly after beginning my role as a leader we were confronted by the Student Affairs Office concerning the contract we had signed. The Temple staff informed us that our group would very likely have its official status revoked because they claimed that we were discriminating in our selection of leader by having our leader contract to lead a life according to biblical morality.

Biblical morality also encompasses caring for the poor, integrity, humility, and purity in our relationships; and all of these aspects of morality are inseparable within our faith. If we were to throw out even one aspect of biblical morality then the validity and authority of our faith would be gone. Therefore we were faced with the choice of surrendering our beliefs or surrendering CMDA's presence at Temple School of Medicine.

This is a clear case of restricted religious freedom. Holding each other accountable to a biblically moral life is at the core of training the next generation of physicians, and I need not remind you how dire a need there is for physicians who value integrity, humility, and love. Thousands of America's finest physicians who benefited from their campus CMDA would agree with me in saying that we need CMDA to maintain its presence in our schools.

Therefore, I implore you to intercede on our behalf and defend our religious freedom. This is not only because we should be allowed to practice our faith on our school campus, but also because the CMDA has played a critical role in the training of American physicians.

Thank you for your time,

Ryan Finigan

ATTACHMENT EE



March 30, 2008

Cornerstone Ministry Officers:

In accordance with the requirements outlined in The Source #1, ASBSU Judiciary is officially requesting that you update your clubs constitution in order to comply with the ASBSU nondiscrimination clause. ASBSU Judiciary found the following sections of your constitution to be in conflict with the nondiscrimination clause.

Article V, Section 2, subsection 3:

"Be in good moral standing, exhibiting a lifestyle that is worthy of a Christian"

This phrase was found to be in conflict with the nondiscrimination clause. Both "good moral standing" and "lifestyle that is worthy of a Christian" are vague and can be discriminatory against people based on things listed in the nondiscrimination clause.

Article V, Section 2, subsection 4:

"Have passed the Cornerstone Ministry Equipping Course (or equivalent)."

Judiciary would like to know if anything in this course in any way conflicts with the nondiscrimination clause.

Article V, Section 3, subsection 3:

"Be in good moral standing, exhibiting a lifestyle that is worthy of a Christian as outlined in the Bible"

This phrase was found to be in conflict with the nondiscrimination clause. Both "good moral standing" and "lifestyle that is worthy of a Christian" are vague and can be discriminatory against people based on things listed in the nondiscrimination clause.

Article V, Section 3, subsection 4:

"Have passed the Cornerstone Ministry Equipping Course"

Judiciary would like to know if anything in this course in any way conflicts with the nondiscrimination clause.

Article V, Section 5, subsection 1:

"A Biblically compatible lifestyle"

Judiciary found this phrase to conflict with the nondiscrimination clause

Article VI, Section 2:

Specifically referencing Matthew 18:15-17. The final line of this passage is: "and if he refuses to listen even to the church, treat him as you would a pagan or a tax collector."

Judiciary found this in conflict with the nondiscrimination clause.



Associated Students of Boise State University

1910 University Drive Boise, Idaho 83725-1335

Judiciary

phone 208-426-1440

fax 208-426-4233

<http://asbsu.org>

Article X, Section 2, subsection C.1:

"Abide by a Biblically compatible lifestyle"

Judiciary found this phrase to conflict with the nondiscrimination clause

Article X, Section 2, subsection C.4:

"Have passed the Cornerstone Ministry Equipping Course"

Judiciary would like to know if anything in this course in any way conflicts with the nondiscrimination clause.

Article XI, Section 2:

Specifically referencing Matthew 18:15-17. The final line of this passage is: "and if he refuses to listen even to the church, treat him as you would a pagan or a tax collector."

Judiciary found this in conflict with the nondiscrimination clause.

As this is the official notification of a request to update your constitution, your club has 2 months to update your constitution and submit it for judicial review. However, seeing as ASBSU Judiciary does not conduct business during the summer months, your club will have until September 2, 2008 to submit your constitution for review. If you have any further questions or concerns, you may direct them to Kara Fink, Student Activities Program Coordinator, at 426-5951.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell O'Leary", with a long, sweeping horizontal line extending to the right.

Russell O'Leary
Chief Justice
ASBSU Judiciary



Associated Students of Boise State University

Judiciary

1910 University Drive Boise, Idaho 83725-1335

phone 208-426-1445

fax 208-426-4233

<http://astboise.org>

February 27, 2009

BSUCRU Officers:

In accordance with the requirements outlined in The Source #1, ASBSU Judiciary is officially requesting that you update your club's constitution in order to comply with the ASBSU nondiscrimination clause. ASBSU Judiciary found the following sections of your constitution to be in conflict with the nondiscrimination clause.

Article IX Section 1

"All officers must exemplify the application of Scriptural life principles, in accordance with the national standards of Campus Crusade for Christ." Judiciary is concerned that the passage "Scriptural life principles may be in conflict with the ASBSU Non-discrimination policy. Please further define "Scriptural life principles" and the process used to determine whether an officer is exemplifying those principles.

Article X Section 4

"The qualifications for executive council (servant team) shall include, but are not limited to: a personal relationship with Jesus; a Spirit-filled servant attitude; agreement with BSUCRU goals of reaching students for Christ through personal and group evangelism using tools like the Four Spiritual Laws and the Holy Spirit booklet etc.; to go through our basic follow up materials; willingness to be in a small discipleship/Bible study group and to be trained (in time) to lead one; to come to BSUCRU events like prayer and the weekly meeting, retreats, fun times, etc; to share Christ intentionally (goal: once weekly); to prepare a 3 minute testimony and share it with a staff person; to take on a ministry of service in one of the four committees of inward, upward, outward, and stewardship; To be part of a Bible-based, Jesus-centered church; commit to at least 8-9 hours of active involvement." Not allowing members to serve as officers due to their religious beliefs is in conflict with the ASBSU Non-discrimination policy.

In addition to the above request ASBSU Judiciary is requesting you submit a copy of the constitution of the national organization Campus Crusade for Christ. In your constitution you claim affiliation with the above mentioned organization and it is ASBSU policy that we have a copy of the national organization's constitution in our files.

As this is the official notification of a request to update your constitution, your club has 2 months to update your constitution and submit it for judicial review. If you have any further questions or concerns, you may direct them to Kara Fink, Student Activities Programs Coordinator, at 426-3951.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russ O'Leary", written over a horizontal line.

Russell O'Leary
Chief Justice
ASBSU Judiciary

ATTACHMENT FF

June 11, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice
The Judiciary Committee of the United States
House of Representatives
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks:

My name is Justin Ranger. I have lived in Idaho since 2001. I graduated from Boise State University in the Spring of 2009 with a major in Philosophy and a minor in Mathematics. While I was a student, I was the President of the student club, Cornerstone Ministry.

During my involvement with Cornerstone Ministry, I desired to create an environment that would engage students, and would contribute to campus life in general. The purpose of Cornerstone Ministry was to hold Bible studies, book discussions, prayer meetings, and to distribute free literature to students on campus. The focus of the club was to engage students academically and intellectually on matters that related to our religious views. This we believed added to diversity and contributed to campus life.

At the end of my sophomore year at Boise State, some other students and myself began the process of starting a new religious club on campus, The Veritas Forum. We used as a template the constitution of Cornerstone Ministry which was a fully recognized student club. The new constitution was rejected based on BSU's interpretation of the non-discrimination clause. In our dialogue with BSU staff and student Judiciary members we pointed out that the new constitution was modeled on a constitution of a club which had already received full recognition. The constitution for Cornerstone Ministry was reviewed by BSU and declared to be discriminatory as well. After submitting several revisions of our constitution in an attempt to be fully compliant with BSU's non-discrimination clause, it became apparent that the club would not be recognized simply because we required its officers to agree to the beliefs and purpose of the club. Eventually the Cornerstone Ministry club was de-recognized as an official club on campus.

After Cornerstone Ministry was de-recognized we lost all of the rights and benefits of being an officially recognized club, e.g., reserving meeting rooms on campus for free, submitting flyers to be posted on bulletin boards, receiving discounts on catered food for events, being able to recruit students at orientations, etc. Furthermore, while our constitution was under review, the time of the few students that were still involved with the club was consumed in dealing with this issue, rather than fulfilling the purpose of the club. Not only did the size and vitality of the club diminish, but the club's ability to benefit student life was severely limited during this time.

Cornerstone Ministry could not withhold the statement of belief from our constitution since it is what determines our identity and the purpose of the club. Although, we were assured that it was unlikely that anyone who did not agree with our beliefs or the purposes of the club would attempt to run for an office in our club, it was a matter of honesty, integrity, and transparency to

be upfront with the criteria by which officers would be considered. Since BSU would not accept our criteria for officers before the settlement agreement, we were forced to be de-recognized.

Thank you for caring about this issue, and hearing about the plight of the club that I served.

ATTACHMENT GG

June 11, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice
The Judiciary Committee of the United States
House of Representatives
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks:

My name is Jesse Barnum, and I graduated from Boise State University in 2009 with a B.A. in Philosophy and minors in German, Latin, and History. I was a member of the Cornerstone, a religious student organization, from 2006 until I graduated in 2009. I was also one of the organizing members of the Veritas Forum from 2007 through 2009. The Veritas Forum was a religious student organization who applied for official recognition as a student organization, but was denied that status.

As a student, religious organizations helped meet my need for community, and they provided me encouragement and support. They were an integral part of my success as a student, and without them I would not have engaged in the broader campus community to the extent that I did.

Religious student organizations have a vital role in university life. Not only do they support those students who are part of a particular religion, they increase the cross-section of ideas present on campus. Without the presence and articulate expression of these ideas on campus, the quality and success of a university education diminishes. The story of the Veritas Forum at Boise State University illustrates this well.

In 2007, I and a group of students began the process of organizing The Veritas Forum at Boise State University. Our goal was to create university events that explored life's hardest questions; questions like what is morality, and why is there suffering and pain in our lives and in the world. We wanted our own professors and other leading minds around the world come to Boise State to discuss these issues with us, the students, without the constraints of the classroom, and to engage in these issues in a way that was relevant to us in our everyday lives. In this way, the ideas and purpose of The Veritas Forum fit perfectly with the purposes of the university and organized student groups.

However, The Veritas Forum was also a religious student organization and we believed that Jesus, who he was and what he did, was important to any discussion and understanding of these questions. And in spite of Jesus' undeniable prominence and significance in the history of the world, He was conspicuously lacking from most campus dialogue on these issues. Given our stated goal and belief, it was necessary that to be successful and preserve the integrity of our

organization we needed to establish qualifications for leadership that were consistent both with that goal and our religious beliefs. These two elements were inextricably linked.

We submitted our application for recognition as a student group in the Fall of 2007. It was rejected because of the qualifications we required to hold office. In spite of the setback, we continued to organize an event under another recognized student organization, The Cornerstone. Our first event discussed suffering and pain: its meaning, why does it exist, and is there an answer to it. Professor Scott Yenor of Boise State University, whose own daughter had recently undergone treatment for cancer, was the presenter. We advertised the event on campus and scheduled it for a Friday night during the spring semester of 2008. Given the day and time of year, our expectations were that maybe 40 people would attend. Instead of 40 people, about 240 students and faculty attended. The 200 person capacity room was filled well past its limitations. The event was a huge success, and was well received by numerous campus organizations and departments, many of them regardless of their own opinions and beliefs.

But the university continued to pursue its policy of not allowing student religious organizations to identify qualifications for leadership, and Cornerstone was derecognized as a club for the same reasons. The Veritas Forum was denied recognition.

Again, in spite of this additional setback, we began work on hosting another event because the desire and interest in what we were doing was so clearly demonstrated by the success of the first event. In order to hold the event, we worked with another student religious organization that had yet to be derecognized. The second event was held in the spring of 2009 and was attended by more than 100 students and faculty. The topic discussed this time was the trend of removing “faith” and “religion” from public dialogue and discourse.

I and some other key students in the Veritas forum graduated in the spring of 2009. We were very proud of the work that had been accomplished and we were excited about the interest that was shown by the campus community in what we were doing. We were also disappointed that we had been unable to organize The Veritas Forum in such a way that it would have enabled it to continue past our graduation. The interest and the need for open and honest dialogue were clearly demonstrated, but the legal and institutional obstacles we faced prevented us from ever having The Veritas Forum formally recognized. There is no Veritas Forum at Boise State today.

Religious student organizations like the Veritas Forum benefit the university, but their inability to maintain officer qualifications will mean that they can no longer fully participate in the university community. Not only will individual students suffer, but the quality of our state universities will suffer as well.

ATTACHMENT HH

June 11, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Re: "First Amendment Protections on Public College and University Campuses"
Hearing Date: June 2, 2015

Dear Chairman Franks:

Thank you for considering this letter in connection with the above-referenced Congressional hearing. I served as the President of the local chapter of the Christian Legal Society at the University Of South Carolina School Of Law during the 2007-08 academic school year, during which time our local chapter filed a First Amendment lawsuit challenging the University's discriminatory policies against student organizations that were religious in nature.

While I was a law student, the University had a policy of assessing and collecting a "student activity fee" from all students and allocating those monies collected into "general funds" and "special funds" available to certain student organizations. Under the USC Student Government Finance Codes (§390.05), "Religious Organizations" were ineligible for general funding. Although religious organizations like CLS were technically eligible for the special funding, those resources were more limited in their use (funds could only be applied to "content neutral" programs) and the entire fund itself was often depleted during the Fall semester.

The result of these policies left the CLS chapter with limited to no access to funds in the Fall semester and without any funds at all during the Spring semesters. This despite the fact that all of the CLS student members were assessed/charged the student activity fees and non-religious organizations had substantial budgets for their use from both the general and special funding.

As President of the CLS chapter, I approached school officials and elected student government members seeking redress for these policies to no avail. Ultimately, I was faced with the decision to keep quiet in the face of the deprivation of my First Amendment rights or to sign my name verifying a Complaint against the University in the federal courts. Still to this day I can recall the weight of the pen as I inscribed my signature on the Verification.

June 11, 2015

Page 2

Thankfully for me and the CLS chapter and its members, the University quickly cooperated after reading the Complaint and once counsel explained to the University the First Amendment rights of its “religious” students. The University admitted its policies were discriminatory in that they treated religious organizations differently from every other type of student organization on campus. The University issued a moratorium on disbursement of student activities fees to student organizations until their policies were revised to treat students equally.

I am very thankful to CLS for their assistance to the local chapter during this trying and difficult time and also to the University officials for their acknowledgement of our disparate treatment and their willingness to redress the situation. Nevertheless, I wish that it did not have to come to filing a federal action to get the attention of the University to the constitutional violations they endorsed and I am confident that there were many other student “religious” organizations that simply accepted inequality or were without the help necessary to seek justice.

I would be very glad to speak further with anyone about this matter and, again, I thank you for your consideration.

Sincerely,

/s/Robert S. “Trey” Ingram III

ATTACHMENT II

Frequently Asked Questions about SGSOs and Indiana University's Non-Discrimination Policy:

[prepared by Indiana University administration, August 2015, available at <http://policies.iu.edu/docs/academic-policy-docs/student-orgs-faqs.pdf>]

1. What are the benefits of registering with the University as a Self-Governed Student Organization (SGSO)?

The benefits of registering an organization as an SGSO include:

- being able to reserve space on campus and often for free;
- applying for a Student Organization Account;
- applying for funding;
- applying for office space in the IMU;
- using the "SGSO at IU" trademark;
- reserving a table for the Student Involvement Fair.

2. Can student groups who elect not to register as SGSOs still meet on campus?

Yes, but they will not receive the benefits of being an SGSO. Non-registered groups of students are welcome to assemble and associate in areas of the campus that are open to them as students of Indiana University. Furthermore, they are welcome to reserve campus space for their events under the same terms and conditions as other third-party groups.

3. What non-discrimination requirements does the University have in place for SGSOs?

The University requires all SGSOs to accept "all comers." SGSOs cannot reject students seeking to participate in, become members of, or serve as leaders of the organization because of their age, color, disability, ethnicity, gender, marital status, national origin, race, religion, sexual orientation, or veteran status. The University requires each SGSO to include the University's non-discrimination statement in its SGSO constitution.

4. May an SGSO establish eligibility requirements for membership or leadership positions that are not tied to an individual being a member of a protected class?

Yes. SGSOs may impose eligibility requirements for membership and service in leadership positions as long as the requirements are not based on a student belonging to any of the protected classes listed above. Examples of acceptable requirements include:

- requiring members to pay dues;
- requiring members to attend group meetings consistently;
- establishing that leadership positions within the group are open only to those members who have been in good standing with the group for a certain period of time;
- honor societies establishing a minimum GPA threshold.

5. Are single-sex fraternities and sororities allowed under the University's non-discrimination statement?

Yes. The University abides by Title IX of the Education Amendments Act of 1972, which recognizes that differentiated treatment based on sex for purposes of membership in a social fraternity or sorority is not unlawful. An organization in this category may remove "gender" from the non-discrimination statement in its SGSO constitution.

6. May SGSOs require students seeking to serve in leadership positions to be members of a particular religion?

No. As mentioned above, eligibility for leadership in the SGSO cannot be based on any categories that are included in the University's non-discrimination statement. The requirement is that all students be eligible to join the SGSO and seek leadership positions within it. However, the SGSO is not required to elect or appoint any particular leadership candidate and may establish a process for electing or appointing leaders that does not exclude candidates based on their membership in a protected class. **For example, a chapter of a religious student alliance would not be permitted to forbid someone of a different religion, or someone non-religious, from running for a leadership position within the SGSO.**

7. What are the consequences of an SGSO failing to comply with the University's non-discrimination statement?

If, after registering, an SGSO fails to comply with the statement by excluding a student due to his or her membership in one of the protected classes listed above, a complaint may be made under the IU Student Code of Rights, Responsibilities and Conduct and the campus judicial process for student organizations. If sanctions result from that process, they may include the SGSO losing SGSO status.

ATTACHMENT JJ

<https://www.detroitnews.com/story/opinion/columnists/ingrid-jacques/2018/03/12/editors-note-wsu-errs-ousting-christian-group/32875005/>

Editor's note: WSU errs in ousting Christian group

[Ingrid Jacques, The Detroit News](#) Published 8:40 p.m. ET March 12, 2018



Buy Photo

(Photo: The Detroit News)

A Christian student group was allowed back on the campus of Wayne State University last week, just two days after it [brought a federal lawsuit](#) against the university.

So while InterVarsity Christian Fellowship, which has had a presence on campus for 75 years, should never have been barred, at least Wayne State officials backed down.

The issue here was that Wayne State “derecognized” InterVarsity because the group had the audacity to require its leaders to practice what they preach (i.e. recognize the faith). Somehow that violated school policy. Why be involved with an organization if you fundamentally disagree? Participation with InterVarsity is completely voluntary.

Wayne State’s response to the suit was to allow the group back to campus, and a university spokesman says that’s not an interim decision.

According to the official statement from the school: “Wayne State University values student groups as an integral part of campus life and co-curricular learning. We strive to foster student groups that are inclusive, diverse, and expand student experiences. After a review of the situation and communicating with the InterVarsity Christian Fellowship organization, Wayne State has decided to recertify the group as an official student organization. The InterVarsity student group is committed to welcoming and including all students, and the university will not intervene in the group’s leadership selection.”

It’s unfortunate Wayne State couldn’t have come to that conclusion before first kicking InterVarsity (one of the oldest chapters in the country) off campus late last year. The university canceled the group’s reserved meetings, and required it to pay high rent if it still wanted to hold its Bible studies and other activities on campus.

“We hope the school will make this change permanent, so no other students have to go through what we’ve been through over the last six months,” said Cristina Garza, former president and current member of the InterVarsity group, in a statement. The Becket law firm, which fights for religious liberty, is representing the student group.

Wayne State’s treatment of these students was clearly discriminatory, and it should refund the \$2,720 InterVarsity was charged. Student groups should be allowed to pick leaders who share in their mission, without penalty.

ijacques@detroitnews.com

ATTACHMENT KK



February 18, 2020

Ms. Lynn Mahaffie
Deputy Assistant Secretary
for Policy, Planning, and Innovation
Office of Postsecondary Education
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

By: regulations.gov portal

Re: Docket ID ED-2019-OPE-0080

Dear Ms. Mahaffie:

This letter is to offer, in brief form, my legal views on the propriety of Proposed Rule §75.500 (b) and (d) as set forth in the Federal Register, Vol. 85 No. 12 (January 17, 2020) p. 3223. (The substance of these regulations is replicated as to States and subgrantees in Proposed Rule §76.500(b) and (d), see pp. 3225-3226, and my comments apply to those provisions as well.) I do not address any other provision or aspect of the proposed rules.

I have been a constitutional law professor and scholar for nearly thirty years, first at the University of Minnesota Law School (1991-2007), where I held an endowed chair and served as associate dean for research and scholarship, and presently at the University of St. Thomas School of Law (2007-2020), where I am Distinguished University Chair & Professor of Law. I am co-author (with Professors Calabresi, McConnell, Bray, & Baude) of a major constitutional law textbook, *The Constitution of the United States* (3d ed. 2017) and co-author (with Luke D. Paulsen) of the monograph *The Constitution: An Introduction* (Basic Books 2015). I have written more than ninety published scholarly articles, primarily in the area of U.S. Constitutional Law, including numerous articles on the First Amendment law of religious liberty, freedom of speech, and freedom of expressive association. The views and opinions I express are my own and not the official views of my academic institution.

In my opinion, the proposed rule accomplishes a valuable clarification of religious and student group freedom of speech and freedom of expressive associational liberty under the First Amendment to the U.S. Constitution and, further, seeks faithfully to implement these constitutional principles in the context of certain federal grant programs. The proposed rule builds upon earlier landmark Supreme Court decisions protecting First Amendment liberties, including (among others) *Widmar v. Vincent*, 454 U.S. 263 (1981), *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995), and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). The proposed rule also specifically protects the rights of private religious groups to maintain their religious identities and associational freedom, including in the selection of their members and leaders. The Supreme Court has recently (and unanimously) held that such rights are protected by the First Amendment. See *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012).

The provisions of the proposed rule go a step further in protecting the substance of these liberties than the Court's decision in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010) held to be constitutionally *required*. But the rule in no way *contradicts* that decision; it simply provides protection, by a proper federal rule, for rights that *Christian Legal Society v. Martinez* did not deem required as a constitutional matter. The *Christian Legal Society* case was decided before the Supreme Court's important decision in *Hosanna-Tabor*. Because *Christian Legal Society* nonetheless continues to create confusion for college administrators, the proposed rule is helpful to accomplish the goal of fully protecting campus student religious groups from exclusion or discrimination attributable to such a group's doctrinal views, affiliations, self-understanding, or standards of conduct for its members or leaders. The language chosen is aptly suited for that purpose.

Finally, nothing in the identified provisions of the proposed rule poses any constitutional or other legal problem.

Thank you for the opportunity to express these views.

Respectfully submitted,



Michael Stokes Paulsen
Distinguished University Chair
& Professor of Law
The University of St. Thomas
(Minneapolis, Minnesota)

ATTACHMENT A



**When Colleges and Universities Exclude Religious Student Groups:
A Serious Problem
(last updated March 2023)**

The following data is compiled from the experiences of several different religious student organizations. It is a representative list and is not comprehensive, because many situations—indeed probably the majority of situations—go unreported.

At many universities and colleges nationwide, religious student organizations have been threatened with exclusion from campus because they require their leaders to agree with their religious beliefs. All of these colleges and universities receive federal funding.

On a typical campus, hundreds of student groups meet to discuss political, social, and philosophical ideas. The student groups apply to the university administration for “recognition” as a student group. “Recognition” allows a student group to reserve free meeting space on campus, communicate with other students, and apply for student activity fee funding available to other student groups.

Without recognition, a group is stigmatized and finds it nearly impossible to exist on campus. A group loses the ability to reserve free meeting space. It loses the ability to communicate with students on the same basis as other student organizations communicate. It cannot attend student activity fairs at the beginning of the semester or be listed on the college website that connects students with recognized student groups.

Religious student organizations enrich campus life in tangible and intangible ways. Religious groups provide emotional and spiritual support for students, thereby improving wellbeing and mental health for students, and benefiting retention. Religious groups enhance campus diversity by contributing to the “marketplace of ideas” on campus. Religious groups are among the most ethnically diverse student groups on campus. They give students opportunities to serve their campuses and communities through an array of service projects.

Excluding religious student organizations harms students and diminishes campus diversity. Some colleges have adopted policies that protect religious groups and their ability to choose their leaders according to their religious beliefs. Unfortunately, many colleges have punished religious student groups for their religious beliefs and speech, including having religious leadership requirements, as described below.

This is a nationwide issue. This document demonstrates that religious student organizations face many issues on campuses around the country. We note, however, that there are many more undocumented issues that have occurred than those listed here.

Very often, the process of getting a religious group registered involves their chapter constitutions receiving additional scrutiny, and their leaders being subject to additional questions or requests to change their chosen language that expresses their beliefs, including their leadership standards. For example, one religious organization with student chapters noted that, in the last four

years, they had consulted legal counsel related to issues on sixteen different public colleges and universities, in order to get help navigating recognition issues, ranging from an actual denial to the threat of denial, or unusual bureaucratic hurdles to overcome. Another religious organization stated that they had numerous examples of similar problems, but it declined to share the details of many of those challenges due to various sensitivities. This is often because the student leaders of these religious groups are too intimidated by their schools' climate of hostility to their religious beliefs or speech to even want their schools identified. Often students don't want to talk publicly about problems they encounter because they are concerned about the repercussions to their group and to the relationships they are seeking to build with administrators.

Alabama

University of South Alabama

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to get registered. In 2019, the Alabama Legislature adopted legislation protecting belief-based student groups. (Ala. Code § 16-68-3(a)(8))

Arizona

Embry Riddle Aeronautical College

In 2018, a religious student group was refused recognition by the college because of its religious leadership requirements.

University of Arizona

In 2010, the university denied recognition to a pro-life student group because the group's proposed constitution required that its members share its beliefs about the sanctity of human life. After receiving a letter from a legal organization, the university granted recognition to the group. Subsequently, in 2011, the Arizona Legislature protected religious student groups' ability to choose their leaders and members according to their religious beliefs. (A.R.S. § 15-1863)

Arizona State University

In 2004, the university denied a religious student group recognition because it required its leaders and members to agree with its religious beliefs. After the group challenged the university in court, the university revised its policy to allow religious student groups to require their leaders and members to share their religious beliefs. (*Christian Legal Society Chapter at Arizona State University v. Crow*, No. 04-2572 (D. Ariz. Nov. 17, 2004))

In 2018, 2020, and 2022, university staff denied the CLS chapter's application to re-register. After CLS's legal counsel corresponded with the university general counsel, however, the university agreed to register the CLS student chapter in accordance with the 2004 settlement agreement.

California

California State University

The California State University comprises 23 campuses with 437,000 students. In the 2014-15 academic year, the University withdrew recognition from many religious student associations because they required their leaders to affirm the associations' religious beliefs. Some excluded groups had met for sixty years on Cal State campuses with religious leadership requirements. But under a new university policy, as a Cal State administrator explained, "What they cannot be is faith based where someone has to have a profession of faith to be that leader."

Eventually, Cal State retreated from its position and provided a letter that, under certain circumstances, religious groups' leadership selection processes could include questions about a candidate's religious beliefs. But the problematic policy remains on the books, and the religious groups remain on campus solely at the discretion of university administrators. In the past two years, some religious groups have experienced problems obtaining recognition on particular campuses. Also on the books is a decision by the federal Ninth Circuit that allowed (but did not require) the university to exclude religious groups because they require their leaders to be religious. (*Alpha Delta Chi v. Reed*, 648 F.3d 790 (9th Cir. 2011).) This Ninth Circuit opinion leaves 25% of all college students in the nation unprotected.

The 23 California State University campuses are: California State University, Bakersfield; California State University, Channel Islands; California State University, Chico; California State University, Dominguez Hills; California State University, East Bay; California State University, Fresno; California State University, Fullerton; Humboldt State University; California State University, Long Beach; California State University, Los Angeles; California Maritime Academy; California State University, Monterey Bay; California State University, Northridge; California State University, Pomona; California State University, Sacramento; California State University, San Bernardino; ;San Diego State University; San Francisco State University; San Jose State University; California Polytechnic State University, San Luis Obispo; California State University San Marcos; Sonoma State University; California State University, Stanislaus.

University of California, Davis

A nondiscrimination policy at the University of California, Davis protected students regardless of their religious beliefs, unless they held Christian beliefs. The policy said: "Religious/Spiritual Discrimination - The loss of power and privilege to those who do not practice the dominant culture's religion. In the United States, this is institutionalized oppressions toward those who are not Christian." In February 2011, after receiving a letter from a legal group, the university revised its policy.

University of California, Hastings College of the Law (now UC College of the Law, San Francisco)

In 2007, a religious student group was denied recognition because it required its leaders and voting members to agree with its religious beliefs. The law school claimed to have a novel policy that required all student groups to "allow any student to participate, become a member, or seek leadership positions in the organization, regardless of their status or belief." The Supreme Court ruled, 5-4, in 2010 that the law school could apply this "all-comers" policy to religious

groups, but only if it applied the policy uniformly to all student groups. (*Christian Legal Society v. Martinez*, 561 U.S. 661 (2010)) This decision has created nationwide confusion on college campuses with severe repercussions for religious student groups, because many colleges claim they have this novel policy when they do not and instead are discriminatorily excluding religious student groups from their campuses.

Colorado

Aims Community College

In 2022, students wanted to start a chapter of a national religious organization but were told that they could not because the college had had a negative experience with a prior religious group. The chapter leaders then met with administrators and cited the 2020 federal regulation that protects religious student organizations, and the administrators then agreed to recognize the group.

University of Northern Colorado

In the 2018-19 academic year, a religious student organization was threatened with de-recognition unless it dropped its faith requirement for its leaders and submitted a constitution that in no way indicated that the organization *expected* its leaders to share its religious beliefs. The student leaders sought help from legal counsel. After receiving a letter from the students' legal counsel, the university claimed it had an "all-comers" policy and said it could not accommodate the group, despite its language referring only to enumerated statuses. The group was eventually recognized.

In 2011, a religious student group was denied funding for a campus event due to a university policy that prohibited funding for "ideological, political, or religious activities." The policy was eventually changed.

University of Colorado, Colorado Springs

In the 2018-2019 academic year, a religious student organization whose purpose is to articulate Christian apologetics in a campus environment was denied recognition by the University because of its requirement that its leaders agree with its religious beliefs. On November 15, 2018, the group filed a federal lawsuit against the university, which settled in favor of the student group in May 2019.

Fort Lewis College

In 2012, a religious student group was told that a college policy did not allow them to approach other students on campus to discuss spiritual topics. The problem was resolved through correspondence from legal counsel.

Florida

Florida Polytechnic

In 2020, the university refused to recognize an InterVarsity chapter until multiple rounds of engagement with legal counsel caused the university to change its position.

University of Florida

In 2008, the university refused to recognize a religious student group because of its religious requirements for its leaders and members. When the group challenged the policy in court, the university revised its policy to protect the right of religious groups to have religious leadership and membership requirements. The university paid several hundreds of thousands of dollars toward the student group's legal fees. (*Beta Upsilon Chi, Upsilon Chapter at the University of Florida v. Machen*, 586 F.3d 908 (11th Cir. 2009), *vacating as moot*, 559 F. Supp. 2d 1274 (N.D. Fla. 2008))

University of South Florida

In 2015, the university implemented a new policy that effectively denied student activity fee funds to student groups with religious leadership requirements.

Rollins College

In 2013, a number of religious groups were de-recognized and could no longer hold Bible studies on campus because college administrators applied a policy that effectively prohibited religious student groups from having religious leadership and membership requirements. When several religious groups sought to once again be recognized in the 2018-2019 academic year, they faced the same challenges.

Florida State University

In 2004, the university threatened not to recognize a religious student group because of its religious leadership requirements. After a letter from a legal organization, the university recognized the group.

Georgia

University of West Georgia

In the summer of 2019, a religious student group was told by university administrators in the Center for Student Involvement that it would not be a registered student organization for the 2019-2020 academic year because of its religious leadership requirements. It had been a registered student group since 2014, although at that time, it had taken several months and the involvement of a legal organization to become a registered student organization. In August 2019, after a legal organization became involved, a high-ranking university official reversed the decision and registered the organization.

University of Georgia

In 2006, the university denied recognition to a religious student group because of its religious leadership and membership requirements. When the group challenged the policy in court, the university revised its policy to allow religious student groups to select leaders and members based on their religious beliefs. (*Beta Upsilon Chi v. Adams*, No. 3:06-cv-00104 (M.D. Ga. 2006))

Georgia Institute of Technology

In 1997, a university threatened to derecognize a religious student group because of its religious leadership and membership requirements. The Georgia Attorney General issued an

opinion that the university was violating the group's free speech rights. The university then recognized the religious organization. (Ga. AG Op. 97-32)

Idaho

Boise State University

In 2008, the university implemented a policy that would not allow religious student organizations to consider religion in selecting leaders. The student government required two religious groups to remove references to the Bible from their constitutions. The groups challenged the policy in court. The university agreed to recognize the religious groups and allow them to "limit leadership positions to students who share the same beliefs, values, and purposes" of the groups. (*Cordova v. Laliberte*, No. 08-543 (D. Idaho 2008).

In 2012, the university stated that it wished to return to a policy that would prohibit religious groups from having religious leadership requirements. In 2013, the Idaho Legislature protected the ability of religious student groups to have religious leadership requirements. (Idaho Code § 33-107D)

University of Idaho College of Law

In 2001, a law school's student government denied a religious student group's request for student activity fees funding because the religious group required its leaders and voting members to agree with its religious beliefs. In deciding the religious group's appeal, the student judiciary determined that the religious group could receive student activity fees funding while having religious leadership requirements.

In 2021, a CLS student chapter sought recognition as an official student group at the University of Idaho College of Law. The law school student government, which was delegated the authority to recognize student organizations, grilled the CLS student leaders for nearly an hour about their application for recognition. The student government's questions focused on CLS's religious beliefs. After two such student government meetings in which the CLS student leaders defended their religious beliefs, legal counsel for the CLS chapter sent a letter to the University, asking that the CLS student chapter be recognized. The letter relied on the federal campus access regulation, 34 C.F.R. §§ 75.500(d) & 76.500(d). The CLS chapter was recognized.

Illinois

Knox College

In 2019, a student activist group sought to get the Student Senate to derecognize the InterVarsity chapter each year for nearly two years because of the chapter's convictions regarding sexuality. The Senate approved a campus-wide referendum to vote on the chapter's recognition, a move which was eventually stopped by the administration.

Northwestern University

In 2015, several religious students were found to have violated campus policies against solicitation after university administrators defined "solicitation" as "seeking to gain support for organizations or causes." The administrators concluded that students who initiated spiritual

conversations with other students and invited them to a meeting violated university policy. The university punished the religious student group by imposing sanctions on it.

University of Illinois

In 1993, a law school threatened to derecognize a religious student group for its religious beliefs. When a faculty member wrote a letter on behalf of the religious group, the law school allowed the group to remain recognized. (Stephen M. Bainbridge, *Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act*, 21 J.C. & U.L. 369 (1994))

Southern Illinois University School of Law

In 2005, law school administrators revoked a religious student group's recognition because it required its leaders and members to agree with its religious beliefs. The student group challenged the policy in court and won a preliminary injunction. (*Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006))

Indiana

Indiana University

In August 2015, the university announced that it would change its policy so that religious student groups could no longer require their leaders to agree with the groups' religious beliefs. The university acknowledged that religious groups would not be able to choose their leaders according to their religious beliefs but that fraternities and sororities would be allowed to discriminate on the basis of sex in their selection of members and leaders.

Twenty religious student groups, including Catholic, Muslim, Jewish, and Christian student groups, sent a letter to the administration expressing their concerns about the new policy and its impact on religious groups' ability to choose their leaders according to their religious beliefs. After seven months of communications from students, parents, alumni, donors, and state political leaders, the university announced that it would keep its original policy and allow religious student groups to have religious leadership requirements. In 2022, the Indiana Legislature adopted legislation protecting religious student groups. (Indiana Code 21-39-8-1 *et seq.*)

Ivy Tech Community College

A student group had to seek help from legal counsel for the organization when it faced derecognition due to its religious leadership standards. It had to formally negotiate with school officials in order to become registered.

Purdue University

In 2003, the university threatened to derecognize a religious student housing cooperative because it required its members to agree with the religious beliefs that defined the house. After receiving a letter from a legal organization, the university agreed to continue to allow religious housing cooperatives formed around religious beliefs.

Iowa

University of Iowa

In 2017, the University derecognized a religious student group, which had met on campus for 25 years, because it required its leaders to share its religious beliefs. The group had been previously recognized for its outstanding service to the student body. The group filed a federal lawsuit to regain its recognition and was granted a preliminary injunction in January 2018. The university lost and appealed, also losing the appeal. *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021).

In July 2018, the University officially derecognized 38 other student groups, including Muslim, Sikh, Mormon and Christian groups. InterVarsity was among these groups and was told that it could not require its leaders to agree with the group's religious beliefs. The Eighth Circuit Court of Appeals ruled that the University of Iowa officials had violated a clearly established right when they derecognized the religious student organizations, and that they therefore had forfeited qualified immunity. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021).

These court cases were not the first time concerns arose at the University of Iowa. For over a decade, religious groups had been targeted by other student groups for exclusion from campus because they required their leaders to agree with the groups' religious beliefs. In 2004, for example, the law school denied recognition to a religious student group because it required its members and leaders to agree with its religious beliefs. After several letters from a legal organization, the university recognized the group. But over the years, there was a steady drumbeat of opposition to religious student groups on campus. In 2019, the Iowa Legislature adopted a law protecting religious student groups on public university campuses. (Iowa Code § 261H.3(3))

Central College

In 2008, the college threatened to expel a religious student group from campus because it asked its leaders to agree to live according to its religious beliefs. Eventually, the college agreed to allow the group to remain on campus.

Cornell College

In 2011, the college required religious groups to delete their religious leadership and membership requirements from their constitutions in order to remain on campus.

Kansas

University of Kansas

In 2021, the student government denied a funding request for a religious student organization, noting that it could not grant a request if any of the funds would be used for religious purposes. The student leaders sought help from legal counsel for the organization. Legal counsel sent two separate letters requesting changes to the unconstitutional funding policy that singled out religious groups for different treatment. The student government changed its policy and granted the student group funding.

Washburn University School of Law

In 2004-2005, a law school student government voted to punish a religious group for not allowing a student to lead its Bible studies even though the student admitted that he did not agree with the group's religious beliefs. When the religious group sought protection in court, the law school agreed to allow the religious student group to keep its religious leadership and membership requirements. (*Christian Legal Society Chapter of Washburn University School of Law v. Farley*, No. 04-4120 (D. Kan. Sept. 16, 2004).) In 2016, the Kansas Legislature adopted a law protecting religious student groups on public university campuses. (K.S.A. §§ 60-5311 to 60-5313)

Louisiana

Louisiana State University

In 2003-2005, the university denied recognition to a Muslim religious student group that had met on the LSU campus for many years. The university said that a new university policy required all student organizations to state in their constitutions that they would not restrict membership based on religious belief. After receiving a letter from a legal organization, the university restored recognition to the religious student group. In 2016, Louisiana adopted a law protecting belief-based organizations. (LSA-R.S. § 17:3399.33)

Maine

Bowdoin College

In 2014, the college derecognized a religious student group because it required its leaders to agree with its religious beliefs, as it had done for several decades. Despite *The New York Times'* front-page coverage, the college derecognized the religious group.

University of Maine, Farmington

In 2010, the university threatened to deny recognition to a religious student group unless it removed from its constitution that the group's purpose was to evangelize. After fifteen months, the university agreed to restore its recognition.

Maryland

University of Maryland – Baltimore County

In 2022, the Graduate Student Association refused to recognize religious groups (including InterVarsity) because they were religious groups.

Towson University

In 2010, the Student Government Association voted to deny funding to a religious student organization, because it determined that the event that was to be funded was too religious.

Massachusetts

Tufts University

In 2000, the student judiciary voted to derecognize a religious student group because it required its leaders and members to agree with its religious beliefs. After a legal organization sent

a letter, the administration restored recognition to the religious group. The issue arose again in 2014.

Harvard University

In 2018, the university placed a religious student group on administrative probation because it required its leaders to agree with its religious beliefs.

Springfield Technical Community College

In 2022, a religious student group was told they could no longer be recognized because their values didn't align with those of the university.

Michigan

Eastern Michigan University

In 2022, a religious student group was told they had to include language stating they would not use religious criteria in the selection of leaders "unless the student organizations' restriction is shown to be specifically allowed by law." The chapter received legal counsel on how to clarify that religious leadership criteria for religious groups is specifically allowed by law, actually enabling religious groups to be treated like other groups in being able to maintain an expressive identity. The group was then recognized. Most groups, however, would not be able to understand their rights, as most would understand the language to except only fraternities and sororities from the policy in relation to their sex-based distinctions.

Wayne State University

In 2017, after several months of trying to reason with the administration, a religious student organization that had been a recognized student group at the university since 1956 was derecognized because it required its leaders to agree with its religious beliefs. After a federal lawsuit was filed, the university restored recognition to the student organization, but continued to fight in court for the right to deny recognition to the group. It lost in district court, with the judge finding that the university had violated the free speech, freedom of association, freedom of assembly, and free exercise rights of the student organization. (*InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 542 F. Supp. 3d 621 (E.D. Mich. 2021))

University of Michigan

In 2012, the university derecognized a religious student group because it required its leaders to agree with its religious beliefs. In 2013, the university restored recognition to the religious student group. The university has a history, dating back to 1992, of sporadically threatening to exclude a religious group because it requires its leaders to agree with its beliefs.

Minnesota

University of Minnesota

In 2020, the university's Graduate Student Activities office refused to allow religious groups, including InterVarsity, to participate in the activities fair.

In 2003, the university denied recognition when another religious group refused to state in its constitution that its membership was open to all students regardless of religion. The group challenged the university policy. In order to settle the case, the university changed its policy to allow religious student groups to “require their voting membership and officers to adhere to the organization’s statement of faith and its rules of conduct.” (*Maranatha Christian Fellowship v. Regents of the Board of the University of Minnesota System*, No. 03-5618 (D. Minn. Oct. 24, 2003))

In 1994, the university derecognized a religious student group because it required its leaders and members to agree with its religious beliefs. A professor at the law school led the successful effort to regain recognition for the group. (Michael S. Paulsen, *A Funny Thing Happened on the Way to the Limited Public Forum: Unconstitutional Conditions on “Equal Access” for Religious Speakers and Groups*, 29 U.C. Davis L. Rev. 653, 675 (1996))

Minnesota State University, Mankato

In 2015, a student invited some of her dormitory neighbors to discuss religious ideas. A residential advisor told the student that she was violating a university policy which allowed students to prohibit “religious solicitation” on a dormitory floor by majority vote. Eventually the university repealed its policy.

Missouri

Southeast Missouri State University

In 2015-2016, the university denied a religious student group recognition because it required its leaders to agree with its religious beliefs. The group worked with the administration and the student government to secure a policy that would protect religious groups. In April 2016, the student government voted *not* to adopt a policy that would protect religious groups. After the student government vote, five additional religious groups indicated that they would not be able to remain on campus if they could not require their leaders to agree with their religious beliefs. In October 2016, the university agreed that religious student groups could have religious requirements for their leaders.

Montana

University of Montana School of Law

From 2007-2011, the law school student government denied recognition to a religious group because it required its leaders and members to agree with its religious beliefs. The religious group challenged the policy in court, but the district court ruled against the religious group because it was in the Ninth Circuit. The religious group dismissed its appeal when the law school agreed to implement numerous reforms to bring allocation of student activity fees into conformity with the First Amendment. (*Christian Legal Society v. Eck*, 625 F. Supp.2d 1026 (D. Mont. 2009), *appeal dismissed*, No. 09-35581 (9th Cir., Aug. 10, 2011))

Montana State University

In 2022, the university refused to recognize a religious student organization’s chapter because of the chapter’s religious leadership requirements. It required the chapter to submit a

constitution which did not include an explanation that religious leadership requirements were consistent with the university's nondiscrimination requirement.

In 2014, the university adopted a new policy that effectively prohibited religious student groups from having religious leadership requirements. The religious groups could not persuade the university to allow them to maintain their leadership requirements because of Ninth Circuit precedent.

Nebraska

University of Nebraska-Omaha

In 2010, the university told a religious student group that it must remove from its constitution its requirement that its leaders agree with its religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. The university also had told a different religious group that its students could not meet with students who had filled out a card indicating that they wanted to receive information from the group.

New Hampshire

University of New Hampshire Franklin Pierce Law School

In 2022, the law school's Student Body Association asked inappropriate questions about a religious student organization's religious beliefs, with certain members appearing hostile to the chapter's views. Legal counsel wrote two letters citing federal regulations, 34 CFR §§ 75.500 (d) and 76.500 (d). The group was then granted recognition.

New Jersey

Princeton University

For several years before 2005, the student government denied a religious student group recognition because it was religious. After a letter from a legal organization, the administration eventually granted the group recognition.

New Jersey Institute of Technology

In 2010, the college had a policy creating three tiers of student groups with the third tier automatically denied student activity fee funding, unlike the groups in the first two tiers. The third tier consisted largely of religious student groups.

Rutgers University

In 2021, the Graduate Student Association refused to recognize multiple Christian groups as duplicative (one of which was an InterVarsity chapter). Two years of conversation with the university finally resulted in two Christian clubs being recognized.

In 2002-2003, the university derecognized a religious student group because it would not include language in its constitution that would prevent it from requiring its leaders to agree with its religious beliefs. In response to a court challenge, the university revised its interpretation of its

policy to allow religious student groups to keep their religious leadership requirements. (*Intervarsity Multi-Ethnic Campus Fellowship v. Rutgers*, No. 02-06145 (D.N.J. 2002))

New Mexico

University of New Mexico

In 2020, the University refused to recognize a religious student group because of its religious leadership requirements. The student leaders sought help from the national organization, and after multiple conversations with administrators, the University backed down only because the organization reminded them of the federal regulation finalized in 2020 that protected religious student groups, 34 CFR §§ 75.500 (d) and 76.500 (d).

University of New Mexico School of Law

In 2001, the law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After receiving a letter from a legal organization, the university revised its policy and recognized the religious group with its leadership and membership requirements.

New York

State University of New York, Cortland

In 2022, a religious student organization submitted revisions to its constitution that included statements that it expected its leaders to demonstrate knowledge of the national organization's teachings, and that the process would include asking applicants about their beliefs. The Student Government Association (SGA) asked the leadership to remove those statements, claiming it went against the SGA policy that said the SGA could oppose recognizing a group if "it is discriminatory in any way...". After legal counsel sent a letter detailing the state of the law and that the chapter wished only to preserve its religious identity, the chapter was re-registered and allowed to include the statements in its constitution.

State University of New York, Albany

In 2016-17, a religious student group had difficulty achieving recognition from the Student Association due to a policy stating that any student must be allowed to be a member and run for office in any student organization, with no eligibility qualifications allowed to ensure suitability, knowledge or experience. The religious student group expressed concern about preserving its religious beliefs and mission and the university's hindering its association rights, but the university continued to insist on the policy and asked for language changes in the constitution. The group achieved recognition after a convoluted process of updating its constitution, though it remained concerned that it would not be able to uphold its religious beliefs.

New York City College of Technology, Brooklyn

In 2017, a religious student group seeking to register as a student organization was told that their constitution could not have any leadership requirements other than the basic GPA-type requirements the college has in place. They were asked to remove any such language in their constitution. The group was concerned about its association rights and asked for policies clarifying

the requirement further. The administrator refused to give more details, and just demanded that they remove all religious requirements for leaders, or they would not be registered.

State University of New York, Buffalo

In 2011, the student government derecognized a religious student group because it required its leaders to conform to its religious standards of conduct. After seven months, the student judiciary ordered that the student government restore recognition to the religious group.

North Country Community College

In 2005, a student was told by university administrators that she could not form a religious student group because of “separation of church and state.” After a letter from a legal organization, the university agreed to allow her to form a religious student group.

Pace University

The law school denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After eighteen months of correspondence, including letters from a legal group, the law school eventually recognized the religious group with religious requirements for leaders.

State University of New York, Oswego

In 2001, a religious student group was denied recognition because it required its leaders and members to agree with its religious beliefs. Eventually the university agreed to recognize the group with its religious leadership and membership requirements.

North Carolina

University of North Carolina, Chapel Hill

In 2005-2006, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. The student group challenged the university’s action in court. The university settled the case by adopting a policy that allows all student groups, including religious groups, to have leadership and membership requirements regarding beliefs. (*Alpha Iota Omega Christian Fraternity v. Moser*, No. 04-765, 2006 WL 1286186 (M.D.N.C. May 4, 2006); 2005 WL 1720903 (M.D.N.C. Mar. 2, 2005)) Nonetheless, for the next 8 years, religious groups at UNC were repeatedly told that the policy might be altered to no longer allow religious leadership requirements. In 2014, the North Carolina General Assembly enacted legislation to protect religious student groups on public college campuses. (N.C.G.S.A. §§ 115D-20.1 & 116-40.12)

University of North Carolina, Greensboro

In 2011-2012, the university denied recognition to a religious student group because it required its members to agree with its religious beliefs. The university recognized the group after it challenged the university policy in court.

North Dakota

University of North Dakota

In 2003, the university denied recognition to a religious student group because it required its leaders and members to agree with its religious beliefs. After several months, the university agreed to allow religious groups to take religion into account in selection of their leaders and members and restored recognition to the group. In 2021, the North Dakota Legislature adopted legislation to protect student groups. (N.D. Code § 15-10.4-02(h))

Ohio

The Ohio State University Moritz College of Law

In 2003-2004, a religious group was threatened with derecognition by the law school after a member of another student group demanded that it be derecognized because of its religious leadership and membership requirements. After months of discussions with university administrators, the religious group sought court protection. It dismissed its legal challenge after the university revised its policy to allow religious student organizations to have religious leadership and membership requirements. The religious group then met without problem from 2004 to 2010. (*Christian Legal Society Chapter of the Ohio State University v. Holbrook*, No. C2-04-197 (S.D. Ohio 2004) (dismissed when university changed its policy))

In 2010, the university asked the student government whether the university should discard its policy and no longer allow religious groups to have religious leadership and membership requirements. After several public meetings on the issue, the student government urged the university to drop its protection for religious student groups and “endorse[d] the position that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those [religious] organizations.” Having unleashed anti-religious sentiment on campus, the university eventually tried to compromise and retain protection for religious groups’ leadership requirements but not membership requirements. But the campus controversy continued. Ultimately, the Ohio Legislature resolved the issue by prohibiting public universities from denying recognition to religious student organizations because of their religious leadership and membership requirements. (Ohio Rev. Code § 3345.023)

University of Toledo College of Law

In 2005, the law school refused to recognize a religious student group unless it removed all scriptural references from its constitution. The university also required the group to pledge not to choose its leaders and members on the basis of religion, even though the university actually had a written policy that allowed religious groups to do so. As a result of the group’s challenge in court, the university recognized the group and agreed that student groups could have religious leadership requirements and include references to the Bible in their constitutions and bylaws. (*Christian Legal Society Chapter of the University of Toledo v. Johnson*, 3:05-cv-7126 (N.D. Ohio June 16, 2005))

Case Western Reserve University

In 2006, the university denied recognition to a religious student group until it received a letter from a legal organization. In 2013, the student government of a graduate school at the university denied recognition to a religious student group because of the “emphasis on God and

especially because of the bible sessions” in its application for recognition. After a letter drafted by a legal organization was sent, the graduate school recognized the group.

Wright State University

In 2009, the university denied a religious student group recognition because it required its voting members to agree with its religious beliefs. The religious group had been a recognized student group at the university for 30 years. After receiving correspondence from a legal group organization, the university restored the group’s recognition.

Cleveland State University

In 2018, the university derecognized a religious student group because it required its leaders to agree with the group’s religious beliefs, even after the group brought to the administrator’s attention that Ohio state law prohibited public universities from denying recognition to religious student organizations because of their religious leadership requirements. Eventually recognition of the group was restored.

Oklahoma

The University of Oklahoma

In August 2011, the student government sent a memorandum to all registered student organizations, announcing a re-interpretation of university policy that would prohibit religious student associations from having religious leadership and membership criteria. After receiving a letter from a legal organization, the university agreed that a religious student group could require its leaders to agree with its religious beliefs. In 2012, the university denied recognition to a religious student group because it required its members to agree with the group’s religious beliefs. After receiving a letter from a legal organization, the university agreed to recognize the group. In 2014, the Oklahoma Legislature enacted protection for religious student groups. (70 Okl. St. Ann. § 2119)

Oregon

The University of Oregon

For many years, religious groups have been sidelined and placed under the authority of a separate association. As a result, most groups do not actually register as student organizations, are treated differently in terms of how they can reach out to involve students and get funding. In addition, students don’t have as many opportunities for leadership within religious groups. When a religious group sought recognition as a student organization in 2018, they were told they could not have religious standards for leadership.

Pennsylvania

Penn State

In 2004, the university refused to recognize a Christian student group because the university claimed that its purpose was duplicated by other religious groups. The university had a policy that required all religious groups to be “unique.” The policy would effectively limit the

number of Christian groups on the campus. After the group challenged the policy in court, the university recognized the religious student group and deleted its policy requiring “uniqueness.”

In 2005, however, the university adopted a policy that prohibited religious student groups from requiring their leaders to agree with the groups’ religious beliefs and standards of conduct. In response to another court challenge, the university revised its policy to allow religious groups to choose their leaders according to their religious beliefs. (*DiscipleMakers v. Spanier*, No. 04-2229 (M.D. Pa. 2005))

Shippensburg University

A university derecognized a religious student group because its leadership and membership requirements purportedly violated the university’s speech code. After the group filed a court challenge, the university changed its policies to affirm that religious and political groups could choose their leaders and members according to their beliefs.

Temple School of Medicine

In 2013, a religious student group was told by campus administrators that it stood to lose recognition because it required its leaders to lead lives in accordance with its religious beliefs.

South Carolina

College of Charleston

In 2016-17, a religious student organization experienced different treatment than other student organizations because religious groups were required to follow a different process of approval in order to access numerous benefits: getting registered, having access to facilities, and getting funding for their events. The students and religious organization advisors learned to navigate within the system, though they were often frustrated by the process.

Charleston School of Law

The Christian Legal Society chapter was attacked by the Equality Alliance for hosting a speaker who communicated a biblical understanding of marriage and sexual conduct.

University of South Carolina

In 2008, a religious student group was denied access to student activity fee funding that was available to other student groups solely because it was religious. After the group challenged the policy in court, the university adopted a new policy that allowed all student groups to be funded on the same terms.

Tennessee

Vanderbilt University

In 2011-2012, Vanderbilt University denied recognition to fourteen religious groups because they required their leaders to agree with the groups’ religious beliefs. The university told one religious student group that it must delete five words from its leadership requirements if it wanted to remain on campus: “personal commitment to Jesus Christ.” That group left campus rather than recant their core religious belief. The university told another religious student group

that it was religious discrimination for the group to state in its constitution that it expected its leaders to lead its Bible study, prayer, and worship. Also, the university claimed it was religious discrimination for the group to require that its leaders affirm that they agreed with the group's core religious beliefs.

In 2013, Tennessee passed a law protecting religious student groups on public university campuses. (T.C.A. § 49-7-156) The law does not apply to Vanderbilt University because it is a private university.

Texas

Texas A & M University

In 2009, the university told a religious group that it would no longer be recognized because it required its members to agree with its religious beliefs. After a legal organization sent a letter, the university agreed to recognize the religious group with its religious membership requirements.

In 2011-2012, another religious group was told it must delete its religious requirements for its leaders and voting members from its constitution if it wanted to remain a recognized student group. After several letters from a legal organization, the university agreed to allow the group to be recognized with its religious requirements for leadership and membership.

University of North Texas Dallas

In 2016-2017, the law school delayed granting a religious student group recognition because of its religious leadership requirements. After 8 months, the university adopted a policy that protects religious groups: "A registered student organization created primarily for religious purposes may restrict officer positions to those members who subscribe to the registered student organization's statement of faith." The religious student group was recognized.

Vermont

Middlebury College

In 2016, a religious student group was derecognized because of its theological beliefs.

Virginia

University of Virginia

In August 2021, several religious groups at the University of Virginia learned that the Student Council was requiring that all student organizations submit an "Identity Inclusivity Disclosure Form" in order to participate in the Fall Activities Fair, an important event for student organizations to introduce themselves to incoming students. The Student Council's form required a student organization to indicate whether it restricted its membership, leadership, programming, or activities based on the enumerated classes in the University's nondiscrimination policy. Regardless of its responses on the Form, a student organization would be allowed to participate in the Fall Activities Fair. However, if the Council decided that an organization did not respond honestly, an Honor Code charge could be brought, which could result in expulsion of the student officer signing the Form. Recognizing that the Form was targeting them, several religious organizations sent a letter to University leaders voicing their concerns and citing federal

regulations, 34 CFR §§ 75.500 (d) and 76.500 (d). The Student Council withdrew the Form several days later.

Earlier in November 2020, the Student Council had adopted a resolution for its lobbyist to seek repeal of the Virginia law that protects religious and political student groups' right to choose their members and leaders according to their beliefs. To date, the state law has not been repealed. (Va. Code Ann. § 23-9.2:12)

James Madison University

In the fall of 2016, a religious student group was denied funding to help send students to a conference; in previous years, they had received funding. During the student government meeting addressing the appeal, the student group responded to one claimed basis for the denial. The discussion then turned to whether student activity fees should be used to support Christian beliefs. Many claimed they should not and then voted to deny the appeal. The discussion was lively and heated among student government members. The experience demonstrated a clear lack of understanding of the Supreme Court's rulings on student activity fees and forums for speech.

Randolph-Macon College

In 2017, a religious student organization was threatened with derecognition if it did not permit a student who disagreed with the chapter's theological positions to become a leader.

University of Mary Washington

In 2005, a student wanted to start a religious student group but could not agree to a university policy that would prohibit it from having religious leadership requirements. In the past, the university had denied recognition to any student group that was religious or political in nature. After receiving a letter from a legal organization, the university recognized the group. In 2013, the Virginia General Assembly passed a law to protect religious and political groups. (Va. Code Ann. § 23-9.2:12)

William and Mary College of Law

In February 2021, the Christian Legal Society chapter at the William and Mary College of Law invited a religious freedom lawyer to speak at its meeting. Due to the COVID-19 pandemic, the meeting was held on Zoom, and the speaker was located in California. CLS publicized its meeting through the normal campus communication channels. Several student groups, calling themselves the Equality Alliance, published an open letter to the law school, urging the CLS student chapter to disinvite its speaker due to his work on religious freedom cases. CLS students received disturbing and harassing comments from their fellow students.

In an email to the law school community, the administration explained that student groups were allowed to invite speakers, even people whose views other students disliked. The federal campus access regulations, 34 CFR §§ 75.500 (d) and 76.500 (d), may have helped administrators respect the CLS chapter's right to function on campus and prevented an escalation of the situation.

Washington

University of Washington

In 1997, a religious student organization was repeatedly treated differently than other groups because of its religious status. It was denied the opportunity to advertise the way other groups were allowed to do, and its fliers were even removed. It was also subjected to different treatment in how rooms were allocated and was denied an appropriate room for a large event it was having that was routinely given to other groups. The group was also threatened with having its club status removed. After a strongly worded letter from legal counsel, the university stopped targeting the group.

Highline Community College

In 2007, a religious student organization was denied funding allocated for student organizations. The groups was told they were ineligible because the funds could not be used to fund religious activities. After a letter was sent from legal counsel, the college granted the group funding.

Wisconsin

University of Wisconsin, Madison

In 2022, a CLS chapter was seeking to re-register at the law school. They were asked to delete language in their constitution that a leader “must be a Christian.” The group was told that they could require agreement with beliefs, based on the Regents’ Policy 30-6, but could not require identification with a particular religion. This nonsensical distinction was confusing to the student leaders. After receiving a letter noting federal regulations, 34 CFR §§ 75.500 (d) and 76.500 (d), the chapter was able to re-register. Administrators, however, informed the chapter that its registration was “provisional.”

In 2006, the university derecognized a religious student group in part because of its religious leadership and membership requirements. When the group challenged its policy in court, the university had to change its policy. (*Madison Roman Catholic Found. v. Walsh*, 2007 WL 1056772 (W.D. Wis. Apr. 4, 2007)). The university then denied student activity fee funding to the religious group because its speech included prayer and religious instruction. The religious group won its court challenge to this viewpoint discrimination. (*Badger Catholic v. Walsh*, 620 F.3d 775 (7th Cir. 2010))

Milwaukee School of Engineering

The student government refused to renew recognition of a Christian student group because of its religious standards of conduct. After a legal organization sent a letter, the student government restored recognition to the group, as well as to a Muslim student group.

University of Wisconsin, Superior

A university refused to recognize a religious student group because it required its leaders to agree with its religious beliefs. After a court challenge, the university recognized the religious student group with its religious leadership requirements. (*Badger Catholic v. Walsh*, 620 F.3d 775 (7th Cir. 2010)).

ATTACHMENT B

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
Athletes in Action	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
Geneva Campus Ministry	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
Hillel (University of Iowa)	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
Imam Mahdi Organization	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
International Neighbors at Iowa	STOPPED, PENDING LITIGATION
International Student Outdoor Recreation Association	YES
Intersection	YES

InterVarsity Graduate Christian Fellowship	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
J. Reuben Clark Law Society	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
Latter-day Saint Student Association	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
Lutheran Campus Ministry	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
Multiethnic Undergrad Hawkeye InterVarsity	STOPPED, PENDING LITIGATION
Multiracial Student Association	YES
Musicology Society (University of Iowa)	YES
Muslim Students Association	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
Newman Catholic Student Center	STOPPED, PENDING LITIGATION
Nightingale Writers' Group	YES
NOBCCChE (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
Orthodox Christian Fellowship	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
Salt Company - The	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
Sikh Awareness Club	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
Twenty Four Seven	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 C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECULAR STUDENT ALLIANCE,
980 S. Arroyo Parkway, Suite 270
Pasadena, CA 91105,

and

DECLAN A. GALLI,
154 Canyon Circle
San Luis Obispo, CA 93410,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
400 Maryland Ave., SW
Washington, DC 20202,

and

SECRETARY OF EDUCATION,
400 Maryland Ave., SW
Washington, DC 20202

Defendants,

RATIO CHRISTI, INC.
2150 Elmwood Ave
Lafayette, IN 47904

[Proposed] Defendant-Intervenor.

Civil Case No. 1:21-cv-00169 (ABJ)

**DECLARATION OF COREY MILLER, PH.D.
IN SUPPORT OF
RATIO CHRISTI'S MOTION TO INTERVENE AS DEFENDANT**

I, COREY MILLER, PH.D., under penalty of perjury, hereby declare and state as follows:

1. I am over eighteen years of age and make this declaration on personal knowledge. If called as a witness, I could and would testify competently to the matters set for herein.

2. Ratio Christi, Inc. is a Christian apologetics organization. Its student chapters—many of which meet weekly—provide a friendly venue for atheists, skeptics, and adherents to any religion to investigate the claims of Christianity, discuss religious beliefs, and seek truth without fearing reprisal.

3. As a Christian apologetics organization, Ratio Christi seeks to defend the Christian faith and explain how the Bible applies to various current cultural, ethical, and political issues. For example, Ratio Christi is staunchly pro-life, believing that every human life—from conception to natural death—is created in the image of God.

4. Part of Ratio Christi's mission is to be an expressive student organization at universities and to protect its and its members' constitutional rights on campus. Ratio Christi and its members express their religious and other beliefs on each university or college campus through many means including flyers, signs, peaceful demonstrations, hosting tables with information, inviting speakers, and talking with fellow students about Christian beliefs and how they impact various social, moral, cultural, and ethical matters, among other things.

5. Any student can attend Ratio Christi's events and join the organization. But Ratio Christi requires that those who lead the Christian organization share its religious beliefs.

6. As a result, many of Ratio Christi's student chapters have, in the past, been denied by a university registered status, limiting its access to funding, meeting and event space, and administrative support. To access campus, Ratio Christi has thus

depended and continues to depend on federal laws protecting and enforcing Ratio Christi's First Amendment rights.

I. Biography of Declarant Corey Miller, Ph.D.

7. I have been the President and CEO of Ratio Christi from 2015. In that role, I oversee the Ratio Christi organization, including for its student chapters. I am familiar with Ratio Christi's beliefs, practice, and operations.

8. I hold masters degrees in philosophy, biblical studies, and in philosophy of religion and ethics. My doctorate is in philosophical theology from the University of Aberdeen, Scotland.

9. While I grew up in Utah as a seventh generation Mormon, I came to Christ in 1988. I am passionate about defending and proclaiming the truth of the Gospel that Jesus Christ died on the cross and rose again from the dead to pay the penalty for our sins and provide eternal life to those who believe in Him.

10. I have served on pastoral staff at four churches and have taught nearly 100 college courses in philosophy, theology, rhetoric, and comparative religions at various places (*e.g.*, Purdue, Indiana University, Multnomah University, Ecola Bible College). From 2009–15, I served on staff with Cru's (formerly, Campus Crusade for Christ's) Faculty Commons ministry at Purdue. I taught philosophy and comparative religions at Indiana University for twelve years.

11. I have published scholarship in many journals, such as the International Philosophical Quarterly, Philosophia Christi, and the Christian Research Journal. I am also author or co-author of four books:

- a. *Leaving Mormonism: Why Four Scholars Changed their Minds* (2017);
- b. *Is Faith in God Reasonable? Debates in Philosophy, Science, and Rhetoric* (2014);
- c. *In Search of the Good Life: Through the Eyes of Aristotle, Maimonides, and Aquinas* (2019); and

- d. *Engaging with Mormons: Understanding their World, Sharing Good News* (2020).

II. Ratio Christi's Theological Purpose & Organizational Structure

12. Ratio Christi is a Christian apologetics organization. Its members use their theological training to share the Gospel on college and university campuses across the globe. *See Exhibit 1 at 2, also available at* Ratio Christi, <https://ratiochristi.org/>.

13. The term apologetics is from the Greek word apologia, which was originally used of a speech of defense or an answer given in reply. *See Exhibit 2 at 1-2, also available at* Ratio Christi, *About*, <https://ratiochristi.org/about>.

14. Ratio Christi's purpose is to encourage and strengthen the faith of Christian students while sharing Christ's message and love with those who have not yet accepted Him. Today's college students are well-read, sophisticated, and intelligent. Ministering to them requires answering the biggest objections to Christianity, which is where our organization comes in. *See Ex. 2.*

15. Ratio Christi wants to keep students strong in their faith so they can withstand the challenges they face as they go out into the world. We do this in three ways. First, we arm students with reasons to follow Christ. We bring faith and logic together to give students thought-out reasons for following Jesus Christ. Our goal is to help Christians work through their doubts, and ultimately to share Christ with their peers. Second, we equip professors with tools to share their faith. With the right encouragement, resources, and platform, professors can share their own faith with the students around them and be a light within their spheres of influence. We help provide these tools. Third, we have university clubs around the world. University students are questioning purpose, faith, and identity. Our nationwide clubs provide a safe place to ask apologetics questions (and give leaders resources to tackle them with confidence). *See Ex. 2.*

16. Our campus ministry teams are evangelistic at heart and focus on fellowship as much as on debate. Our goal is to share the Gospel on every college campus. We're just as quick to give a hug as we are to give an argument for our faith. Ex. 2 at 4–5.

17. Our campus ministry does not replace or compete with any other ministries or churches. We actively seek out connections with Cru, Intervarsity, and many other parachurch organizations. We do our best when we partner with others. *See* Ex. 2.

18. *Worldwide Organization.* As a national and international organization, Ratio Christi has a worldwide impact. Throughout the world, Ratio Christi: (1) hosts national intellectual gatherings that unite differing people groups; (2) mobilizes theologians and thoughtful Christians to support & influence worldwide church matters; (3) produces apologetics resources for ministers, pastors, students, and families; (4) provides resources to Ratio Christi university clubs; (5) offers hands-on apologetics training events that go beyond the classroom; (6) remotely supports missionaries in Christian-hostile regions; and (7) hosts nationwide internship program to provide apologetics training. Ex. 2 at 6–7.

19. *Local Chapters.* Ratio Christi is at heart a local movement in communities and countries across the world. At the local level, Ratio Christi: (1) hosts on-campus Christian apologetics clubs and outreach events (2) participates in community service projects; (3) trains students to evangelize on their campuses; (4) offers fellowship, mentoring, networking, and training for professors; (5) helps church staff and pastors prepare kids for college; (6) starts high school mentoring groups to arm students for college; and (7) supports local churches with any speaking and teaching needs. Ex. 2 at 5–6.

20. On campus, Ratio Christi student clubs explore and debate some of the most probing questions about faith, reason, and life through panel discussions, lectures, discussion groups, and debates. At 123 chapters across the country and 13 chapters around the world, Ratio Christi trains students to discuss their beliefs in a rational

manner, hosts events, and fosters dialogue on campus. Indeed, at many of its chapters, more non-Christians than Christians attend its events. Ratio Christi also provides community for its regular members by connecting them to one another and by hosting informal fellowship events.

21. Ratio Christi has student chapters at 123 U.S. universities and colleges, including many public universities, as well as at 13 international universities. It seeks to grow and add more student chapters at more universities every day. A complete list of Ratio Christi's current student chapters is attached. *See Exhibit 3 (Ratio Christi Student Chapters List); see also Ratio Christi, Locations, <https://ratiochristi.org/chapters/>.*

III. Ratio Christi's Theological Beliefs and Leadership Requirements

22. Ratio Christi has a Statement of Faith that identifies its beliefs and sets forth leadership requirements that governs its local groups, attached as an exhibit to this declaration. *See Exhibit 4, Ratio Christi Statement of Faith, also available at <https://ratiochristi.org/about/beliefs/>.*

23. Ratio Christi's Statement of Faith outlines its beliefs about the various doctrines that form the core of the Christian faith, including the authority of Scripture, the nature of God, the nature and fall of man, God's provision of salvation through Jesus Christ, and the role of the church. *See Ex. 4.*

24. Ratio Christi's Statement of Faith also explains how Christians who dissent from a significant portion of our faith statement, as well as those of no or alternative religious faith, may participate in non-leadership capacities. *Ex. 4.*

25. All chapter directors and other leadership must affirm the entire faith statement. *Ex. 4 at 2.*

26. Student officers and faculty or staff advisors must affirm all or virtually all of our faith statement to serve in those roles. *Ex. 4 at 2.* By requiring adherence to all or virtually all of the faith statement, on a case-by-case basis Ratio Christi allows for

slight nuance among believers about the phrasing of certain doctrinal matters in the statement, but Ratio Christi has the final say and does not allow any student officers or faculty or staff advisors leaders to omit or dispute portions of the faith statement entirely.

27. Ratio Christi also has a Statement on Human Sexuality, attached as an exhibit to this declaration. *See Exhibit 5, Ratio Christi Statement on Human Sexuality, also available at Ratio Christi Statement on Human Sexuality, <https://ratiochristi.org/about/beliefs/sexuality/>.*

28. Among other things, this statement affirms that God created human beings as either male or female, that efforts to change one's biological sex defy God's creative order and undermine human flourishing, that God designed sexual intimacy to be expressed solely within a marriage between one adult male and one adult female, and that God intended for marriage to be a permanent life-long union. Ex. 5.

29. As part of living out a consistent, biblical spirituality, one dedicated to the pursuit of Christ-likeness, all Ratio Christi leaders are expected to avoid sexual intimacy outside of marriage and to encourage others to follow this biblical pattern of purity. Indeed, whatever one's personal tendencies and desires, the call of Christ on our lives is the same: sexual purity manifest among the married as complete faithfulness and by those who are unmarried by living a chaste life (1 Thess. 4:3–8). Ex. 5 at 3.

30. These requirements are designed to ensure that our chapters remain faithful to our Christian beliefs and maintain a consistent Christian witness to the various university communities to which they minister.

IV. Ratio Christi's Organizational Structure on Campus

31. Ratio Christi incorporates these beliefs in its governing documents, including in the documents governing its student chapters and clubs.

32. Any Ratio Christi group on a college campus is a student chapter of Ratio Christi, Inc., a nonprofit registered 501(c)(3) corporation. The current mailing address for Ratio Christi, Inc. is 2150 Elmwood Ave, Lafayette, IN 47904. Unlike public universities, Ratio Christi is not a recipient of federal funds.

33. The student chapters of Ratio Christi, Inc. are bound and governed by its policies and guidelines, and they are its local extensions.

34. A copy of one constitution that a Ratio Christi student chapter submitted to a university (the University of Colorado, Colorado Springs in August 2018) is attached as an exhibit as a representative example of student chapter governing documents. *See* Exhibit 6 (Constitution for the Ratio Christi Student Chapter at the University of Colorado, Colorado Springs).

35. *Purpose of Student Groups.* As this document shows, a Ratio Christi student constitution reflects the national organization's mission. As a result, a student chapter's governing documents will explain that, as a Christian apologetics organization, Ratio Christi seeks to advance a Biblical worldview, explaining how the Bible applies to various current cultural, moral, and political issues. Ratio Christi's mission is "to equip university students and faculty to give historical, philosophical, and scientific reasons for following Jesus Christ." Ex. 6 at 1.

36. A student constitution explains that Ratio Christi seeks to discuss "culturally relevant issues related to history, science, philosophy, and theology and ask how they pertain to a biblical worldview and the truth of Christianity." It also seeks to "encourage all students and faculty to interact with Christian thinkers on an objective, intellectual basis." Ratio Christi's goal is "to foster critical thinking, the use of logic, and evidential and philosophical tools in the pursuit of truth in understanding the world and religious beliefs." Ex. 6 at 1.

37. A student constitution explains that Ratio Christi promotes the intellectual development of students who share an interest in Christian beliefs and want to be

able to defend and discuss their beliefs and the beliefs of others in an intellectual manner by giving the historical, philosophical, and scientific reasons for following Jesus Christ. Ex. 6 at 1.

38. A student constitution explains that, as part of its Christian mission, Ratio Christi welcomes all students to participate in its activities and events. Ex. 6 at 6.

39. Ratio Christi serves a university community in various ways, including by enriching the marketplace of ideas with perspectives students may not often hear elsewhere and by providing a place where students of different backgrounds and perspectives can discuss the religious, moral, and cultural issues of the day. Ex. 6 at 1.

40. Ratio Christi seeks to preserve its Christian identity, purpose, and message in its student clubs. Ex. 6 at 1.

41. *Membership.* Ratio Christi's members, by having the power to vote on any organizational business, influence the message and direction of the organization. Therefore, Ratio Christi allows any student at a university "who agree[s] with and promote[s]" its mission and purposes to join as a member. Ex. 6 at 2. Ratio Christi does not require students to "profess faith in, endorse, or adopt any religious beliefs" to become a member or participate in its activities. Ex. 6 at 2, 6.

42. It would contradict Ratio Christi's expressive and associational purpose to allow individuals who do not support its mission and purposes to serve as members. Conferring membership on those who do not support Ratio Christi's purposes would communicate a message which it opposes and does not wish to communicate.

43. Ratio Christi, through its governing documents, does not limit membership based on any other criterion listed as a protected class in traditional civil rights codes. Its governing documents do not, for example, limit membership on the basis of race, national origin, sex, age, or disability.

44. *Leadership.* Because each student organization seeks to advance, teach, and defend Christian beliefs, Ratio Christi requires that its officers must share and personally hold its Christian beliefs. And it requires that its members, those who influence its overall direction, generally support its mission.

45. As a Christian organization, Ratio Christi believes that its officers “are the spiritual leaders of the Chapter” and that they are “responsible for promoting, guiding, and leading the spiritual health of the Chapter and its members; for leading others toward Christian maturity; for teaching faithfully the Word of God; and for teaching, inculcating, defending, communicating, and advocating the Chapter’s Christian beliefs,” both internally to members and externally to the University community. Ex. 6 at 3.

46. Ratio Christi provides all of its officers “with specialized training as spiritual leaders of the organization.” Ex. 6 at 3.

47. Therefore, the primary responsibilities of Ratio Christi’s officers are (1) to exercise spiritual leadership and (2) “to live in a manner that is consistent with Christian beliefs and conduct standards, so as not to undermine the Chapter’s Christian witness on campus,” and (3) “to ensure that the viewpoints the Chapter advocates on campus through its events and activities are consistent with Christian teaching and a Biblical worldview.” Ex. 6 at 3.

48. Ratio Christi charges each officer with the responsibility “of living, before the Chapter and the world, a life which places Jesus Christ at the center.” Ex. 6 at 3–4. Thus, all Ratio Christi officers must, among other things, “profess a personal relationship with Jesus Christ and abstain from any conduct that would impair their ability to bear witness of their faith and serve the purposes of the organization.” Ex. 6 at 2.

49. It would contradict Ratio Christi’s expressive and associational purpose to permit individuals who do not profess a relationship with Jesus Christ and share its

religious beliefs to serve as its officers. Conferring leadership positions to those who do not profess a relationship with Jesus Christ and share Ratio Christi's religious beliefs would communicate a message which Ratio Christi opposes and does not wish to communicate.

50. Ratio Christi's membership and leadership policies are an expression of its faith and are integral to ensuring that it can achieve its religious mission.

51. Ratio Christi, through its governing documents, does not limit leadership based on any criterion, other than religion, found in traditional civil rights codes. Its governing documents do not, for example, limit leadership on the basis of race, national origin, sex, age, family size, or disability.

52. Because of its sincerely held religious beliefs, Ratio Christi objects to communicating any university-imposed ideological message in its organization documents of acceptance or approval of other religious beliefs that undermine the Christian message it advocates and advances on campus.

53. Because of its sincerely held religious beliefs, Ratio Christi objects to any university policies limiting its leadership selection processes because they may require Ratio Christi to accept as members students who do not support its purposes and as officers students who do not share its religious beliefs.

V. Federal Protections Have Been Critical to Ratio Christi's Presence on Campus

54. Part of Ratio Christi's mission is to be an expressive student organization at the University and to protect its and its members' constitutional rights on campus. Freedom of speech and religion benefits everyone: public colleges and universities that remain committed to preserving a positive educational environment for all their students should avoid viewpoint discrimination against religious student clubs. Respecting the constitutional rights of all students creates the most positive learning atmosphere of all; one of true viewpoint diversity and freedom of thought and debate.

55. Ratio Christi is committed to exercising its First Amendment freedoms on campus and to contributing to a positive atmosphere of debate. It has thus defended its members' rights in court when necessary to access campus resources.

56. For instance, in one case in Georgia, Ratio Christi encountered a tiny "speech zone" that exiled a pro-life display to an area comprising less than 0.08% of a 405-acre campus. Exhibit 7, Complaint, *Ratio Christi of Kennesaw State Univ. v. Olens*, Case 1:18-cv-00956-TWT, filed Mar. 15, 2018 (N.D. Ga.). Officials had unrestricted discretion to grant, deny, or modify a student organization's reservation request even for unconstitutional reasons. The lack of guidelines allowed them to "quarantine" speech they deemed "controversial" to a small, less-accessible speech zone.

57. After Ratio Christi sued, the university agreed to eliminate its speech zone so that students will be free to speak freely in all outdoor areas of campus. The university also agreed that, when students seek to reserve space, they cannot be relegated to disfavored areas. In addition, officials no longer have free rein to charge security fees in any amount. A new policy outlines when and how security fees can be charged. Exhibit 8, Settlement Agreement, *Ratio Christi of Kennesaw State Univ. v. Olens*, Case 1:18-cv- 00956-TWT (N.D. Ga.).

58. Likewise, Ratio Christi also sought redress in court when it faced viewpoint discrimination in Colorado over its leadership requirements. The University of Colorado, Colorado Springs refused to grant the group registered status for several years because of its requirement that student leaders share its religious beliefs. The university's denial limited its access to funding, meeting and event space, and administrative support. Exhibit 9, Complaint, *Ratio Christi at Univ. of Colo., Colo. Springs v. Sharkey*, Case No. 1:18-cv-02928, filed Nov. 14, 2018 (D. Colo.). The university's policy allowed its officials to deny registered status to a group because the organization selects leaders that share and will advocate for the organization's religious or political philosophy, and the policy also gave officials unlimited discretion

to approve or reject student groups, even groups that meet all the published requirements.

59. After Ratio Christi filed suit, the university updated its policies to ensure that any student club may require its leadership to promote the purposes of the club and hold beliefs consistent with the group's mission. Exhibit 10, Settlement Agreement, *Ratio Christi at Univ. of Colo., Colo. Springs v. Sharkey*, Case No. 1:18-cv-02928 (D. Colo.).

60. On many other occasions, Ratio Christi has also been denied recognition or faced other obstacles to equal access to campus resources because of its theological beliefs informing its leadership requirements. Since 2011, Ratio Christi has been able to resolve at least 30 disputes over access to campus with universities short of resorting to litigation.

61. Only after arduous and long negotiations did these chapters obtain express or de facto exemptions from the policies. Each of these disputes required Ratio Christi to secure the assistance of legal counsel to engage in negotiations and other provide other formal assistance to obtain access to campus resources. Even seeking these changes short of litigation takes time and effort for students.

62. More so, even cases in which a settlement is reached shortly into litigation, Ratio Christi still had to incur substantial resources to exercise its First Amendment rights. For example, it took 170 attorney hours and many hours from Ratio Christi staff and students—before the University of Colorado, Colorado Springs even filed its answer—to arrive at a settlement by which the university agreed to modify its policy. Exhibit 10, Settlement Agreement, *Ratio Christi at Univ. of Colo., Colo. Springs v. Sharkey*, Case No. 1:18-cv-02928 (D. Colo.).

63. Based on these and other experiences, Ratio Christi has credible, rational fear of being denied campus access at many other colleges and universities, too, under similar policies that have a disparate impact on religious student groups.

64. For example, comments submitted by the Christian Legal Society's student chapter at the University of Iowa College of Law included a recent document prepared by the University of Iowa during litigation. This document showed that if it were to prevail in court and implement the type of policies sought by the Secular Student Alliance, that it would not allow the Ratio Christi student group to remain on campus. *See* Exhibit 11, Christian Legal Society at the University of Iowa College of Law, Comment & Attached Chart of Religious Groups, Docket ID ED-2019-OPE-0080, RIN: 1840-AD45, ID: ED-2019-OPE-0080-16197, Tracking Number: 1k4-9f3f-gmyi (Feb 19, 2020). (The university administrators highlighted 32 other religious groups that could be derecognized as well, including Chi Alpha, and many Muslim, Jewish, Sikh, Latter-day Saint, Catholic, and Protestant student groups.)

65. But Ratio Christi also provides important benefits for college campus. As comments submitted to the Department of Education during rulemaking showed, religious student organizations like Ratio Christi serve students at the University of Iowa in many ways. They connect students to both local and global service opportunities, provide spiritual guidance, emotional support, and a sense of belonging to otherwise-isolated students. As the University's Dean stated, religious groups allow students to "espouse a particular ideology or belief or a mission" and that this is "beneficial" because "it promotes progress toward graduation [and] it gives students a sense of camaraderie." *See* Exhibit 12 at 50–51, E. Scott Martin, Chi Alpha Campus Ministries U.S.A., Comment & Attached *Amicus* Brief of Religious Groups, Docket ID ED-2019-OPE-0080, ID: ED-2019-OPE-0080-13800, Tracking Number: 1k4-9f37-w77i. As the documents submitted to the Department showed, in the spring of 2016, Ratio Christi's Iowa chapter hosted a lecture on the rational defense of Jesus' resurrection. The lecture drew about 600 people from both religious and nonreligious backgrounds. In March 2018, they hosted another event discussing God as revealed in the Old Testament. That event drew over 100 people and led to a weekly

apologetics series that drew a dozen regular attendees. And at the most recent Ratio Christi Christmas party, most of the students decided to watch a philosophical discussion about the meaning of life rather than engage in the scheduled board games. *Id.*

66. Among the campuses where Ratio Christi has chapters, affiliates, and members are public universities that receive direct or state-administered grants of federal funds from the Department of Education, making them subject to the challenged rule. Students at these public universities, including members of the Ratio Christi student chapter there, have to pay mandatory student activity fees that go to provide official university funding for recognized student organizations.

VI. Federal law protects Ratio Christi's First Amendment rights

67. Ratio Christi thus has reason to believe from its experience that the First Amendment, paired with other federal civil rights laws protecting First Amendment freedoms, played and will continue to play a critical role in keeping the door open for its ministry and expressive activities on campus.

68. Ratio Christi's continued ability to access college campuses thus also critically depends on federal laws that ensure that it has the freedom to define itself according to its governing documents, to follow its statements of belief and human sexuality, and to hold to its membership and leadership policies for student clubs.

69. Federal law is particularly important because most colleges and universities choose to charge mandatory student activity fees, out of which comes funding and other resources for recognized student groups. Our students are required to pay the same tuition and mandatory student fees as other students on campus. These student fees in turn subsidize a diversity of viewpoints on campus. Often, these fees are used to subsidize Ratio Christi, as well as subsidize groups holding to beliefs and practices other than those espoused by Ratio Christi and its members.

70. Federal requirements of viewpoint neutrality ensure that, if students must pay mandatory student activity fees, Ratio Christi has an equal opportunity to access these fees subsidizing student activities. Many campus officials and students object to Ratio Christi student groups receiving student fees and other campus resources. But the First Amendment requires that public universities treat all groups neutrally as to their viewpoints within a mandatory student fee structure. The First Amendment also protects the free exercise of religion and it protects religious groups from being targeted for unequal treatment because of their religious identity, exercise, and activities.

71. Federal law is thus crucial to allowing Ratio Christi and its campus members to participate fully in campus life and to receive their equal share of access to campus funding and resources. Federal law protects Ratio Christi's student members from being forced to fund a structure that distributes fees among recognized student organizations but that would exclude Christian students like Ratio Christi members from eligibility for funding; that structure would discriminate against Ratio Christi students based on their theological beliefs and based on the governing structure stemming from their theological beliefs, all protected characteristics under the U.S. Constitution and other federal laws. Federal law protects Ratio Christi students from being forced to fund recognized student organizations that would otherwise discriminate against them based on these or other protected characteristics.

72. The rule seeks to ensure that any schools with unconstitutional policies review them and cease enforcing them. 85 Fed. Reg. 59,916 (Sep. 23, 2020). This change helps students by creating a positive learning environment that respects students' constitutional rights. It also seeks to avoid a situation in which students need to seek recourse from unconstitutional policies in federal court.

73. I thus wrote comments to the Department of Education supporting this rule, saying:

While working with Ratio Christi on more than a 100 campuses across the US, we've encountered lots of resistance to our commitment to serve students and faculty by offering viewpoint diversity from other things you hear on campus. We strive to love others but also give reasons from science, history, and philosophy for why we think faith in Christ is plausible. But we've often been deprived from space on campus, funding, free speech, and even approval as a campus group simply on the basis of our orthodox Christian beliefs. I've been an adjunct professor and a grad student. Our chapters help people to think critically and better prepare them for life. I think the proposed regulation would greatly help students of religious organizations better serve their campuses.

See Exhibit 13 at 1, Corey Miller, Comment, Docket ID ED-2019-OPE-0080, ID: ED-2019-OPE-0080-15288, Tracking Number: 1k4-9f2l-7e6a (Feb. 19, 2020).

74. A student member of Ratio Christi likewise submitted a comment supporting this rule. Weslee Green wrote:

This proposal to protect student religious organizations will have a truly positive impact on the lives of students. . . . Throughout my college experience I've been a part of Cru at the University of Arizona, a student-led Christian movement that has been instrumental in building my understanding of how to live out my faith. I'm also a founding member of the University of Arizona Ratio Christi chapter, another Christian student group that has taught me how to articulate my beliefs in a respectful and understanding way. Because of these groups I've become a part of a strong community of like-minded peers that has enriched my time at university in ways I could not have imagined. I've also been personally mentored by leaders from both clubs. Their faith and actions truly modelled to me what it means to live as a follower of Christ. In addition, I've been given opportunities to act as a leader in each organization. While these opportunities have taught me many valuable communicative and collaborative skills, they have also granted me the ability to invest in other members and to encourage them in their own faith journeys.

I'm not the only one who has benefited from being a part of a religious student group, and I know I speak for many students when I say I can't imagine my life without these communities or the spiritual support of their leadership. These groups do not exist to push a particular political agenda; rather they act as spaces for students to explore, learn, and grow. They seek to build up individuals on a personal level, empowering them to make a positive difference on campus and in the community.

See Exhibit 14 at 1, Weslee Green, Comment, Docket ID ED-2019-OPE-0080, ID: ED-2019-OPE-0080-13320, Tracking Number: k6p-qxch-17ps (Feb. 19, 2020).

75. Because of the Department's rule, public colleges and universities, including the public universities at which Ratio Christi may start future student chapters, are now required on condition of federal funding to respect religious student clubs and

not implement policies that would exclude them from the benefits available to all other student clubs.

76. Were the rule not in place, and were universities to create and enforce unconstitutional policies along the type sought by Plaintiffs in this lawsuit, Ratio Christi's students would lose access to critical resources, at a time when student budgets have already been devastated by the COVID-19 pandemic. As a result, educational opportunities that would have been available to students, including Ratio Christi's members, would be degraded or lost entirely.

77. If the Department's rule were not in place, universities who create or maintain unconstitutional policies will inflict significant harms on Ratio Christi students who seek to continue to start new student chapters. It would marginalize religious students and exclude religious student groups from campus benefits available to other students. This will create particular disproportionate harm to Ratio Christi members because many Christian students come from historically disadvantaged backgrounds, especially immigrant, poor, and rural backgrounds. It will also create various intangible and other harms to Christian students because of the disrespectful stigma caused when universities equate students' faithful theological beliefs with, as Plaintiffs put it, "legally mandated university support for invidious discrimination." Compl. ¶ 102(c), Doc. 1.

78. The effects of repealing the rule on religious student organizations and their members is clear. It will mean that universities will be more likely to violate Ratio Christi students' First Amendment rights by denying them viewpoint-neutral access to campus resources and by affording preferential access to all other groups.

79. Whether colleges and universities with unconstitutional policies exempt religious student groups while requiring other student groups to comply, or instead ultimately change or rescind their general unconstitutional policies to comply with the Department's requirements by exempting all student organizations from

unconstitutional requirements, the student members of Ratio Christi will be forced to pay, through their universities' collection and disbursement of mandatory student fees, to subsidize many other student organizations—including organizations that the members do not wish to affiliate with or subsidize.

80. In the absence of a mandatory fee structure, Ratio Christi and its members likely would choose not to subsidize groups with which Ratio Christi and its members disagree; in the same way, without a mandatory fee structure, many other students likely would choose not to subsidize groups with which they disagree, such as Ratio Christi and its member student clubs.

81. If the rule were not in effect, public universities would be free to receive federal funds and to exclude religious student groups, who would not even have a chance to compete for a share of student activity funds, unless a federal court intervened. Mandatory student fees would not be distributed on a viewpoint-neutral basis if campus rules excluded many religious student groups from consideration.

VERIFICATION

I, COREY MILLER, a citizen of the United States and a resident of the State of Indiana, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing Declaration is true and correct based on my personal knowledge.

Executed this ____ day of February, 2021 in Lafayette, Indiana.

COREY MILLER

unconstitutional requirements, the student members of Ratio Christi will be forced to pay, through their universities' collection and disbursement of mandatory student fees, to subsidize many other student organizations—including organizations that the members do not wish to affiliate with or subsidize.

80. In the absence of a mandatory fee structure, Ratio Christi and its members likely would choose not to subsidize groups with which Ratio Christi and its members disagree; in the same way, without a mandatory fee structure, many other students likely would choose not to subsidize groups with which they disagree, such as Ratio Christi and its member student clubs.

81. If the rule were not in effect, public universities would be free to receive federal funds and to exclude religious student groups, who would not even have a chance to compete for a share of student activity funds, unless a federal court intervened. Mandatory student fees would not be distributed on a viewpoint-neutral basis if campus rules excluded many religious student groups from consideration.

VERIFICATION

I, COREY MILLER, a citizen of the United States and a resident of the State of Indiana, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing Declaration is true and correct based on my personal knowledge.

Executed this 18th day of February, 2021 in Lafayette, Indiana.



COREY MILLER

ATTACHMENT D

Senator Tim Scott's OFRs for the 02/3/21 HELP Committee Hearing on the Nomination of Dr. Miguel Cardona for Secretary of Department of Education

School Choice and Charter School stakeholder questions.

Do you believe charter schools are public schools?

Yes, while charter schools can be privately managed, they are public schools.

Will you commit to me that you will ensure the continued inclusion of robust funding requests for the Charter Schools Program in future budget requests?

I believe that all children should have access to an excellent public school. There are high-quality public charter and neighborhood schools across our country that are serving students, families, and communities well. I believe we should learn from and celebrate the successes and innovations of these schools—as we should all great public schools. It would be premature to take a position on this funding issue without having had the benefit of consultation with staff at the Department of Education and or key stakeholders. If confirmed, I commit to doing my due diligence in exploring this issue.

Do you commit you will not propose funding cuts to the Charter Schools Program?

It would be premature to take a position on this funding issue without having had the benefit of consultation with staff at the Department of Education and key stakeholders. If confirmed, I commit to doing my due diligence in exploring this issue.

Will you commit to support the DC Opportunity Scholarship Program?

It would be premature to take a position on this funding issue without having had the benefit of consultation with staff at the Department of Education and key stakeholders. If confirmed, I commit to doing my due diligence in exploring this issue.

Do you support the right of any parent to enroll their child in the best school?

I think it is important that all public school students, regardless of which kind of school they attend, have access to the educational opportunities they need to succeed.

Do you think any child should be stuck in any failing school district because of their zip code?

As stated in the previous response, I think that all public school students should have access to the educational opportunities they need to succeed. If confirmed, I will work to ensure that the Department holds all schools to the requirement of providing a high-quality education for the students they serve.

Do you support a parent's right to choose another school if they are stuck in a failing school districts?

I appreciated our discussion on this issue during the hearing and as I mentioned then, my passion is to ensure quality public schools. I'm a strong proponent of making sure all schools are quality schools and investing in our neighborhood schools to make sure that they're quality schools where parents want to send their children. Ultimately, we should seek to build a system in which there are no winners or losers, in which all public schools are great schools.

Digital divide/homework gap

How will you work with your counterparts at the Department of Commerce and the Federal Communications Commission to shrink the digital divide in this nation and ensure that students have equitable access to the technological resources that are increasingly needed to learn and grow?

The digital divide is one of the many ways that the pandemic has exacerbated the inequities in our education system and society. If confirmed, I commit to working with partners across government to address this critical challenge and collaborate on solutions to enable students to access essential technology.

Combating Anti-Semitism

As Secretary of Education, will you commit to ensuring that the Office for Civil Rights enforces and adheres to the Executive Order on Combating Anti-Semitism?

As a part of its mandate, the Department of Education's Office for Civil Rights works to ensure that federally funded educational programs do not engage in discrimination based on race, national origin, sex, disability, or age. This includes the important responsibility of protecting students of any religion from discrimination based on their actual or perceived shared ancestry or ethnic characteristics. If confirmed, I commit that I will work with Department of Education staff to understand the additional effects of the Executive Order on Combatting Anti-Semitism.

Title IX and Religious Freedom

Faith-based colleges and universities play an important role in the higher education landscape. According to the National Center for Education Statistics, there are over 4,300 degree-granting institutions in the U.S., just over 1,000 of which define themselves as religiously affiliated. What is your perspective on religious freedom, institutional autonomy, and the rights of both individuals and institutions to practice their sincerely held religious beliefs? How do you view ED's role in addressing and preserving First Amendment religious freedom rights for colleges & universities under the Biden administration?

I share President Biden's commitment to a culture of tolerance and inclusiveness that encourages individuals of all faiths to celebrate their beliefs openly and without fear of harm. I deeply believe in the importance of diverse perspectives and backgrounds, including diversity of religious beliefs, and the value brought by that diversity to learning environments. Should I be confirmed, I look forward to advancing the goals of respect and dignity for communities and institutions of all faiths and religions, consistent with the U.S. Constitution and federal laws.

Since Title IX was passed during the Carter administration, every administration—including the Carter, Clinton, and Obama administrations—has agreed that Title IX’s religious exemption applies to schools of divinity, seminaries, yeshivahs, and other religious schools that were animated and controlled by their religious beliefs. And no court has ever interpreted Title IX’s religious exemption otherwise. Hundreds of seminaries, yeshivahs, and religious schools nationwide of all faiths have relied on that unbroken history. Do you agree with the position taken by all previous administrations?

I recognize that the First Amendment’s protection for religious freedom is one of the important building blocks of our Constitution, together with protections for equality and other rights and responsibilities set out in the Bill of Rights and our nation’s laws. However, it would be premature to take a position on the positions taken by previous administration without having had the benefit of consultation with staff at the Department of Education and key stakeholders. If confirmed, I can commit to doing my due diligence on these issues.

Do you agree that churches, seminaries, rabbinical schools, and other religious groups must be able to decide how to train their own religious leaders according to the teachings of their faith?

I believe that religious organizations have certain freedoms under the First Amendment, and, if confirmed as Secretary, I can commit to adhering to the U.S. Constitution and federal law as interpreted by the courts.

The Department of Education has two rules that protect religious student groups, 34 CFR §§ 75.500(d) and 76.500(d). The rules prohibit public college administrators from discriminating against student groups because of their sincerely held religious beliefs, speech, and leadership standards. Will you assure me that the Department will work to implement these regulations and ensure that religious students feel welcome and respected on the campuses of public colleges that receive federal grants?

I do not have a view on these specific regulations to provide at this time. Should I be confirmed, I commit to you that I will consult with staff at the Department to learn more about these specific regulations and gather the necessary information prior to determining the appropriate regulatory stance. As stated in my confirmation hearing, I believe that we must ensure that learning environments, including college campuses, are places free of discrimination and harassment for all students, including those of all religious faiths.

Higher Education and Accountability

Do you agree that all institutions of higher education should be held to the highest standards of quality regardless of sector?

We share the goal of ensuring all our federal investments in education have the desired impact of helping students complete a high-quality credential or degree regardless of sector.

Do you agree that we should ensure the availability of affordable and accessible education for all students ensuring their opportunity so they may select the pathway that best fits their needs?

I believe that it is crucial we make investments to improve college affordability in ways that reduce the need for students to take on debt. Related to that goal, we also must ensure we are better aligning and communicating pathways to college and careers in our middle and high schools. I look forward to working with you on these issues if confirmed.

Do you agree that all sectors of higher education should be actively engaged when developing regulations, guidance documents and interpretations to ensure those being affected can provide meaningful input?

I understand that the Higher Education Act lays out requirements for the development of regulations, including a negotiated rulemaking process that involves a diverse range of stakeholders. If confirmed, I will ensure that the Department of Education follows the policies and procedures required of it.

There are over 7 million students attending nonprofit and proprietary institutions. Should those students attending nonprofit and proprietary schools also receive additional funding? If not, do you think those students are less deserving or have not experienced the same adverse impact from the coronavirus pandemic as students attending public schools?

If confirmed, I look forward to working with you to secure additional funding to help students and institutions of higher education across the country get additional support to meet their needs during the pandemic.

ATTACHMENT E

United States Senate

WASHINGTON, DC 20510

May 20, 2021

The Honorable Miguel A. Cardona, Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Secretary Cardona,

We write to you in support of the First Amendment rights of students on college and university campuses. Unfortunately, incidents in more than 30 states over the past decade show that faith-based student groups in particular have suffered unequal access to campus resources because of the sincerely held religious beliefs that inspire their association. It is imperative that the Department of Education uphold regulatory protections for faith-based student groups, particularly for groups that maintain leadership requirements based on sincerely held religious beliefs.

Student groups offer constructive social outlets between coursework and the day-to-day of college life. Often, these groups are where new students go to forge friendships and find ways to engage with their new community. Faith-based groups uniquely center their mission on dedication to a higher power. These groups are religiously diverse. Christian, Jewish, Muslim, and Baha'i faiths alike are creating chapters on campuses to provide a space for students to learn about, worship, and practice their faith in likeminded fellowship.

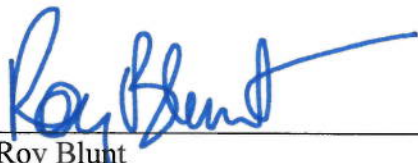
Nothing speaks to the power of faith-based student groups more than their actions. For example, Cru, a faith-based student group at University of Kansas in Lawrence, Kansas, helped first-semester freshmen connect with relief efforts in Houston, Texas, after Hurricane Harvey. Another example is the several student groups from George Mason University in Fairfax, Virginia—Cru, the Muslim Student Association, and the Jewish Student Association—who worked together to raise money for refugees displaced by conflict. These groups provided invaluable support to communities in need. Their stories are but a few of many examples of how faith-based student groups across the country make an impact in their communities and beyond.

The Final Rule titled, *Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities*, 34 C.F.R. §§ 75.500(d) and 76.500(d) (“final rule”), ensures the equal treatment of faith-based student groups at public institutions of higher education. It has come to our attention that there is a legal challenge to this final rule premised on a flawed understanding of good public policy and the law. It is also our understanding—based on a recent court filing—that the Department of Education is considering regulatory action related to the final rule.

In response to questions from Senators following your confirmation hearing, you said that “we must ensure that learning environments, including college campuses, are places free of discrimination and harassment for all students, including those of all religious faiths.” The final rule accomplishes this goal. It appropriately and lawfully ensures that faith-based student groups have equal access to campus resources, notwithstanding their sincerely held religious beliefs, including leadership requirements. No student group should suffer loss of official recognition, use of institutional facilities, or access to student fee funds simply for being faith-based. It would come at too high a cost for the First Amendment and for the communities that benefit from these groups’ acts of public service.

We ask the Department to recognize the importance, and the constitutional rights, of faith-based student groups at public institutions of higher education. Current law already protects religious student groups in high schools. Students deserve the opportunity to organize under both their faith and at their university or college.

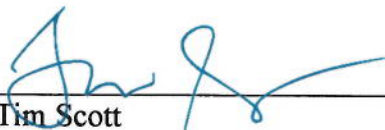
Sincere Regards,



Roy Blunt
United States Senator



James Lankford
United States Senator



Tim Scott
United States Senator

ATTACHMENT F

June 1, 2021

The Honorable Miguel A. Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

We write to ask you to preserve two regulations, 34 C.F.R. §§ 75.500(d) and 76.500(d), that provide protections for faith-based student organizations and their contributions to religious diversity on public college campuses. These regulations provide commonsense protections for faith-based student organizations who have faced discrimination on some college campuses for nearly four decades. These regulations protect students of all faiths, including student organizations represented by many of the undersigned organizations.

We respectfully ask you to preserve 34 C.F.R. §§ 75.500(d) and 76.500(d) as adopted.

Students do not surrender their constitutional rights when they arrive on public college campuses. Religious freedom is America's first freedom, enshrined as a constitutional right in the First Amendment. The First Amendment guarantee of free exercise of religion is paired with the freedoms of speech and assembly for an important reason. The right to assemble together based on religiously informed beliefs is foundational to a free society. In deciding *NAACP v. Alabama*, 357 U.S. 449 (1958), the United States Supreme Court declared, "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

However, in spite of these constitutional protections, student groups on some college and university campuses are denied the right to require that their leadership affirm the religious convictions of the organizations. They are put at risk of losing their official standing as a campus organization because they want the officers who lead them in prayer and in studying their respective sacred texts to agree with their religious beliefs. Often, registering as an official campus organization is required for these groups to use university rooms for meetings and hold campus events. Denying recognition to these groups because of their sincerely held religious beliefs is wrong.

Faith-based groups regularly invest in the flourishing of their college community through community service. These groups also positively contribute to the growth and development of their members as students navigate the complexities of university life and the transition into adulthood.

We urge you to preserve the legal protections provided in 34 C.F.R. §§ 75.500(d) and 76.500(d) for individual students and religious student organizations so that students of all faiths will continue to feel welcome on their public college campuses.

Respectfully submitted,

Kim Colby
Director
Center for Law and Religious Freedom
Christian Legal Society

Russell Moore
President
Southern Baptist Ethics &
Religious Liberty Commission

Rabbi Abba Cohen
Vice President for Government Affairs
& Washington Director
Agudath Israel of America

Walter Kim
President
National Association of Evangelicals

Marty Stephens
Director of Government & Community
Relations
The Church of Jesus Christ
of Latter-Day Saints

The Rev. Dr. Matthew C. Harrison
President
The Lutheran Church—Missouri Synod

Melissa Reid
Director of Government Affairs
Seventh-day Adventist Church –
North American Division

Jo Anne Lyon
General Superintendent Emerita
The Wesleyan Church

George P. Wood
Coordinator of Religious Freedom
Initiatives
Assemblies of God USA

Anthony R. Picarello, Jr.
Associate General Secretary and General
Counsel
United States Conference
of Catholic Bishops

Daniel E. Balserak
Assistant General Counsel and Director of
Religious Liberty
United States Conference
of Catholic Bishops

Ismail Royer
Director
Islam and Religious Freedom Action Team
Religious Freedom Institute

Rev. N. J. L'Heureux, Jr.
Executive Director Emeritus
Queens Federation of Churches

Stephanie Summers
CEO
Center for Public Justice

Stanley Carlson-Thies
Senior Director
Institutional Religious Freedom Alliance

Lance Kinzer
Director of Policy and
Government Relations
1st Amendment Partnership

Dr. George O. Wood
Chairman
World Assemblies of God Fellowship

Shirley Hoogstra
President
Council for Christian
Colleges & Universities

Asma T. Uddin
Lawyer and Author

Howard Slugh
General Counsel
Jewish Coalition for Religious Liberty

Steven T. McFarland
Former Executive Director
1999-2002
U.S. Commission on International
Religious Freedom

cc: Michelle Asha Cooper, Acting Assistant Secretary, Office of Postsecondary Education
Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights
Emma Leheny, Principal Deputy General Counsel and Acting General Counsel
Melissa Rogers, Senior Advisor to the President and Director, White House Office of
Faith-based and Neighborhood Partnerships

ATTACHMENT G



June 3, 2021

The Honorable Miguel A. Cardona
 Secretary of Education
 U.S. Department of Education
 400 Maryland Avenue, S.W.
 Washington, D.C. 20202

Dear Secretary Cardona:

We, the undersigned organizations, write to ask that you preserve and uphold 34 CFR §§ 75.500(d) and 76.500(d), regulations that provide protection for faith-based student organizations. These regulations were part of the final rulemaking by the Department of Education, published on September 23, 2020, at 85 FR 59916. The language helps ensure that faith-based student organizations will be treated like other student organizations. It is necessary because colleges often discriminate against religious clubs, including those of many minority faiths, just because they have religious expectations for leaders. The regulation will allow religious student organizations to continue to be an authentic presence on campuses across the nation, expressing and living out their religious ideals and values and adding to the diversity of the student body.

The undersigned represent diverse beliefs, but we agree on affirming the freedom of all students to organize based upon their shared religious beliefs. This freedom is essential to a free and truly pluralistic society.

34 CFR §75.500(d) provides (and 34 CFR §75.600(d) has essentially the same language):

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) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

We believe the choice is clear that this language should remain because that decision is supported by 1) a clear logical basis, 2) a clear legal basis, and (3) a clear harm if it is changed:

First, there is a clear logical basis for this regulatory language. These regulations uphold strong values shared by both political parties—tolerance, robust pluralism, and ensuring emotional support and health for college students. The vast majority of universities strongly encourage involvement in student organizations, in order to enable expression, connection, community, emotional health, and leadership development. They know that diverse groups are necessary in order to enable supportive community for a diverse student body.

The language reflects long-standing First Amendment freedoms. The interwoven freedoms of speech, association, assembly, and the free exercise of religion have protected the expression of disfavored minority viewpoints throughout this country's history. In addition, religious groups are not typically politically-oriented; in fact, the students involved in the campus chapters of the undersigned groups identify across the political spectrum; they hold many diverse religious viewpoints and political perspectives. To undo this regulatory protection for religious student organizations is to harm students from across the political spectrum.

It is crucial to keep robust concepts of pluralism in view, especially in relation to the government's role in respecting student association and expression on public college campuses. We hope that this administration will encourage such efforts, knowing that it teaches students tolerance and respect to be surrounded by diverse perspectives. The undersigned groups allow any student to participate in their student chapters. We do, however, expect leaders to preserve the religious identity of the group by teaching and practicing elements of our faith traditions.

It is common sense to allow all groups to maintain their purposes and beliefs by appointing leaders who agree with and can teach the distinct perspectives the groups represent. In fact, most non-religious groups recognized by universities are allowed to require agreement from their leaders. Religious groups should be treated the same way; they should not be excluded from basic First Amendment freedoms (speech, association, free exercise) just because they are religious. That is exactly why this regulation makes sense; it is an appropriate protection for religious organizations, doing exactly what it says—making sure religious groups are treated like other groups.

Second, there is a clear legal basis for the regulation. The First Amendment's freedoms are all important to preserve. The functioning of religious student organizations on public college campuses fall right at the intersection of many of these rights, which should be clearly protected. This regulation provides an important reminder of the importance of students' freedom of expression.

It does not violate the Establishment Clause or entangle the government in religion to allow religious organizations access within a limited open forum, even when they are participating in religious activities and speech, because it is unconstitutional to exclude groups based on the religious content of their speech. See *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). In fact, it violates the Establishment Clause when the government seeks to dictate what religious groups are to believe or seeks to control who they may select as leaders. Religious people should determine the tenets and traditions of their faith, not the government.

In relation to speech, it is clear that the government may not discriminate against speech it does not like. A group may not be singled out or treated differently because of its specific point of view—that is unconstitutional viewpoint discrimination. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). Closely associated with speech is the right of expressive association, foundational to a tolerant and truly pluralistic society. This right includes the ability to gather for purposes of expression, as well as the ability to choose leaders who support the distinctive religious tenets of the religious group. The Eighth Circuit recently affirmed that a student organization should not be subject to viewpoint discrimination while speaking within a university's limited public forum, and determined that a religious student group's rights were violated when it was targeted based on its specific religious views, including its requirement that its leaders agree with its religious beliefs. *Business Leaders in Christ v. Univ of Iowa*, 991 F.3d 969 (8th Cir. 2021).

In *InterVarsity v. Wayne State*, ___ F.Supp.3d ___, 2021 U.S. Dist. LEXIS 65310 (Apr 5, 2021), the court found that the right of religious organizations to select leaders is clearly established under the Free Exercise Clause as well. *Id.*, at 99. The court relied on several recent Supreme Court rulings, including one addressing Free Exercise in a leadership context, in which the Supreme Court found it particularly important that the government not interfere in matters of faith and doctrine as taught by religious organizations. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2060-61 (2020). In addition, the Supreme Court has clarified that a group may not be excluded from a generally offered benefit just because that group is religious. *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012 (2017). If a group is targeted because of its religious beliefs or practices, that is even more clearly problematic. See *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542-46 (1993).

Third, the regulations are important to preserve and harmful to undo because they address real problems. The regulations address a problem that has existed for four decades on too many public college and university campuses: Religious student groups too frequently are subjected to discriminatory treatment because of their religious beliefs, speech, and leadership standards. The regulations are a common-sense solution that protects religious students from discriminatory treatment.

The regulations went through a thorough rulemaking process and was well researched. The Department's summary of comments in favor of the regulations is quite extensive. See 85 FR 59916, 59928-59936. There were extensive and numerous comments in favor of the language, including many who spoke of the impact such groups had on their college experience and beyond, often helping them

to better integrate faith, values and service. When such groups are denied registration or excluded from benefits given to other student organizations, it leads to unequal access and causes religious groups—often the very groups meeting students’ spiritual and emotional needs—to be seen as second-class citizens.

Our affiliated student organizations wish to make a difference in their communities, yet wish to do so in a manner that remains integrated with particular faith motivations and practices. We respectfully ask that you preserve this necessary protection for these beneficial student organizations that wish to serve their campuses and meet the needs of their fellow students. We ask that the Department of Education preserve and uphold 34 CFR §§ 75.500(d) and 76.500(d) as adopted and without modification.

We would welcome an opportunity to meet with you to discuss the importance of these regulations to religious student organizations. We wish you well as you begin carrying out your vital duties as Secretary of Education.

Sincerely,



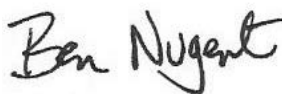
Shannon Compere
Executive Director, U.S. Campus Ministry
Cru



Gregory L. Jao
Director of External Relations
InterVarsity Christian Fellowship/USA



Craig Miller
President, FOCUS
Fellowship of Catholic University Students



Ben Nugent
U.S. Collegiate Director
Navigators



Lance Walker
Director, Public and International
Affairs
The Church of Jesus Christ of Latter-day Saints

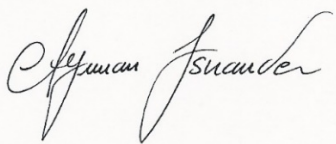


James “Jimmy” McGee, III
President & CEO
The Impact Movement, Inc.

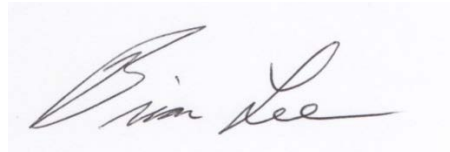


Jon Liu
AACF Director
Asian American Christian Fellowship

Maaria Mozaffar
Director of Advocacy and Policy
Illinois Muslim Civic Coalition



Dr. Ayman Iskander
Treasurer/ co-founder
Coptic Medical Association of North
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Brian Lee
National President
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David Nammo
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Dr. Chester C. Pipkin, Jr.
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Mike Chupp MD, FACS, FCS (ECSA)
Chief Executive Officer
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Lance Kinzer
Director of Policy and Government
Relations
1st Amendment Partnership



Corey Miller
President
Ratio Christi



Chris Bean
Church Engagement Catalyst & Campus Mission
Coordinator
Church of the Nazarene



Daniel J. Dupee
Interim CEO and President Emeritus
CCO



Brandon Worsham
Director and Campus Missionary to UT
Dallas
Fellowship of Christian University Students
(FOCUS)



Claire E. H. McAuliffe
Executive Director
Sigma Alpha Omega® Christian Sorority,
Inc.



Will W. Huss, Jr.
National Coordinator
Reformed University Fellowship



Kenny Nollan
Vice President
Young Life College & University



Sean McNamara | Chief Support Officer
Fellowship of Christian Athletes

cc: Michelle Asha Cooper, Acting Assistant Secretary, Office of Postsecondary Education
Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights
Emma Leheny, Principal Deputy General Counsel and Acting General Counsel
Melissa Rogers, Senior Advisor to the President and Director, White House Office of
Faith-based and Neighborhood Partnerships
Josh Dickson, White House Senior Advisor for Public Engagement and Deputy Director,
White House Office of Faith-Based and Neighborhood Partnerships
Ben O'Dell, Program Specialist at the U.S. Department of Health and Human Services
Partnership Office

ATTACHMENT H

September 23, 2021

The Honorable Miguel A. Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

We write in response to the Department’s blogpost of August 19, 2021, “*Update on the Free Inquiry Rule*,” stating that the Department “anticipate[s] publishing a notice of proposed rulemaking in the Federal Register to propose rescinding parts of the Free Inquiry Rule.” Because the Free Inquiry Rule includes many different regulations, we write simply to express our trust that the Department is not intending to propose rulemaking that will change in any way two regulations, 34 C.F.R. §§ 75.500(d) and 76.500(d), which protect religious student organizations from discrimination on public college and university campuses.

In our letter of June 1, 2021, we asked that the Department preserve these regulations because they provide commonsense protection for faith-based student organizations that have faced discrimination on too many public college campuses for nearly four decades. By protecting students of all faiths, including student organizations represented by many of the undersigned organizations, these regulations ensure that religious students feel welcome on public college campuses and thereby enhance authentic religious diversity on those campuses.

Revision of these regulations would send a message to religious student groups that they are not welcome on public campuses. We trust that is not the message that the Department intends to send.

Especially after the past academic year during which students struggled to keep their organizations intact because many could not meet in person due to the COVID-19 pandemic, these regulations are particularly critical to religious student organizations’ efforts to rebuild. Thriving religious student organizations benefit not just those who choose to participate in their activities but their campus communities as a whole. Religious student organizations offer spiritual nourishment, emotional encouragement, and friendship to all at a time when students are suffering from the physical, emotional, and spiritual toll that the pandemic has taken.

Three recent federal court decisions demonstrate that these regulations are a win-win for *both* religious students *and* college administrators. In March and again in July, the Eighth Circuit Court of Appeals ruled that University of Iowa officials had forfeited qualified immunity and, therefore, were personally liable for damages as a consequence of their derecognition of two religious student organizations because they required their leaders to agree with the groups’ religious beliefs. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021). University officials had indicated to the district court that other religious groups—including Muslim, Jewish, Sikh, Latter-Day Saints, Evangelical, and Catholic student groups—were potential targets for derecognition because they too required their leaders to agree with their

religious beliefs. Similarly, in April, a Michigan federal district court found that Wayne State University officials had lost their qualified immunity by threatening a religious student group with derecognition because it required its leaders to agree with its religious beliefs. *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, --- F. Supp.3d ---, 2021 WL 1387787 (E.D. Mich. 2021).

These regulations codify several Supreme Court decisions, including *Healy v. James*, 408 U.S. 169 (1972), *Widmar v. Vincent*, 454 U.S. 263 (1981), and *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995), and completely align with the Court’s ruling in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010). 85 Fed. Reg. 75,310, 75,311 (Nov. 25, 2020) (“As explained in the preamble to the Final Rule, an ‘all-comers’ policy as described in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010), does not violate the Final Rule’s requirement regarding equal treatment of religious student organizations at public institutions in 34 CFR 75.500(d) and 34 CFR 76.500(d).”). Of course, actual all-comers policies are extremely rare because, if adopted, an all-comers policy would compel all student organizations to accept any student as a member or leader, which would eliminate, or radically change the nature of, any organization which selects members based on gender (*e.g.*, sororities, fraternities, or any single-gender support group), able-bodied status (*e.g.*, athletic ability), veteran status, or political belief (*e.g.*, Democratic or Republican student organizations).

We respectfully repeat our request that the Department preserve the important legal protections provided in 34 C.F.R. §§ 75.500(d) and 76.500(d) for individual students and religious student organizations so that students of all faiths will feel welcome on their public college campuses.

Respectfully submitted,

Kim Colby
Director
Center for Law and Religious Freedom
Christian Legal Society

His Eminence Timothy Cardinal Dolan
Archbishop of New York
Chairman, Committee for Religious Liberty
United States Conference of Catholic Bishops

Walter Kim
President
National Association of Evangelicals

Most Reverend Michael C. Barber, SJ
Bishop of Oakland
Chairman, Committee on Catholic Education
United States Conference of Catholic Bishops

Rabbi Abba Cohen
Vice President for Government Affairs
& Washington Director
Agudath Israel of America

Ismail Royer
Director
Islam and Religious Freedom Action Team
Religious Freedom Institute

Marty Stephens
Director of Government & Community
Relations
The Church of Jesus Christ of Latter-Day
Saints

Howard Slugh
General Counsel
Jewish Coalition for Religious Liberty

Dr. George O. Wood
Chairman
World Assemblies of God Fellowship

Melissa Reid
Director of Government Affairs
Seventh-day Adventist Church –
North American Division

Rev. Douglas E. Clay
General Superintendent
Assemblies of God (USA)

Brent Leatherwood
Acting President
Southern Baptist Ethics &
Religious Liberty Commission

Rev. N. J. L’Heureux, Jr.
Executive Director Emeritus
Queens Federation of Churches

The Rev. Dr. Matthew C. Harrison
President
The Lutheran Church—Missouri Synod

Lance Kinzer
Director of Policy and
Government Relations
1st Amendment Partnership

Shirley Hoogstra
President
Council for Christian
Colleges & Universities

Stephanie Summers
CEO
Center for Public Justice

Stanley Carlson-Thies
Senior Director
Institutional Religious Freedom Alliance

Steven T. McFarland
Former Executive Director
1999-2002
U.S. Commission on International
Religious Freedom

cc: Dr. Michelle Asha Cooper, Acting Assistant Secretary, Office of Postsecondary Education
Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights
Emma Leheny, Principal Deputy General Counsel and Acting General Counsel
Melissa Rogers, Senior Advisor to the President and Director, White House Office of
Faith-based and Neighborhood Partnerships

ATTACHMENT I



September 29, 2021

The Honorable Miguel A. Cardona
 Secretary of Education
 U.S. Department of Education
 400 Maryland Avenue, S.W.
 Washington, D.C. 20202

Dear Secretary Cardona:

We are writing in response to the recent blog by the Department on August 19, 2021, titled “Update on the Free Inquiry Rule.” In the post, the Department indicated an intention to issue a proposed rulemaking that will rescind portions of the 2020 rule. We respectfully ask—as you continue to review this rule, especially 34 C.F.R. §§ 75.500(d) and 76.500(d)—that you commit to uphold protections in the Rule that ensure religious student organizations’ ability to have an authentic religious presence on public college and university campuses free from discrimination.

We celebrate the Department’s desire to uphold the ability of all students to find communities where they can feel accepted and included, and where they can gather around shared passions and perspectives. The diversity of student organizations on public college campuses is beautiful and allows each person to find a group centered around something important to them—ranging across many topics including religion, career interests, service opportunities, hobbies, or various forms of activism. These groups should all be given the opportunity to flourish, including

religious student organizations. The current rule is necessary and ensures that religious organizations have the same opportunities given to other groups.

As the Department noted in the blog post, for many college students, actively “expressing their faith” is an important part, not just of their identity, but of their college experience. Protecting students’ ability to openly talk about faith and to associate with fellow members of their religious communities is a crucial part of free speech and religious exercise. Unfortunately, these First Amendment Freedoms have not adequately been “worked out” by universities, students and the courts, making the rule all the more critical. A number of universities continue to misapply First Amendment principles related to religion. In fact, many religious groups continue to be targeted and singled out for different treatment. Some are singled out for derecognition simply because of their leadership requirements that leaders agree with and model the faith and beliefs of the group, a commonsense expectation that ensures a consistent religious identity from year to year. For instance, the University of Iowa deregistered Sikh, Muslim, Protestant, and Latter-day Saint groups simply due to their requirement that their leaders agree with their religious beliefs. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021). Wayne State University took the same position. *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, ---F. Supp. 3d---, 2021 WL 1387787 (E.D. Mich. 2021). Students involved in many religious organizations also have personal stories of being treated differently as religious groups—challenges that do not result in formal court proceedings, but that are very disruptive to their college experience.

The Rule does not give religious groups special privileges or enable discrimination. It simply codifies and ensures that universities recognize the importance of key Supreme Court cases. *See, e.g., Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

To protect religious expression requires a nuanced understanding. A policy is not “neutral” just because it has the same words applying to every group, if those words by definition uniquely impact one group differently and result in disparate treatment. This is true when the word “religion” in a nondiscrimination statement is unreasonably applied to religious organizations’ selection of their leaders. That term means, applied to nonreligious groups, that they may not distinguish based on religious identity, but they may expect their leaders or members to agree with their group’s non-religious purposes and beliefs. Yet applied to a religious group, it means that they may neither distinguish based on religious identity *nor* expect their leaders or members to agree with their purposes and beliefs, because those beliefs are religious. In the enumerated statuses, religion is the only one that results in this unequal treatment, because it is the only listed category where status and belief are intertwined and inseparable. Accordingly, the Rule’s statement that religious groups must be given the same opportunities as other groups is not a special privilege, but a necessary clarification and a helpful reminder for universities.

Diverse religious groups are in agreement that this clarification is crucial to preserve religious diversity and expression—including many Jewish, Christian, Muslim, and Catholic groups,

among others. In fact, the rule was celebrated by a wide range of religious groups because it exactly preserves their ability to authentically represent and faithfully preserve the tenets of their particular faith traditions. See InterVarsity Press Release of Sept 9, 2020, <https://intervarsity.org/news/intervarsity-welcomes-stronger-protections-religious-student-groups>; Slugh, Howard, “Religious Groups Led by Co-Religionists—It Shouldn’t Be Controversial,” Nov 23, 2018, <https://www.nationalreview.com/2018/11/religious-groups-government-must-not-dictate-leaders/>.

In addition, the Rule does not impose significant additional requirements. No particular policy must be adopted – the regulation simply asks that the policy be applied to ensure religious groups are given all the privileges “otherwise afforded to other student organizations.” Nor does the current rule prevent a school from choosing a “true all-comers policy,” as was clarified in the Preamble to the Final Rule, 85 Fed. Reg. 59939 (Sept. 23, 2020). It does, however, require that, if any groups are allowed to select based upon agreement with the group’s purpose, then religious groups should be allowed to do so as well, not treated differently just because their beliefs are religious.

Notably, “all-comers” policies, as defined in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010), are restricted to a very limited set of policies. They refer to policies that equally prohibit all student organizations from holding to any status or belief-based requirements of any kind for membership or leadership, without exception—not limited to enumerated protected categories. *Id.*, at 675. Schools with all-comers policies must not allow any exceptions for any status-based requirements, and must ensure that no group requires agreement with its purpose or beliefs. They may not apply their policies in a viewpoint discriminatory manner, targeting only disfavored groups for examination as to whether they meet the standard. We are aware of no public universities that have true all-comers policies, as most policies restrict consideration only of the enumerated categories, allow exceptions for a number of single gender groups, and do not think to question the ability of groups to associate around shared ideas that they expect their leaders to agree with.

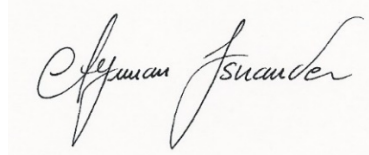
The Rule is also consistent with the Department’s goals. We agree with the importance of promoting “inclusive learning environments” for all students, and believe that having robust religious student organizations can be an important factor in enabling that vision, as they are often among the most diverse groups on campus. Students should all feel part of the greater university community, and should also have the opportunity to connect in smaller communities where they have a sense of belonging. Universities have a critical role in encouraging everyone to seek to understand others and to dialogue with respect. The college campus should be a place where differing perspectives are allowed to remain distinct, so that authentic dialogue and understanding across difference are possible. This is especially important for minority religious groups, formed around specific shared beliefs, the erosion of which can alter their identity and compromise the sense of safety for students associating around that religious identity. In order for this to be true, policies must not be targeted at silencing certain perspectives, whether directly or indirectly. See *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520 (1993).

We respectfully request that you preserve the Rule's provision that clarifies that religious student organizations are to be treated fairly, meaning that—absent a true all-comers policy in place—universities are to allow religious organizations to authentically express and live out their religious beliefs and practices, in part through holding to belief-based leadership standards. This is a commonsense solution that is important to all religious student organizations.

Sincerely,



Shannon Compere
Executive Director, U.S. Campus Ministry
Cru



Dr. Ayman Iskander
Treasurer/ co-founder
Coptic Medical Association of North
America (CMANA)



Gregory L. Jao
Director of External Relations
InterVarsity Christian Fellowship/USA



David Nammo
Executive Director & CEO
Christian Legal Society



Jon Liu
AACF Director
Asian American Christian Fellowship



Dr. Chester C. Pipkin, Jr.
President
ReJOYce in Jesus Campus Fellowship



Dr. Jeffrey Barrows
Sr. VP Bioethics and Public Policy
Christian Medical & Dental Associations



Lance Walker
Director, Public and International
Affairs
The Church of Jesus Christ of Latter-day Saints



Lance Kinzer
Director of Policy and Government
Relations
1st Amendment Partnership



Daniel J. Dupee
Interim CEO and President Emeritus
CCO



Corey Miller, PhD
President / CEO
Ratio Christi



Will W. Huss, Jr.
National Coordinator
Reformed University Fellowship



Brandon Worsham
Director and Campus Missionary to UT
Dallas
Fellowship of Christian University Students
(FOCUS)



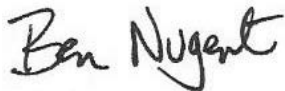
Chris Bean
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Church of the Nazarene



Claire E. H. McAuliffe
Executive Director
Sigma Alpha Omega® Christian Sorority,
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E. Scott Martin
National Director
Chi Alpha Campus Ministries, U.S.A.



Ben Nugent
U.S. Collegiate Director
Navigators



Sean McNamara | Chief Support Officer
Fellowship of Christian Athletes



Kenny Nollan
Vice President
Young Life College & University

cc: Dr. Michelle Asha Cooper, Acting Assistant Secretary, Office of Postsecondary Education
Suzanne Goldberg, Acting Assistant Secretary, Office for Civil Rights
Emma Leheny, Principal Deputy General Counsel and Acting General Counsel
Melissa Rogers, Senior Advisor to the President and Director, White House Office of Faith-based and Neighborhood Partnerships
Josh Dickson, White House Senior Advisor for Public Engagement and Deputy Director, White House Office of Faith-Based and Neighborhood Partnerships
Ben O'Dell, Program Specialist at the U.S. Department of Health and Human Services Partnership Office

ATTACHMENT J

View EO 12866 Meeting 1840-AD72

Title: Religious Liberty and Free Inquiry Rule

Agency/Subagency: 1840-ED/OPE

Stage of Rulemaking: Proposed Rule Stage

Meeting Date/Time: 03/01/2022 03:00 PM

Requestor: Alliance Defending Freedom **Requestor's Name:** Matthew Bowman

Documents:

List of Documents

[ADF-Ratio Christi Comment Free Inquiry Rule 1840-AD72](#)

Attendees:	Participation
List of Attendees	
<ul style="list-style-type: none">Mallory Rechtenbach - Alliance Defending FreedomMatthew Bowman - Alliance Defending FreedomCorey Miller - Ratio ChristiShagufta Ahmed - OMBAlex Hunt - OMBLaura McFarland - OMBJoanne Legomsky - OMBAshley Clark - EDLynn Mahaffie - EDJosie Skinner - EDWill Desmond - EDVanessa Burton - ED	<div>In Person</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div> <div>Teleconference</div>



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Title: Religious Liberty and Free Inquiry Rule

Agency/Subagency: 1840-ED/OPE

Stage of Rulemaking: Proposed Rule Stage

Meeting Date/Time: 03/10/2022 01:30 PM

Requestor: Cru **Requestor's Name:** Lori Kepner

Documents:

List of Documents

2020 IDEALS study- navigating-religious-diversity

2021-06-03 Letter to Secretary Cardona re Religious Student Organizations

Protecting the Presence of Religious Organizations Pamphlet

[2015-12 Letter to U of Indiana](#)

[2021-09 Group Letter to Secretary Cardona](#)

University of Iowa religious group watchlist 2019

Attendees:

List of Attendees

Participation

- Atty. Lori D. Kepner - Cru
- Mr. Greg Jao - InterVarsity
- Mr. Doug Weber - Navigators
- Mr. Bill Riechart - CMDA
- Atty. Rebecca Wheeler Walston - Impact Movement
- Shagufta Ahmed - OMB
- Joanne Legomsky - OMB
- Laura McFarland - OMB
- Vanessa Burton - ED
- Ashley Clark - ED
- Oliver Longworth - ED
- Scott Prince - ED
- Alex Hunt - OMB

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Title: Religious Liberty and Free Inquiry Rule

Agency/Subagency: 1840-ED/OPE

Stage of Rulemaking: Proposed Rule Stage

Meeting Date/Time: 03/18/2022 02:00 PM

Requestor: American Atheists **Requestor's Name:** Alison Gill

Documents:

List of Documents

No documents found.

Attendees:

List of Attendees	Participation
• Dena Sher - Americans United	Teleconference
• Alison Gill - American Atheists	Teleconference
• Victoria Anderson - American Atheists	Teleconference
• Nora Greene - American Atheists	Teleconference
• Shagufta Ahmed - OMB	Teleconference
• Alex Hunt - OMB	Teleconference
• Laura McFarland - OMB	Teleconference
• Joanne Legomsky - OMB	Teleconference
• Lynn Mahaffie - ED	Teleconference
• Vanessa Burton - ED	Teleconference
• Oliver Longworth - ED	Teleconference



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Title: Religious Liberty and Free Inquiry Rule

Agency/Subagency: 1840-ED/OPE

Stage of Rulemaking: Proposed Rule Stage

Meeting Date/Time: 04/04/2022 11:30 AM

Requestor: Christian Legal Society Requestor's Name: Laura Nammo

Documents:

List of Documents

[CLS Letter to UVA Presdient Ryan..08122021](#)

[UVA Student Council Identity Inclusion Disclosure Form.08022021](#)

Attendees:	List of Attendees	Participation
• Shagufta Ahmed - OMB		Teleconference
• Alex Hunt - OMB		Teleconference
• Joanne Legomsky - OMB		Teleconference
• Laura McFarland - OMB		Teleconference
• Lynn Mahaffie - ED		Teleconference
• Oliver Longworth - ED		Teleconference
• Vanessa Burton - ED		Teleconference
• Vanessa Santo - ED		Teleconference
• Antoinette Flores - ED		Teleconference
• Ashley Clark - ED		Teleconference
• Mrs. Laura D. Nammo - Christian Legal Society		Teleconference
• Mr. Rick Campanelli - Christian Legal Society		Teleconference
• Mr. Lance Kinzer - 1st Amendment Partnership		Teleconference
• Mr. Galen Carey - NAE		Teleconference



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ATTACHMENT K

**E.O. 12866 Meeting
Religious Liberty and Free Inquiry Rule
Rulemaking RIN: 1840-AD72**

**Matthew S. Bowman and Mallory Rechtenbach,
Alliance Defending Freedom; and
Corey Miller, President/CEO Ratio Christi**

Thank you for the opportunity to provide comments on OIRA's review of the final rule, Religious Liberty and Free Inquiry Rule (RIN 1840-AD72).

A. The Need for Federal Regulatory Action

- There is no need for this regulatory action. In fact, repealing the current regulation has the potential to cause harm to students on college campuses across the country.
 - Religious discrimination is on the rise on college campuses, with 1 in 4 students experiencing either discrimination or intolerance because of their religious beliefs.¹ Furthermore, news reports of religious discrimination have begun to appear regularly in both the media and academic publications.²
 - For example, Jacob Mandel, a Jewish college student who participated in a Jewish student organization on campus, was threatened on a public university campus and advised friends not to wear a Star of David to avoid being identifiable as Jews.³ Jewish faculty members at several universities were also the target of anti-Semitic threats like "Gas Jews Die" and images of swastikas.⁴
- There is no evidence that this regulation has caused any harms or inappropriate burdens that result in a need for this regulatory action. Requiring public universities to comply with free speech and inquiry protections is an important goal. The agency should identify specific reasons why this regulation is causing harms or burdens and needs to be repealed.

¹ Kevin Fosnacht & Cindy Broderick, *The Role of Religion and Institution Type in Seniors' Perceptions of the Religious and Spiritual Campus Climate*, 19 J. OF COLL. & CHARACTER 244 (February 2018).

² *Is Religious Intolerance and Discrimination Becoming More Common?*, NSSE SIGHTINGS (Feb. 26, 2018), <https://nsse sightings.indiana.edu/archives/783>.

³ Jeremy Bauer-Wolf, *The Bias that a College Ignores?*, INSIDE HIGHER ED (June 29, 2017), <https://www.insidehighered.com/news/2017/06/29/lawsuit-highlights-jewish-students-frustrations-san-francisco-state>.

⁴ Colleen Flaherty, *Jewish Professors Targeted*, INSIDE HIGHER ED (Nov. 28, 2016), <https://www.insidehighered.com/news/2016/11/28/two-jewish-professors-different-campus-are-harassed-anti-semitic-threats>.

B. Alternative Regulatory Approaches

- The agency should consider the alternative of leaving this regulation in place, and should specify why that alternative approach cannot be maintained.
 - The current regulation assists in eliminating religious discrimination and intolerance on college campuses.
 - In a pluralistic society, it is important for students to be exposed to a variety of religious groups while in college and to learn about religious diversity.
 - Research has found that “religion and spirituality remain an important element in fostering a positive campus climate for all members of today’s college campuses.”⁵
 - Joe Cohn, legislative and policy director for the Foundation for Individual Rights in Education (FIRE) said, “A better way to promote diversity and inclusion is to foster an environment where a diverse array of student organizations are part of the campus community and where the barrier to creating new belief-based student groups is low.”⁶
- The current regulation promotes a “thriving civil society,” and teaches college students how to join in this longstanding American tradition of forming voluntary associations around a particular identity.⁷

C. Identifying and Measuring Benefits and Costs

- Because the current regulation protects the benefit of student free speech, intellectual diversity, and religious nondiscrimination, the agency should calculate the cost of losing those benefits if the current regulation is repealed.
- The agency should assess the degree to which repealing this regulation would lead to further discrimination, intolerance, and marginalization of religious students on campus, particularly those who are members of minority religions.
- The agency should consider and calculate the financial impact on

⁵ *Is Religious Intolerance and Discrimination Becoming More Common?*, NSSE SIGHTINGS (Feb. 26, 2018), <https://nssesightings.indiana.edu/archives/783>.

⁶ Kery Murakami, *Tying Grant Eligibility to Religious Freedom*, INSIDE HIGHER ED (Feb. 7, 2020), <https://www.insidehighered.com/news/2020/02/07/colleges-worry-about-implications-religious-freedom-rule>.

⁷ Eboo Patel, *Should Colleges De-Register Student Groups*, INSIDE HIGHER ED (Sept. 28, 2018), <https://www.insidehighered.com/blogs/conversations-diversity/should-colleges-de-register-student-groups>.

national religious student organizations, chapters of organizations on individual campuses, and individual student members.

- If this regulation is repealed and chapters of religious organizations are decertified by universities, that would impact the economic prospects of the national organization through a substantial loss of dues and members.
- Almost all college students are required to pay mandatory student activity fees. But only officially recognized student groups have access to these fees to use for educational events and speakers. If religious student groups are decertified as official student organizations, the students in these groups will still be required to pay fees, but will be unable to utilize the funds that all other groups can access. This will lead to lost expenses and for the speech of religious organizations, and a disparate negative impact on those organizations' ability to gather and speak in comparison to other student organizations.
- In addition, only officially recognized student groups have access to free meeting spaces. If religious groups are decertified, they would have to pay anywhere from \$200–\$1000 to rent space for each meeting, possibly dozens of times per school year.
- This disadvantage for religious organizations raises concerns both constitutionally and under the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb through § 2000bb-4.
 - It is unconstitutional for public universities to discriminate against a religion organization because of their religious viewpoints.⁸
 - It also violates RFRA for this agency to single out a regulation that protects religious groups and target that regulation for elimination, since removal of the protection afforded by that regulation would substantially burden the religious exercise of students and student groups
- The agency should consider the burdens and costs resulting from loss of diversity on campus from repeal of the regulations, and should assess the number of religious student organizations likely to be expelled from campuses or student group resources that currently have protection under this regulation.
 - For example, prior to this regulation, the University of Iowa expelled almost 40 religious student groups from campus including the Sikh Awareness Club, the Chinese Student Christian Fellowship, the Imam Mahdi Organization, and the Latter-day Saint Student Association simply because they wanted to be led by student who

⁸ *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (“The government must abstain from regulating speech when the specific motivating ideology or the opinion or the perspective of the speaker is the rationale for the restriction.”); 42 U.S.C. § 2000bb-1.

- shared their faith.⁹
- “The changing demographics of our nation require nearly every American adult to possess skills to bridge religious divides.”¹⁰
 - Students will be exposed to a variety of religions and beliefs throughout their lives and careers.¹¹ Maintaining the existing regulation provides societal benefits as students enter the workforce and various communities around the country.
 - If there are fewer religious student groups on campus, fewer students will have opportunities to learn about a diversity of beliefs in a safe environment.
 - Repealing this regulation would open up religious students to further marginalization and discrimination by allowing public universities to exclude them from campus life and the public square.
 - To return to the University of Iowa example, even though 356 student groups were *not* in compliance with the policy,¹² *only* religious groups were removed from campus.
 - Several students at the University of Iowa reported feeling “intimidated” by what the University’s accusations and deregistration of their organization meant for their education and future job prospects, particularly because the University was also the employer for some of these students.¹³
 - A study of religious students found that a lack of recognition on campus of their beliefs can act to ‘other,’ marginalize, and isolate students.¹⁴
 - When only religious student groups are expelled from campus or put on a “watch list,” as they were by the University of Iowa,¹⁵ they suffer a dignitary harm by a public institution that tells them they are not welcome in the public square, and when the federal government continues to fund those universities, a message is sent that the

⁹ Megan Fowler, *Judge: U of Iowa Officials have to Pay for Repeated Discrimination Against Christian Groups*, CHRISTIANITY TODAY (Oct. 3, 2019), <https://www.christianitytoday.com/news/2019/october/university-of-iowa-intervarsity-discrimination-liabilities.html>.

¹⁰ Alyssa N. Rockenbach et. al., *Ideals: Bridging Religious Divides through Higher Education*, <http://ifyc.org/sites/default/files/navigating-religious-diversity-9-27.pdf>.

¹¹ *Id.*

¹² Eboo Patel, *Should Colleges De-Register Student Groups*, INSIDE HIGHER ED (Sept. 28, 2018), <https://www.insidehighered.com/blogs/conversations-diversity/should-colleges-de-register-student-groups>.

¹³ *Id.*

¹⁴ Jacqueline Stevenson, *Internationalisation and religious inclusion in United Kingdom higher education*, HIGHER EDUCATION QUARTERLY (2014), <http://shura.shu.ac.uk/9630/>.

¹⁵ INTERVARSITY CHRISTIAN FELLOWSHIP/USA and InterVarsity Graduate Christian Fellowship, Plaintiffs-Appellees, v. THE UNIVERSITY OF IOWA, et al., Defendants-Appellants., 2020 WL 1242915 (C.A.8).

discrimination is societally acceptable.

- Forming and joining student organizations has a significant positive impact on student outcomes and mental health. The agency should consider the negative impact on students' development and mental health if religious organizations are removed from campus.
 - Young people are currently facing a mental health crisis, with 35% of college students struggling with a mental illness.¹⁶
 - "There is extensive research focused on student involvement in college suggesting that quality involvement leads to higher levels of student learning and development."¹⁷
 - Furthermore, involvement in student organizations "significantly predicted several aspects of psychological well-being including: students' personal growth, positive relationships with others, and purpose in life."¹⁸
 - "Religious participation on campus is itself a form of social integration. Faith communities are instrumental in the formation of friendships and intimacy with other people, and these supportive networks, in turn, provide a wide range of psychological and spiritual benefits"¹⁹
 - Studies have demonstrated that a "supportive campus environment" was the "engagement variable most significantly predictive of mental health for both males and females."²⁰
 - Many students join different types of groups depending on their interests and where they have a sense of belonging. Often, this sense of belonging stems from joining a group which shares their religious beliefs or identity.²¹
 - The vast majority of students who participate in student organizations report that it made them feel more connected to the community, made them more confident, and taught them problem

¹⁶ Amy L. Eva, *How Colleges Today Are Supporting Student Mental Health*, GREATER GOOD MAG. (Jan. 11, 2019),

https://greatergood.berkeley.edu/article/%C3%ADtem/how_colleges_today_are_supporting_student_mental_health

¹⁷ Cindy A. Kilgo et. al., *The Estimated Effects of College Student Involvement on Psychological Well-Being*, 57 J. OF COLL. STUDENT DEV. 1043 (Nov. 2016), <https://muse.jhu.edu/article/638565/summary>.

¹⁸ *Id.*

¹⁹ Alyssa N. Bryant, *The Effects of Involvement in Campus Religious Communities on College Student Adjustment and Development*, 8 J. OF COLL. & CHARACTER 1 (2007).

²⁰ Virginia Miller Ambler, *Who flourishes in college? Using positive psychology and student involvement theory to explore mental health among traditionally aged undergraduates*, W&M SCHOLARWORKS (2006), <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=2108&context=etd>.

²¹ *Student Life Survey: Student Involvement & Belonging*, CENTER FOR THE STUDY OF STUDENT LIFE (July 2015), <https://cssl.osu.edu/posts/632320bc-704d-4eef-8bcb-87c83019f2e9/documents/student-life-survey-2015-involvement-and-belonging.pdf>.

- solving skills.²² The Ohio State University found that student involvement and engagement “is a key component of their success.”²³
- Stanford researchers have found that “good academic performance is also driven by habits learned through religious adherence,” because they cultivate conscientiousness and cooperation.²⁴
 - The benefit of religious student groups is particularly striking for students who are members of minority groups or who are first-generation college students. Joining a Shia Muslim student group or a Korean Christian student group brings a sense of home that has demonstrably beneficial impacts on students.
 - First-generation college students are more than twice as likely to drop out of four-year institutions before the second year and are also less likely to finish a bachelor’s degree within five years.
 - Studies have shown that first generation college students most frequently utilized two programs to aid in success: departmental organizations and religious organizations.²⁵
 - The agency should analyze the impact repealing this regulation would have on first generation college students and minority groups.

E. Specialized Analytical Requirements

Small businesses and non-profits

- The agency needs to assess the impact on small businesses, which includes nonprofit entities, under the Regulatory Flexibility Act (“RFA”).
 - The RFA defines small businesses to include most non-profit entities. Therefore, the agency needs to provide a sufficient analysis to assess and certify the impact on religious organizations—both parent organizations of student groups, and the student groups themselves—on removing the current regulatory protections for those organizations.
 - For example, Ratio Christi is a Christian apologetics ministry with student chapters across the country, including at public universities that have sought to deny Ratio Christi recognition and access to

²² *Id.*

²³ *Id.*

²⁴ Carrie Spector, *Religiously engaged adolescents demonstrate habits that help them get better grades, Stanford scholar finds*, STANFORD RESEARCH STORIES (Apr. 15 2018), <https://ed.stanford.edu/news/religiously-engaged-adolescents-demonstrate-habits-help-them-get-better-grades-stanford-scholar>.

²⁵ Erica Irlbeck et. al., *First Generation College Students: Motivations and Support Systems*, 55 J. OF AG. ED. 154, <https://files.eric.ed.gov/fulltext/EJ1122313.pdf>.

campus resources because of its theologically informed leadership requirements. Ratio Christi has student chapters at nearly 200 universities and colleges.

- Ratio Christi, like many campus ministries, simply wants to be treated equally. Universities are supposed to be and operate best when they are places promoting the free exchange of ideas, i.e., when their purpose is the pursuit of truth. This purpose is undermined if a university becomes an arm of political truth or allows cancelling groups whose traditional Christian beliefs aren't acceptable as ideas to be explored and debated. The 2020 regulation secures the purpose of the university and reflects the American ethos, which is grounded in the First Amendment.
- A substantial number of nonprofit student organizations would be impacted by a rule repealing the 2020 regulations.
- Non-profit religious entities also have rights under the Religious Freedom Restoration Act (“RFRA”). Any substantial burden on their religious exercise cannot be imposed absent a compelling interest imposed by the least restrictive means of regulation. 42 U.S.C. § 2000bb-1.

Federalism

- The rule has significant impacts on federalism and effects on state and local law, and the agency should assess and estimate those impacts.
 - The current rule requires public universities to comply with free speech and non-discrimination principles and the First Amendment. Repealing that rule removes protections that federal law should provide.
 - Sixteen states have laws that ensure student organizations may speak for and govern themselves.²⁶ This includes the right to choose their own leaders according to their own standards.
- The agency should consult with state and local governments, universities, and tribal entities before proceeding with a proposed rule.

Comment period

- Because of the wide-ranging impacts of this rule on so many students and student organizations, and because of the lack of negative impact of leaving the current rule in place while this rule is considered, the agency should provide at least 60 days for a public comment period so groups have a sufficient opportunity to obtain and submit helpful information.

²⁶ Virginia, Tennessee, Arizona, North Carolina, Ohio, Idaho, Montana, Arkansas, Alabama, Kentucky, Kansas, South Dakota, North Dakota, Oklahoma, Iowa, and Louisiana

ATTACHMENT L

December 14, 2015

President Michael A. McRobbie
Office of the President, Indiana University
Bryan Hall 200
107 S. Indiana Avenue
Bloomington, IN 47405
lupres@iu.edu

Mr. John Applegate
Executive Vice President for University Academic Affairs
Bryan Hall 204
107 S. Indiana Avenue
Bloomington, IN 47405
jsapple@iu.edu

Dear President McRobbie and Mr. Applegate,

We, the undersigned members of the IU Campus Religious Leaders Association (CaRLA), are grateful that the university has chosen to invite more input on this proposed non-discrimination policy before deciding about its implementation.

As stated on our website, CaRLA is a diverse group whose members respect one another and our respective faith traditions. Within CaRLA, we have diverse beliefs regarding theology and how to live out our beliefs. However, the undersigned members of CaRLA agree on affirming the freedom of all students to organize based upon their shared religious beliefs and accompanying actions. This includes the right to choose their leaders as their unique faith tradition guides them. Therefore, we respectfully request that you clarify the university's proposed non-discrimination policy so that it expressly protects the right of religious student groups to select their leaders using religious criteria, including belief.

Ultimately, the question before the university is not about any group's specific beliefs, but about respecting and retaining the freedoms of religion, speech, and assembly that make IU the great community that it is. We look forward to further interactions with you on this important topic.

Sincerely,



Brian Buffington, The Navigators, Campus Director, buffington.brian@gmail.com

John Leis, Adventist Christian Fellowship (ACF), Campus Director
Adrian Paneto, Adventist Christian Fellowship (ACF), Student President, apaneto@indiana.edu

Mathew Shockney, Baptist Collegiate Ministry, Campus Director
Jordan Yahiro, Baptist Collegiate Ministry, Student President, jyahiro@indiana.edu

Jeff Chudy, Bridges International, Campus Director
Jae Park, Bridges International, Student President, jaeepark@indiana.edu

Kyle Leffel, Campus Outreach, Campus Director
Will Crooks, Campus Outreach, Student President, ecrooks@indiana.edu

Rabbi Yehoshua Chincholker, Chabad House*, Director
Jacob Impellicceiri, Chabad House*, Student President, jnimpell@indiana.edu

Derek Britt, Chi Alpha, Campus Director
Alan Pomerence, Chi Alpha, Student President, apomeren@umail.iu.edu

Julia Payne, Christian Legal Society Chapter at IU*, Student President, julipayn@indiana.edu

Doug Schroeder, Christian Life Fellowship, Director
Steven Munson, Christian Life Fellowship, Student President, smmunson@indiana.edu

Bill Kershner, Christian Student Fellowship, Director
Clayton De Fur, Christian Student Fellowship, Ministry President, cjdefur@umail.iu.edu

Alex McNeilly, Clearnote, Campus Director
Alex Van Dyke, Clearnote, Student President, ajvandyk@indiana.edu

Josiah Leuenberger, Connexion, Campus Director
Miriam Poole, Connexion, Student Director, marpoole@indiana.edu

Tony Hageman, Cru, Campus Director
David Phillips, Cru, Student President, phillidl@indiana.edu

Fr. Jude McPeak, OP, Hoosier Catholic Students, Director of Campus Ministries
Annie Fleming, Hoosier Catholic Students, Student President, annflemi@indiana.edu

Tori Castek, InterVarsity Christian Fellowship, Campus Staff
Will Hughes, InterVarsity Christian Fellowship, Student President, wdhughes@indiana.edu

Rich Woelmer, University Lutheran Church (Lutheran Church-Missouri Synod), Campus Pastor
Erin Healy, LCMS U at Indiana, Student President, erhealy@indiana.edu

Fariha Hossain, Muslim Student Association*, Co-President, hossainf@indiana.edu
Mohammad Sabeh-Ullah, Muslim Student Association*, Co-President, msabehul@indiana.edu

Daniel Lundberg, The Navigators, Student President, dclundbe@indiana.edu

Chris Jones, Redeemer Community Church, Lead Pastor
Emily Taylor, Redeemer at IU, Student President, emnorthc@indiana.edu

Brad Tubbesing, Reformed University Fellowship, Campus Minister
Joshua Streveler, Reformed University Fellowship, Student President, jstrevel@umail.iu.edu

* An IU self-governing student organization that is not currently part of CaRLA

ATTACHMENT M



Identity Inclusion Disclosure Form

The University of Virginia Student Council is committed to supporting the wellbeing of all students. Currently, laws of the Commonwealth of Virginia allow student organizations identifying as political or religious in nature to limit membership based on political or religious affiliation, respectively. Until this law is changed, we are asking all recipients of Student Council services to disclose their membership policies as they relate to student identities. These answers will be displayed to the public on the Student Council website and at the Activities Fair so that University members can make informed decisions about joining organizations. We hope that you will use this opportunity to showcase your organization's commitment to equity and inclusion.

Failure to fill out this form will result in removal from the Fall Activities Fairs. Additionally, pursuant to §IV(II)(A)(2)(b) of the University of Virginia Student Council Bylaws, the Representative Body may vote to suspend a CIO's recognition or to restrict its access to resources provided by the Council for misrepresentation of information provided to the Council. Students will have the opportunity to report violations for any membership, leadership, programmatic, or activities-based



exclusions not disclosed on this form.

On your honor, please answer the following questions:

Your email will be recorded when you submit this form

Not **yx8wx@virginia.edu**? [Switch account](#)

*** Required**

Organization Name *

Your answer

Your Name *

Your answer

Your Title/Position (only presidents or their equivalents should fill out this form)

*

Your answer

Point of Contact *

Your answer

Question 1: Is your organization a religious or political organization? *

☐ Yes

☐ No

Question 2: Does your organization restrict its membership, leadership, programs, or activities on the basis of any of the following: age, color, disability, gender identity, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, veteran status or family and genetic information? *

☐ Yes

☐ No

Question 3: If you answered “yes” to the previous question, please select on which bases your organization restricts its membership, leadership, programs, and/or activities:

- ☐ Age
- ☐ Color
- ☐ Disability
- ☐ Gender Identity
- ☐ Marital Status
- ☐ National or Ethnic Origin
- ☐ Political Affiliation
- ☐ Race
- ☐ Religion
- ☐ Sex (including pregnancy)
- ☐ Sexual Orientation
- ☐ Veteran Status
- ☐ Family and Genetic Information

Question 4: If the answer to Question 2 is “yes,” you may use this space to explain for each basis why your organization enforces these restrictions.

Your answer

A copy of your responses will be emailed to yx8wx@virginia.edu.

Submit

Never submit passwords through Google Forms.

This form was created inside of UVa. [Report Abuse](#)

Google Forms

ATTACHMENT N



CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

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.¹ 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.

¹ 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.²

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.³ 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.⁴ 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

² 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.

³ 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.

⁴ 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

Page 4 of 4

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

Director, Center for Law and Religious Freedom
Christian Legal Society

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CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

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 (8th 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 (8th 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 (8th 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 (6th 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*,

University of Virginia Student Council

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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,

Kim Colby
Director, Center for Law and Religious Freedom
Christian Legal Society
8001 Braddock Road
Suite 302
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(703) 894-1087/kcolby@clsnet.org

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
Athletes in Action	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
Geneva Campus Ministry	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
Hillel (University of Iowa)	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
Imam Mahdi Organization	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
International Neighbors at Iowa	STOPPED, PENDING LITIGATION
International Student Outdoor Recreation Association	YES
Intersection	YES

InterVarsity Graduate Christian Fellowship	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
J. Reuben Clark Law Society	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
Latter-day Saint Student Association	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
Lutheran Campus Ministry	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
Multiethnic Undergrad Hawkeye InterVarsity	STOPPED, PENDING LITIGATION
Multiracial Student Association	YES
Musicology Society (University of Iowa)	YES
Muslim Students Association	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
Newman Catholic Student Center	STOPPED, PENDING LITIGATION
Nightingale Writers' Group	YES
NOBCCChE (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
Orthodox Christian Fellowship	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

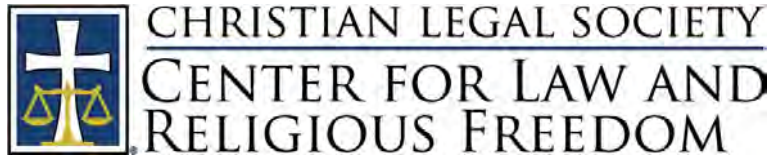
Rugby Club at Iowa (Women's)	YES
Running Club (University of Iowa)	YES
Russian-Speaking Students and Scholars Association	YES
Sailing Club (Iowa)	YES
Sales Engineering Club	YES
Salsa Dance Club	YES
Salt Company - The	STOPPED, PENDING LITIGATION
SCOPE Productions (Student Commission on Programming Entertainment)	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
Sikh Awareness Club	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
Twenty Four Seven	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 O



September 9, 2022

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

By email: 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

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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:¹

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.

¹ 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."

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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:²

(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

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

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chapter's status because it thought that the chapter's membership policies³ violated its nondiscrimination policy. *Christian Legal Society v. Walker*, 453 F.3d 853, 857 (7th 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 (7th 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.4th --- (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 (9th 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

³ 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.

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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.4th 855 (8th Cir. 2021); *Business Leaders in Christ ("BLinC") v. University of Iowa*, 991 F.3d 969 (8th 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.

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InterVarsity, 5 F.4th 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.

Letter to General Counsel Williams

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September 9, 2022

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 <noreply@engage.mail.campuslabs.com> on behalf of Wisconsin Involvement Network <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 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]

[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 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

*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 P



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

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.4th 855 (8th 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 (7th Cir. 2006); *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775 (7th 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 14th 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 Q



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

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.¹

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

¹ 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:²

(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

² 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.4th 1075 (9th 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 (9th 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.4th 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.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th 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.4th 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,

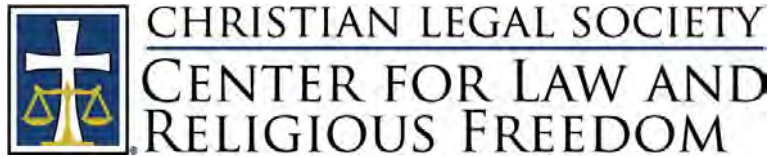
/s/ Laura Nammo

Laura Nammo

Center for Law & Religious Freedom

Christian Legal Society

ATTACHMENT R



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; 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

October 25, 2022

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 (8th 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.4th 855 (8th Cir. 2021); *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th 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 S



December 12, 2022

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

Sent via email (Shane.Cooper@law.unh.edu) and U.S. Mail

RE: Unconstitutional Denial of Free Exercise Coalition Student Group

Dean Cooper:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent the student leaders of the Free Exercise Coalition at the University of New Hampshire Franklin Pierce School of Law ("UNH Law"). Please direct all communications concerning this matter to my attention.

Students at UNH Law formed the Free Exercise Coalition to equip religious students in their free exercise of religion, both on and off campus. The organization is an open member coalition of religious students and their allies, all with a passion to see America's foundational religious freedoms restored and respected. Through scholarship, service, and education, coalition members will have the opportunity to support religious liberty causes on their campus and in their communities.

Rarely, if ever, has a student organization been more aptly named or, as the actions of your students and faculty make clear, needed at UNH Law. Despite the Free Exercise Coalition meeting all the requirements for recognition as an official student organization and completing its application, UNH Law's Student Bar Association ("SBA") refuses to grant formal recognition to Free Exercise Coalition at UNH Law. Rather than faithfully serving its administrative function of approving student organizations that meet—as the Free Exercise Coalition does—the objective criteria set by UNH Law, SBA so maligned the members and beliefs of Free Exercise Coalition, leading its faculty advisor to withdraw. There can be no excuse for such open hostility to the religious beliefs of our clients.

We write to demand that UNH Law immediately recognize the Free Exercise Coalition as an official student organization with all the rights, responsibilities, and privileges appertaining thereto. Further, because this is the second time in a single semester that UNH Law's SBA has engaged in open hostility to religious students and organizations, we must ask that UNH Law (1) require SBA members to receive training in the laws protecting student expression conducted by the Foundation of Individual Rights and Expression by February 1, 2023, (2) investigate the SBA's actions to determine

whether its members have engaged in malfeasance necessitating the removal of individual members of SBA or disbanding of the whole, (3) apprise the student body of these efforts, taken by the administration and in collaboration with the Free Exercise Coalition, to ensure religious animus has no home at UNH Law, and (4) since UNH Law's hostility drove off the Free Exercise Coalition's faculty advisor, UNH Law must appoint you, Dean Cooper, to serve as its faculty advisory.

Should UNH Law fail to meet these demands in writing by January 2, 2023, we have advised our clients of their right to seek redress of these open violations of their civil and constitutional rights in federal court, which they are prepared to assert.

UNH Law's SBA is engaging in unconstitutional viewpoint discrimination.

It is settled law that "the First Amendment rights of speech and association extend to the campuses of state universities." *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981); see also *Healy v. James*, 408 U.S. 169, 180 (1972); *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Students at America's universities are entitled to express their beliefs on campus, as well as by associating with students that share those beliefs. It is the responsibility of a state university—as you should know as a dean of one of the nation's law schools—to ensure that students wishing to so associate receive evenhanded treatment by university leadership.

When university officials—including student leadership like SBA under your direction—question, criticize, or censor student expression and association, the university fails the promise of the First Amendment by promoting viewpoints it favors and regulating speech it disfavors. See *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) ("The principle that has emerged from our cases 'is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.'" (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984))).

Rather than provide routine, administrative approval to the Free Exercise Coalition's application, SBA took upon itself the role of inquisitor. It viewed with suspicion the student group's mission, fomented public discussion that labeled the group as bigoted, subversive, oppressive, and a general "problem" for UNH. Further, this shocking, knives-out inquisition of the Free Exercise Coalition's religious beliefs by the SBA led the Free Exercise Coalition's faculty advisor to withdraw.

It is difficult to understand why you, as a dean of the law school, did not undertake your supervisory role of SBA to immediately educate the SBA as to their open violation of the U.S. Constitution. Rather, by your inaction, you have given tacit approval to the actions of SBA. We remind you of how the U.S. Supreme Court characterized the actions of the University of Virginia:

Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects

may be discussed and considered. The prohibited perspective, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications.

Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819 (1995).

So too did UNH Law—by the actions of its SBA and your inaction—engage in viewpoint discrimination toward the student leaders of the Free Exercise Coalition. “Discrimination against speech because of its message is presumed to be unconstitutional.” *Id.* at 828. To be perfectly clear, the unmistakable holding of the Supreme Court is that UNH Law may not withhold—as it has here—recognition of a student organization “because it finds the views expressed by any group to be abhorrent.” *Healy*, 408 U.S. at 187-88.

UNH Law must correct this constitutional violation by immediately recognizing Free Exercise Coalition as one of its student groups.

UNH Law leaders are liable for SBA’s unconstitutional actions.

The actions of its SBA bear the imprimatur, and ratification, of UNH Law. Indeed, the university officials are responsible for the SBA’s decisions. See, e.g., *Bd. of Regents of Univ. of Wisconsin v. Southworth*, 529 U.S. 217, 233 (2000); *Rosenberger*, 515 U.S. at 832. University leadership cannot claim ignorance. Just this semester, the Christian Legal Society (“CLS”) sought recognition as a student group at UNH Law. The SBA also subjected the CLS student leaders to examination into their beliefs, openly criticizing those with which they disagreed. Only after attorneys representing CLS wrote to you did UNH Law formally recognize this student group. Yet, UNH Law clearly failed any effort to correct SBA’s behavior, despite the warning it received less than two months ago.

SBA fails to grasp the seriousness of its actions. More precisely, SBA fails to recognize the liability its actions personally attaches to you and your faculty and staff. Within just the past two years, two federal circuit courts of appeal and one federal district court rejected qualified immunity defenses and imposed personal liability upon university officials whose actions affirmed the same level of intolerance and hostility toward religion on display at UNH Law. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). Universities make costly errors by allowing open hostility toward religious groups on campus.

As such, should you fail to meet the demands of this letter, we will seek the full recourse of relief available to our clients, which includes seeking to hold you and your faculty personally liable for the actions of SBA.

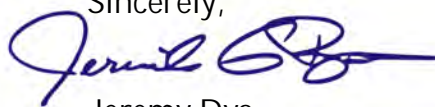
Conclusion

SBA's decision to subject the Free Exercise Coalition's beliefs to an inquisition and drive off their faculty advisor fails UNH Law's "duty under the First Amendment not to base [its policy decisions] on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018). UNH Law, and its SBA, is bound by the Free Exercise Clause of the First Amendment to the U.S. Constitution which binds SBA "to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993).

Inasmuch as UNH Law failed its duty to the Constitution in protecting the civil rights of the Free Exercise Coalition and treated their religious beliefs with hostility, we require the following:

1. Formal recognition of the Free Exercise Coalition as a student group at UNH Law, including the attendant benefits student groups receive, no later than January 2, 2023.
2. SBA at UNH Law must receive training in the laws protecting student expression conducted by the Foundation of Individual Rights and Expression by February 1, 2023.
3. UNH Law must investigate SBA's actions concerning its treatment of religious student groups on campus to determine whether its members engaged in malfeasance necessitating the removal of individual members of SBA or disbanding of the whole.
4. UNH Law will apprise the student body of these efforts, taken by the administration and in collaboration with the Free Exercise Coalition, to ensure religious animus has no home at UNH Law
5. UNH Law must appoint Dean Cooper to serve as Free Exercise Coalition's faculty advisor.

We request your response to these demands in writing no later than December 23, 2022. You are welcome to direct your response to me at [Redacted email address]. Should you have questions related to this matter, you may reach me at [Redacted phone number].

Sincerely,

Jeremy Dys,
Senior Counsel

ATTACHMENT T



CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

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.¹

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.² 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).

¹ 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.

² 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 2013³ 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.

³ 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.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th 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.4th 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 U



September 9, 2022

Lisa S. Loo
Senior Vice President and General Counsel
Office of General Counsel
Arizona State University
Fulton Center
300 E. University Drive
Tempe, AZ 85287-7405

By email: lisaloo@asu.edu

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

Dear Ms. Loo:

I write on behalf of the Christian Legal Society Student Chapter at Arizona State University (“CLS-ASU”) in order to secure its registration as an official student organization. In both 2018 and 2020, CLS-ASU encountered a delay in its registration. In both situations, Mr. Cárdenas and I worked together and were able to resolve the problem quickly and satisfactorily. Attached is the relevant correspondence from 2018 and 2020.

Unfortunately, the identical registration problem has recurred this year. I am writing to ask your assistance in achieving a quick and satisfactory resolution to the problem, as in 2018 and 2020.

CLS-ASU has been a registered student organization at Arizona State University since at least 1991. In 2004, CLS-ASU brought a lawsuit against the University and certain University officials regarding the re-registration of CLS-ASU as a student organization.

In the resulting Settlement Agreement, dated September 2, 2005, which is included in the attachments, CLS-ASU agreed to dismiss its lawsuit in exchange for the University taking certain actions, which included: 1) an amended nondiscrimination policy that protected religious student organizations from denial of registration because they limit membership or leadership positions to students who share the groups’ religious beliefs; 2) a September 26, 2005 letter (attached to the Settlement Agreement) from then-Vice President for Student Affairs Sally Rampage, confirming that religious student groups will not be denied registration because they limit membership or leadership positions to students who share the religious groups’ religious beliefs and also confirming that certain beliefs and practices of CLS-ASU do not violate the nondiscrimination policy; and 3) agreeing to grant registration to CLS-ASU using the constitution that CLS-ASU submitted on May 6, 2005.

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Since this September 2, 2005 Settlement Agreement, CLS-ASU has been a registered student organization, using the constitution that it originally submitted on May 6, 2005. During the most recent re-registration period, CLS-ASU submitted this same constitution; however, a coordinator for student engagement in the Office of Student Connection & Community, [Redacted Name], sent the attached email, dated August 26, 2022, to a CLS-ASU leader to the effect that CLS-ASU needed to add specific language to its constitution in order to be re-registered for the 2022-2023 academic year.

As CLS explained in 2018 and 2020, CLS-ASU and the University remain bound to the constitution to which the University and CLS-ASU agreed in the 2005 Settlement Agreement. I request, therefore, that CLS-ASU, as in 2018 and 2020, again be registered using the constitution it originally submitted on May 6, 2005, and re-submitted for registration for the 2022-2023 academic year. I also request written confirmation that CLS-ASU has been re-registered for the 2022-2023 academic year and will receive all benefits that accompany registration, including but not limited to, being listed on the ASU website's list of student organizations.

Let me briefly review recent legal developments that further reinforce the correctness of the 2005 Settlement Agreement. Federal regulations, Arizona law, Ninth Circuit caselaw, and other recent federal caselaw confirm the right of religious student organizations to have religious leadership requirements. The 2005 Settlement Agreement aligns with these legal developments, which can be briefly summarized as follows:

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 and other benefits “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states:¹

(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,

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

which are informed by sincerely held religious beliefs.

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

Arizona law: The 2005 Settlement Agreement anticipated the statute enacted in 2011 by the Arizona Legislature, which provides that a university may not deny recognition or any privilege or benefit to a religious student organization because it selects only persons committed to its religious mission as its members or leaders. A.R.S. § 15-1863. As a result, state law also clearly establishes that University administrators must recognize CLS-ASU and grant it the benefits otherwise received by other recognized student groups.

Recent Ninth Circuit Decision: The Ninth Circuit 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.4th --- (9th Cir. 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 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

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 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.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th 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.4th 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

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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.

I look forward to resolving this matter quickly and request a written response by September 13 affirming that the University has registered CLS-ASU for the 2022-2023 academic year as required by the 2005 Settlement Agreement. Going forward, please direct any communication from the University to me rather than to the CLS-ASU chapter leaders.

Yours truly,

/s/ Kim Colby

Kim Colby
Of Counsel
Center for Law & Religious Freedom
Christian Legal Society

cc: José A. Cárdenas, Esq., JCardenas@asu.edu, Senior University Advisor to the President for Social Embeddedness and Civic Engagement & Special Counsel, Office of General Counsel, Arizona State University

Attachments:

Email from General Counsel Cárdenas to Kim Colby, August 20, 2020

Letter from Kim Colby to General Counsel Cárdenas, August 3, 2020,
with the following attachments:

Letter from Kim Colby to General Counsel Cárdenas, September 4, 2018

Settlement Agreement of September 23, 2005

Letter from Sally Ramage, Vice President for Student Affairs, September 26, 2005

Email from General Counsel Cárdenas to Kim Colby, September 13, 2018

Letter from Kim Colby to General Counsel Cárdenas, September 20, 2018

Email from [Redacted Name of Coordinator] to [Redacted Name of Student], August 26, 2022

ATTACHMENT V

January 20, 2015

Cinnamon McCellen
Rejoyce in Jesus Campus Fellowship

Cc: Vicki Allen, Advisor

Dear Cinnamon:

This correspondence is to inform you that effective immediately, your student organization, Rejoyce in Jesus Campus Fellowship, will no longer be recognized by California State University, Northridge.

Withdrawing or withholding of official recognition can occur when an organization has failed to meet the standards required for official recognition in a given year. The Rejoyce in Jesus Campus Fellowship organization will no longer be recognized given failure to submit an organizational constitution that is in compliance with non-discrimination and open membership requirements as outlined in California State University Executive Order 1068.

In withdrawing University recognition, your organization is no longer afforded the privileges of University recognition Clubs and Organizations. Those include:

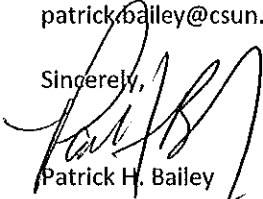
- Recruiting California State University, Northridge students through official campus recruitment programs (such as Meet the Clubs, Matafest, AS Fair, etc.).
- Utilizing the university name as a designation for your organization.
- Have a university issued email account and or website. If your club or organization has a current email or website, a request to suspend your email and website will be sent to the University's IT department and will be deactivated within a week.
- Eligibility for Associated Students, Inc. (A.S.) funding and utilization of AS financial and marketing resources and services.
- Eligibility for University Student Union (USU) facility use at a discounted rate. Only University recognized clubs or organizations are eligible for the discounted rates and fee waivers on room reservations in the USU. Groups of students not recognized by the university who reserve rooms through USU Reservations and Events Services will be charged the off-campus rate and will not be eligible to receive two free meetings per week in USU rooms. Rate information can be found at the following website: www.csun.edu/usu.
- Eligibility for USU co-sponsorship support. Any organization applying for co-sponsorship must be a University recognized club or organization, auxiliary or university department. Therefore, any group of students not officially recognized by the University would not be eligible to receive any USU Co-Sponsorship funding including, but not limited to, funding for costs of room reservations, event production costs, performer fees, food, or Performance Hall usage.
- Ability to have a mailbox and receive mail at the University. If you currently have a mailbox at the MIC it will be closed (all current contents, if any, will be kept for you by the Club and Organization Advisor).

This loss of University recognition is effective immediately and notification has been sent to both the Associated Students and the University Student Union.

If your organization determines that it would again like to be officially recognized by the University, please contact the Matador Involvement Center (MIC) located on the first floor of the USU to discuss how your organization can come into compliance with non-discrimination and open membership guidelines as outlined in EO1068. Assistant Director Vicki Allen or Activities Coordinator Jennifer Villarreal are both available to assist you and can be reached at 818-677-5111 or via email at micleadership@csun.edu.

If you have any questions or additional concerns please contact me at 818.677.2393 or via email at patrick.bailey@csun.edu

Sincerely,



Patrick H. Bailey

Director, Office of Student Involvement and Development
California State University, Northridge

CC: Associated Students
University Student Union
Matador Involvement Center
University Advisor for Rejoyce in Jesus Campus Fellowship

ATTACHMENT W

June 10, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks,

My name is Cinnamon McCellen. I was the student president of the ReJOYce in Jesus Campus Fellowship ("RJCF") at California State University Northridge ("CSUN") from 2013-15. RJCF has been a recognized student group at CSUN for over 40 years and always required that its leaders believe in Jesus Christ as their Lord and Savior. In January 2015, we were told that RJCF would "no longer be recognized given failure to submit an organizational constitution that is in compliance with nondiscrimination and open membership requirements as outlined in California State University Executive Order 1068." As students of faith, we feel our constitutional rights are being violated and we are no longer welcome at CSU.

As a group whose membership draws many students from the African American community, RJCF understands the critical importance of nondiscrimination policies and discrimination is not something we take lightly. We have painfully come to learn that nondiscrimination policies can be misused, as CSU is doing by recently reinterpreting and misinterpreting its nondiscrimination policy to exclude religious student organizations from campus for being religious.

RJCF meets weekly for Bible study, prayer, and mutual encouragement. We help one another, pray for one another, and encourage one another. Many RJCF members are away from home for the first time. RJCF's meetings provide a spiritual home during the challenging adjustment to college life. Because Christian views are not always welcome in the classroom or dormitories, it is refreshing to have a place where we can be open about our faith and learn what the Bible says about specific problems we face or contrary views we hear from professors and other students.

On February 20, 2013, we received an email stating that RJCF's ability to remain a recognized student organization was in jeopardy as a result of Executive Order 1068. Many other religious groups at CSU received similar notices. In the summer of 2013, the religious groups petitioned the new chancellor for a moratorium on implementation of Executive Order 1068. We were grateful when the CSU chancellor announced a one-year moratorium for the 2013-14 academic year. The fact that the moratorium was sought by, and applied solely to, religious student groups showed that Executive Order 1068 really affected only the religious groups that could not in good conscience renounce their religious requirements for leadership. As a result of the moratorium, RJCF remained a recognized student group at CSUN for the 2013-2014 academic year.

Despite RJCF's and other religious groups' requests that the moratorium be extended, CSU refused to extend it for the 2014-15 academic year. After making all the changes that we could in good conscience make, RJCF submitted its constitution and the required recognition forms with a statement that it signed the forms based on RJCF's belief that it is not religious discrimination for a religious group to have religious leadership requirements, as it has had for the 41 years that it has been a recognized student organization at CSU, and as it will continue to have.

On January 22, 2015, I received a letter from the CSUN administration stating that RJCF "will no longer be recognized." RJCF could not pay the weekly rental fee of \$200 that CSU said we would have to pay to keep meeting in the room that we had held our weekly meetings in for free. We reluctantly moved our meetings off-campus.

Because we are no longer a recognized student group, we've lost numerous benefits. The most damaging consequences of CSU's discrimination are the inability to meet on campus, to advertise on campus and to participate in student organizational fairs. These are critical avenues for student groups to be accessible to new students and continue to grow and serve the campus community. Student groups that can't grow eventually can't function as members graduate.

Leaders are the life and future of any organization. Ask any corporation looking for a new CEO. To suggest that this is not the case seems extremely ignorant at best. How can someone lead you effectively in something which they do not believe? Just as it is understood that a fraternity by nature would be led by a male person and a sorority by a female person because of the nature and purpose of the organization, it should also be understood that a religious organization would best be led by a person of that religion. We are not asking a math club to require their leaders to be religious. The nature and purpose of our organization is religious and our leaders must be able to demonstrate and promote our beliefs in order to be effective. To call this discrimination is ridiculous.

We feel that CSU is engaging in religious discrimination by excluding religious student groups from campus solely because they exercise their basic religious liberty to choose their leaders according to their religious beliefs. But we see additional discrimination in the fact that CSU continues to allow fraternities and sororities to choose their leaders and members on the basis of sex, even though Executive Order 1068 prohibits sex discrimination. We deeply appreciate anything that you can do to restore our constitutional freedoms on CSU's campuses.

Sincerely,



Cinnamon McCellen

ATTACHMENT X

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

June 9, 2015

Dear Chairman Franks,

Thank you for the opportunity to submit my story for the record.

I am the student president of a Christian student group at a California public university. This year, for the first time in almost 40 years, our student group was kicked off campus by the university's administrators, all because of our religious identity. So instead of enjoying my senior year as the president of a long-standing service-oriented group, I was forced to spend dozens of hours trying to get us treated fairly again. I have attached a letter that provides a detailed description of the situation.

Unfortunately, the school continues to discriminate against us. That continued discrimination makes the opportunity you are providing all the more important to us: it helps ensure we won't be forgotten.

Thank you very much,

A handwritten signature in black ink, reading "Bianca Travis". The signature is fluid and cursive, with the first name "Bianca" written in a larger, more prominent script than the last name "Travis".

Bianca Travis
Chi Alpha
California State University-Stanislaus



February 6, 2015

Zollie Smith
Executive Director
U.S. Missions

E. Scott Martin
National Director
Chi Alpha

Curtis Cole
Administrative Director

Nathan Cole
Communications Director

Harvey Herman
Program Development Director

Bob Marks
Missionary Personnel Director

Crystal Martin
XA Internationals Director

President Joseph F. Sheley
California State University, Stanislaus
One University Circle
Turlock, CA 95382

Dear President Sheley,

I am writing to inform you about a serious problem and ask for your assistance in solving it. As you may know, the Chi Alpha student chapter at CSU Stanislaus—which has been a part of the student body for almost 40 years—has been kicked off campus for expressing its sincere religious beliefs. As the National Director of Chi Alpha, an international Christian student ministry organization, the exclusion of our chapter at CSU Stanislaus represents a significant problem. Below, I set out the background of Chi Alpha and the dispute, why I think the University's actions raise a number of legal issues, and how we can move forward together.

Background on Chi Alpha. Chi Alpha Campus Ministries is the college outreach ministry of the General Council of the Assemblies of God. Based in Springfield, Missouri, Chi Alpha has more than 300 student groups on campuses in the U.S. and around the world. The Assemblies of God is a Christian denomination that traces its roots back to 1906 Los Angeles and the sermons of William J. Seymour, an African-American minister who was one of the founders of the Pentecostal movement. The denomination has grown to become one of the most robust, diverse religious communities in the world, with much of its growth in the U.S. driven by young people and immigrants, and most of its growth internationally in the Global South. Forty percent of U.S. members of the Assemblies of God are already from minority groups, and we expect to reach majority-minority status in about five years.



The Chi Alpha CSU Stanislaus chapter already reflects this remarkable diversity: the chapter is led by an African-American woman, Bianca Travis, and the majority of our 45-plus Stanislaus members are African-American or Latino. This diversity is no accident—it's one of Chi Alpha's Core Values. That's because we believe a diverse community reflects the love of Jesus for *everyone* on campus. And the key to our unity in diversity—what draws our different Chi Alpha communities together—is a deep, authentic love for Jesus and a desire to show His love to fellow students. That is, what makes each student chapter not just overlook, but rejoice in, our differences is our *shared faith*.

Chi Alpha has been a chartered student organization at the University for almost 40 years. Our members meet together weekly to help support and encourage each other, and the national Chi Alpha organization provides resources to strengthen those efforts. And, like Chi Alpha chapters worldwide, our Stanislaus group has been active in the student community. For instance:

- We've raised thousands of dollars annually to provide financial assistance, education, school supplies, and clothing for children in India and Philippines rescued out of human trafficking.
- We've worked closely with the International Student Office to welcome international students and help them both find housing and feel at home.
- For the past ten years, we have helped CSU Stanislaus's housing office on dorm move-in days.
- For five years, we worked with the CSU Stanislaus police department to hand out free food and water at the annual Warrior Day celebrations.
- For four years, we worked with the CSU Stanislaus police department to serve students and their families during commencement.
- For the past eleven years, we've regularly given out free espresso to students on campus.

Chi Alpha has also been active in the local community. For the past six years, we served in local election booths twice a year. We also ran all of the ticketing booths for the Stanislaus County Fair for three years.

Despite this lengthy history of positive engagement in student and community life, CSU Stanislaus has recently begun treating Chi Alpha unfairly.

Background of the dispute. Since at least 2001, the Chi Alpha chapter at CSU Stanislaus has had a copy of its constitution on file with the University and needed only to turn in the names of new officers and members to receive its charter each year. The deadline for this information has generally been about a month from the start of the Fall semester. In 2014, the deadline was October 17.

On September 11 of this year, Bianca Travis received a letter from Alissa Aragon, the Student Organization Advisor of the Office of Student Leadership & Development. The letter said that Chi Alpha was not permitted to hold events on campus until it changed its constitution. This, she said, was because Chi Alpha's constitution was not in compliance with the University's new interpretation of Executive Order 1068 (which was released in 2011). When asked why this was taking place before the October 17 deadline, Ms. Aragon told Ms. Travis that Chi Alpha had been "randomly" selected for immediate compliance.

The University's new interpretation of EO 1068 required Chi Alpha to change its constitution to state "that membership is open to all CSU students" and that Chi Alpha "leaders cannot be selected on the basis of faith[.]" Ms. Aragon's letter was on University letterhead and copied the Director of Student Leadership & Development, Clarissa Lonn-Nichols, and the Dean of Students, Ronald Noble.

On October 10, 2014, Chi Alpha submitted an updated constitution that had adopted all of the requests made in the September 11 letter. This constitution included the following language to comply with the University's new interpretation of EO 1068:

"Eligibility for membership or appointed or elected student officer positions may not be limited on the basis of race, religion, national origin, ethnicity, color, age, gender, gender identity, marital status, citizenship, sexual orientation, or disability. The organization shall have no rules or policies that discriminate on the basis of race, religion, national origin, ethnicity, color, age, gender, gender identity, marital status, citizenship, sexual orientation or disability."

Chi Alpha included a statement after this language explaining that (a) it believed that the University's new interpretation violated its religious beliefs and (b) that it was complying under duress.

Chi Alpha understands that, as of September 2014, the University interprets its anti-discrimination policy to prohibit religious student organizations from requiring their members or officers to share the religious beliefs that the organizations exist to further. Chi Alpha believes that the University's post-September 2014 interpretation of its anti-discrimination policy burdens Chi Alpha's sincere religious exercise, improperly interferes with the internal affairs of a religious organization, and violates the law, including but not limited to the First Amendment of the U.S. Constitution and Article I Sections 1, 2, and 4 of the California Constitution. Chi Alpha agrees to comply with the University's post-September 2014 interpretation of its anti-discrimination policy only under duress and only to the extent that Chi

Alpha retains the ability to select leaders that fully support Chi Alpha's mission and are capable of carrying out that mission.

On October 18, Ms. Aragon refused to reinstate Chi Alpha's charter but said she would do so if the final sentence—which stated that Chi Alpha was complying under duress—was removed. Ms. Travis twice asked if Chi Alpha had to remove the entire statement or just the last sentence; Ms. Aragon twice confirmed the latter.

On November 11, Chi Alpha resubmitted an updated constitution that removed the last sentence. The next day, Ms. Aragon deviated from her previously-stated position and said she would not reinstate Chi Alpha's charter unless the rest of the statement—which stated that Chi Alpha believed it had a legal right to require its leaders to share its religious beliefs—was removed.

On November 18, Ms. Aragon and her supervisor, Ms. Lonn-Nichols, held a meeting with Ms. Travis, B.J. Miller (Chi Alpha's student vice-president), Dr. Richard Weikart (Chi Alpha's faculty advisor), and Jeremy Anderson (the regional Chi Alpha director of student ministries). Ms. Lonn-Nichols opened the meeting by expressly conditioning reinstatement of Chi Alpha's charter on removing the rest of the statement. All Chi Alpha representatives in the room confirmed their intent to comply with the University's EO 1068 interpretation and said that they just needed, as a matter of conscience, to express their disagreement with being forced to give up selecting student leaders who shared their faith. Even with these assurances and the presence of the required non-discrimination language in the constitution, both Ms. Lonn-Nichols and Ms. Aragon said that Chi Alpha must remove the rest of the statement or it would not have its charter reinstated. When Chi Alpha asked Ms. Lonn-Nichols to put this requirement and her rationale in writing, she ended the meeting and said, "I'm done playing games with you."

After prayerfully considering Ms. Lonn-Nichols' ultimatum, Chi Alpha decided that it could not remove the rest of the statement. On December 1, Ms. Aragon sent Ms. Travis an email stating that Chi Alpha was not chartered at the University and instructing her to remove Chi Alpha's booth from the Campus Quad by December 5. Because of the University's actions, Chi Alpha was forced to cancel 15 previously-approved events in the fall semester and is being denied equal access to campus for the spring semester.

Legal Issues. Through its policies and actions, the University has conditioned Chi Alpha's chartered status on the removal of a purely expressive religious statement from its constitution. It is my understanding that this violates the First Amendment's guarantees of free speech, free exercise of religion, and free association, equal protection, as well as several other federal and California laws. I

describe the legal issues concerning freedom of speech and the free exercise of religion below.

Freedom of Speech. The University is restricting Chi Alpha's speech because of its content, even though that content has no operative effect on the University's interests and that the speech serves only to express Chi Alpha's internal religious beliefs.

The First Amendment protects Chi Alpha's rights to be free from governmentally compelled speech or silence. *See Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796-97 (1988) ("[T]he First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say."). Since the University is banning Chi Alpha's "expression because of its message, its ideas, its subject matter, or its content," the University's actions are subject to "the most exacting scrutiny." *Doe v. Harris*, 772 F.3d 563, 574 (9th Cir. 2014) (striking down California law that regulated the speech of sex offenders).

To pass this scrutiny, the University must have a compelling interest in restricting Chi Alpha's religious expression, and be doing so in the least restrictive way possible. *TBS, Inc. v. FCC*, 512 U.S. 622, 642 (1994). But here, the University has no interest at all. Chi Alpha has already promised, both in writing and in person, to abide by the University's non-discrimination policy. And its mild expression of religious disagreement is far less likely to cause a prominent public dispute than is controversial anti-war attire that is broadly protected as "pure speech." *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 508 (1969). Indeed, with the exception of Chi Alpha members and University administrators, few would have even known of Chi Alpha's verbal expression of dissent because it was made in the context of the constitution. The University cannot have an interest in censoring dissenting ideas, particularly where those ideas are important solely to the members of a voluntary religious association. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("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"). This is doubly true given the "essentiality of freedom 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 in the classroom." *Dube v. State University of New York*, 900 F.2d 587, 597-98 (2d Cir. 1990) (quoting *Sweezy v. New Hampshire*, 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).

The University's actions here go well beyond this standard and unreasonably violate clearly established constitutional rights. A comparison to other cases is

instructive: government defendants often try to excuse compelled speech by noting that the speakers could still *express disagreement* with a governmentally compelled message. *Frudden v. Pilling*, 742 F.3d 1199, 1205 (9th Cir. 2014) (banning a school from forcing students to wear its message of “Tomorrow’s Leaders”). Courts uniformly reject those arguments, *id.* at 1205-06, and would look even more dimly on the University’s attempt here to both compel speech *and* censor disagreement with that speech.

In Chi Alpha’s view, since the University is “not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike [it],” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 661 (2000), it certainly may not censor speech for no reason at all.

Free Exercise of Religion. The University gives its administrators unbridled discretion to control Chi Alpha’s access to charter reinstatement. And its administrators have exercised that discretion to arbitrarily restrict the kind of religious speech that Chi Alpha may engage in. Under the Free Exercise Clause a law burdening religious exercise is generally permissible only if it is “neutral” and “generally applicable.” *Employment Division v. Smith*, 494 U.S. 872, 880 (1990). Laws cannot meet this standard where they allow the government discretion to create “individualized exemptions” on a case-by-case basis or where they are enforced unevenly. *Id.* at 884 (citing *Sherbert v. Verner*, 374 U.S. 398, 401 (1963)); *accord Tenaflly Eruv Ass’n, Inc. v. The Borough of Tenaflly*, 309 F.3d 144, 166-67 (3d Cir. 2002) (striking down law that was not enforced uniformly). That is just as true in the university context as any other. *See, e.g., Rader v. Johnston*, 924 F. Supp. 1540 (D. Neb. 1996) (striking down college actions both because the policy in question had several exemptions and because of administrative insensitivity toward religious conduct).

Because the University permits such broad discretion over granting student group charters and because University administrators have exercised that discretion to single out and arbitrarily target Chi Alpha’s religious speech for censorship, the University’s actions would have to stand up under strict scrutiny in court. And those actions fail that scrutiny for the reasons outlined above. Indeed, since the University can’t have an interest in banning the wholly expressive religious dissent of a voluntary association, even if the University’s actions *were* the result of a neutral and generally applicable law, they would fail simply because they are an irrational restriction on religious expression. *In re Levenson*, 587 F.3d 925, 931 (9th Cir. 2009) (under even rational-basis review, “[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.”).

Moving forward. On behalf of Chi Alpha and of the Assemblies of God, I am writing this letter in the hope that we can resolve this dispute together. Chi Alpha

has been a part of the University's student body for almost 40 years and is filled with students who want to resume building unified diversity on campus as soon as possible. I am sure you agree with me that CSU Stanislaus should not discriminate against Chi Alpha or treat students like Bianca Travis as second-class citizens simply for their expression of religious dissent. If anything, CSU Stanislaus should be *encouraging* active, community-serving student groups like Chi Alpha, not excluding them. Therefore I would request that we meet to discuss this issue and how CSU Stanislaus and Chi Alpha can work together going forward. Please let me know when we might have such a meeting.

Sincerely,

A handwritten signature in black ink, reading "E. Scott Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

E. Scott Martin
National Director
Chi Alpha, U.S.A.

cc: Richard Weikart, Organization Faculty Advisor, rweikart@csustan.edu

ATTACHMENT Y

June 10, 2015

The Honorable Trent Franks,
Chair Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks:

My name is Dr. Ra'sheedah Richardson, and it is an honor to submit this letter for your review on the behalf of ReJOYce in JESUS Campus Fellowship (RJCF) at Texas A&M University (TAMU). I was a member of RJCF at TAMU during graduate school from 2003-2012. RJCF has been a recognized student organization on the campus of TAMU since 1996. RJCF enjoyed this status uninterrupted for well over a decade, until the 2011-2012 school year when TAMU restricted our status as a campus group.

RJCF hosts a number of activities and services open to the Texas A&M community, such as a weekly Bible study, weekend fellowship events and prayer. RJCF typically has from 20-30 students who participate. Personally, RJCF not only supported me through spiritual development and in my relationship with the Lord Jesus, but the fellowship encouraged me to pursue academic excellence and to develop character traits like integrity, wisdom, composure and faithfulness that have been essential for a successful professional career. RJCF has helped me as well as countless other students make the adjustments needed to stand through the pressures and challenges faced in college life and beyond.

In October 2011, the TAMU Office of Student Organization Development and Administration (OSODA) within the Department of Student Activities sent us an email taking exception to RJCF's criteria for voting membership and/or leadership. RJCF seeks to preserve the intent of our organization through our voting member/leadership requirements. OSODA cited the University's statement on harassment and discrimination which states, "Texas A&M University, in accordance with applicable federal and state law, prohibits discrimination, including harassment, on the basis of race, color, national or ethnic origin, religion, sex, disability, age, sexual orientation, or veteran status." The email went on to state that, "This statement extends to student organization membership and leadership, and since ReJOYce in Jesus has a religious component outlined for its voting membership and leadership eligibility, your criteria warrants further review."

Following a review process which included a face-to-face meeting with Office of Student Organization Development and Administration personnel, RJCF was asked to change its constitution in order to remain a recognized student organization at TAMU. I and others in our group were greatly troubled by what we felt was an attack on our rights as students of faith on campus and a misuse of TAMU's non-discrimination policy. We were informed that many other religious student groups at Texas A&M received similar notices and were forced to review and/or revise their constitutions.

For a Christian student organization, having leadership that holds to the same beliefs and values is essential. Without it, we would not be able to preserve the integrity of our values, beliefs and purposes as a faith-based group. I would have personally felt very uncomfortable if the leadership of our organization had been someone who did not subscribe to the tenets of the Christian faith as it would have changed the direction of RJCF monumentally. RJCF would have ceased to have the same

meaning and purpose as a Christian organization if a non-Christian was an officer. This would have subsequently caused me to withdraw my membership. As a result, I would not have received the support offered by RJCF through college.

Without student group recognition, we would not have been able to continue to meet freely on campus to encourage each other in our growth both spiritually and academically. According to TAMU policy, non-recognized student groups are required to pay \$100 per instance for each room reservation. It would have cost our group up to \$7,600 per academic year to continue to operate on campus. This is far too great a hardship for a small student group like RJCF to maintain.

Additionally, non-recognized student groups have a much more difficult time advertising for the group on campus. Specifically, they are unable to post fliers, reserve other advertising media or reserve campus outdoor space. Non-recognized student groups are also not allowed to participate in the MSC Open House – the most significant campus-wide event that allows students to connect with and learn about organizations consistent with their interests, needs or beliefs and what they have to offer.

I have no doubt that had not we sought legal assistance clarifying the interpretation of federal law, RJCF would have ceased to exist on Texas A&M University's campus. After reviewing a letter received from our legal counsel, the University changed its position and acknowledged that RJCF "meets the criteria necessary for an exemption to the open membership requirement outlined in Texas A&M Student Rule 41.1.5 which states that student organizations should 'be open in its membership unless otherwise permitted under applicable federal law.'" RJCF's recognized status was subsequently restored.

Sincerely,

A handwritten signature in cursive script that reads "Ra'sheedah Richardson". The signature is written in dark ink and is positioned above a horizontal line.

Ra'sheedah Richardson, Ph.D.

ATTACHMENT Z

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

June 5, 2015

Dear Chairman Franks,

I write to you as the former President of the Christian Legal Society (CLS), The Ohio State University Moritz College of Law student chapter. Founded in 1961 CLS is a non-profit organization that exists to educate, train, and equip Christian legal professionals and law students to practice Christian principles in the legal profession. Student chapters are part of CLS' Law Student Ministries. I was privileged to serve as the chapter President during the 2003-2004 academic year, which was my second year of law school. We were a chapter of modest size, with a membership of approximately ten law students, and one faculty sponsor. Membership in CLS required affirmation of a Statement of Faith, and adherence to a code of conduct that follows a biblical approach to inter- and intrapersonal conduct. Membership in CLS conferred several privileges, including the right to vote for the chapter's officers. In order to maintain good standing with CLS' national organization, student chapters had to adopt a constitution, bylaws, and codes of conduct that are consistent with those of the national organization.

Of the literally hundreds of student organizations available at a large, public university such as Ohio State, I chose to devote my time and energy to serving with CLS. CLS' stated mission is to "inspire, encourage, and equip Christian lawyers and law students both individually and in community to proclaim, love and serve Jesus Christ through the study and practice of law, the provision of legal assistance to the poor and needy, and the defense of the inalienable rights to life and religious freedom." Upon learning of CLS, I instantly knew I had found an organization with whom I would find purpose and meaning during my law school tenure. Little did I know that groups who sought to impose their notions of "liberty" upon us would challenge CLS' continued existence.

In the fall of 2003—only weeks into my tenure as chapter President—some fellow students approached me and asked whether non-CLS members could attend CLS chapter meetings. I responded that non-members were not only permitted, but were welcomed and encouraged to attend our meetings. Several days later, those same students asked whether non-members could become voting members or officers. I responded that I would need to review the chapter constitution and bylaws. After review and consultation with other chapter officers, we determined that only those who were able to affirm CLS' Statement of Faith, and adhere to our bylaws and code of conduct, were eligible for voting membership and officership.

As a result of our candid response, the students filed a formal complaint with the law school administration. The Law School Dean requested a meeting with me, whereupon she explained the nature of the complaint and asked for my response. I explained that, as a student chapter, we had no choice but to maintain consistency with CLS' national organization, or we would no longer be permitted to affiliate ourselves with them. In essence, to change our constitution and bylaws would be to change the very nature of our organization. We would cease to be a Christian Legal Society.

Several days later, The Ohio State University initiated an investigation into our chapter for allegedly violating the University's non-discrimination policy. The University threatened to void our status as a recognized group, thereby rescinding our ability to use University facilities, receive funding from our student fees, and possibly requiring repayment of past funds received. The consequences of such action would have been devastating. Without the ability to meet on campus, to receive financial assistance, or to even exist as a recognized organization, I am certain CLS would have ceased to continue its ministry at The Ohio State University. Those of us for whom CLS provided a meaningful and important vehicle through which we could use our legal education for the greater good would be relegated to second-class citizens simply because of our sincerely held beliefs.

Unfortunately, I also experienced personal consequences. I was often the subject of name-calling, gossip, and rumor-mongering. The Law School "advised" that I undergo mediation with those whom I had "offended." In short, the law school—*my* law school—created a hostile environment for me. I was warned by upperclassmen not to take courses by certain professors who were not likely to give me fair evaluations. Some of my classmates verbally admonished me for my sincerely held religious beliefs. And I was only in my second year of law school. I would have to endure this treatment and hostility for another year.

I agreed to undergo mediation with a leader from the complaining organization, in the hopes that we could achieve reconciliation. I also hoped to demonstrate that our organization was open and welcoming to all, but that we simply could not compromise our core principles and beliefs. At the next chapter meeting—we met weekly—I apprised the attendees of the situation, and asked that we all make every effort to maintain a friendly and welcoming environment. I recall specifically inviting the very students who complained to CLS meetings, so they could observe for themselves our desire for friendship and collegiality. Unfortunately, our attempts were to no avail.

Once informed of the University's decision to investigate us, I convened an emergency session with our chapter's members and officers. We decided that the appropriate action was to contact the CLS national organization to inform them of the situation. I soon learned that CLS sued The Ohio State University in federal court for religious discrimination. After doing so, my involvement and role diminished significantly, so that I could maintain my focus on my legal studies. I provided some assistance with the preparation of legal documents on our student chapter's behalf, but my involvement primarily consisted of signing documents and providing statements. It also helped to

receive affirmation and encouragement that we had not violated the law, and that we did the right thing.

Several acrimonious months later, we were informed that the University reached a settlement with CLS, and agreed to amend its non-discrimination policy with an exception for student organizations that hold “sincerely held beliefs.” My understanding is that the exception was a stop-gap measure, and I do not know if the University continues to provide such an exception today. My hope is that it does; there are many faith-based organizations with sincerely held religious beliefs who would be unfairly and unlawfully penalized were the University to rescind this hard-won exception.

Mr. Chairman, thank you for the opportunity to share my experience. I am happy to provide additional details if necessary.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Berry", written over a horizontal line.

Michael Berry