

**Written Statement of
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**Submitted to
The Judiciary Committee of the
United States House of Representatives,
Subcommittee on the Constitution and Civil Justice**

**Written Statement for Hearing:
“First Amendment Protections on Public College and University Campuses”
June 2, 2015**

Chairman Franks, Ranking Member Cohen, and Members of the Subcommittee, thank you for inviting me to testify at this hearing on “*First Amendment Protections on Public College and University Campuses*,” regarding the ongoing discrimination against religious student groups on many college campuses. I am Kim Colby, the Director of the Christian Legal Society’s Center for Law and Religious Freedom, where I have worked for over thirty years to protect students’ right to meet for religious speech on college campuses.

The Christian Legal Society (“CLS”) has long believed that pluralism is essential to a free society and prospers only when the First Amendment rights of all Americans are protected, regardless of the current popularity of their speech or religious beliefs. For that reason, CLS was instrumental in the bipartisan passage of the Equal Access Act of 1984¹ that protects the right of all students to meet for “religious, political, philosophical or other” speech on public secondary school campuses.² The Act was a bipartisan effort to protect religious student groups from being excluded from high school campuses because they wanted to meet for religious speech, including Bible studies and prayer, when other student groups met. For over 30 years, the Act has protected both religious and LGBT student groups seeking to meet for disfavored speech.³

CLS is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 public and private law schools. CLS law student chapters typically are small groups of students who meet for weekly prayer, Bible study, and worship at a time and place convenient to the students. All students are welcome at CLS meetings. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of faith, signifying agreement with the traditional Christian beliefs that define CLS.

¹ 20 U.S.C. §§ 4071-4074 (2013). House Education and Labor Committee Chairman Carl Perkins (D-KY), along with Committee ranking member Representative William Goodling (R-PA), Representative Don Bonkers, (D-WA), and Representative Trent Lott (R-MS), shepherded the Act through the House, which passed it by a vote of 337-77. Senator Mark Hatfield (R-OR), Senator Jeremiah Denton (R-AL), and Senator Orrin Hatch (R-UT) led the bipartisan effort in the Senate, which passed it 88-11, with Senator Ted Kennedy (D-MA) and Senator Joe Biden (D-DE) among its Democratic supporters.

² See 128 Cong. Rec. 11784-85 (1982) (Sen. Hatfield statement) (recognizing CLS’s role).

³ See, e.g., *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (requiring access for religious student group); *Straights and Gays for Equality v. Osseo Area School No. 279*, 540 F.3d 911 (8th Cir. 2008) (requiring access for LGBT student group).

I. For Forty Years, Religious Student Groups Frequently Have Been Discriminatorily Excluded from College Campuses.

A. From the 1970s to the mid-1990s, the Establishment Clause was used by some university administrators to justify discriminatory treatment of religious student groups.

On a typical university campus, hundreds of student groups meet to discuss political, social, cultural, and philosophical ideas.⁴ These groups form when a few students apply to the university administration for “recognition” as a student group. “Recognition” allows a student group to reserve meeting space on campus, communicate with other students, and apply for student activity fee funding available to all student groups. Without recognition, a group finds it nearly impossible to exist on campus.

Religious student organizations enhance campus diversity in myriad ways by contributing to the religious, philosophical, cultural, and social “marketplace of ideas” on campus. Often the religious groups themselves are among the most ethnically diverse student groups. Religious groups support students through easy and hard times, a particularly important source of support for students who may be away from home for the first time. By performing community service projects both on and off campus, they enrich campus life in tangible and intangible ways.

1. *Healy v. James* (1972)

The Supreme Court acknowledged the importance to student groups of recognition as an official student group in its landmark 1972 decision, *Healy v. James*.⁵ There the Court ruled that a public college must recognize the Students for a Democratic Society (“SDS”). Denial of recognition would violate the political group’s freedoms of speech and association. The Supreme Court rejected the college’s argument that it would be endorsing the SDS’s extremist political agenda if it recognized the group. Recognition of a student group by a college, the Court said, did not mean that the college endorsed the student group’s political beliefs.

⁴ The Ohio State University, for example, has over 1,100 recognized student organizations. See http://ohiounion.osu.edu/get_involved/student_organizations (“With over 1,100 student organizations, Ohio State provides a wide range of opportunities for students to get involved.”) (last visited May 27, 2015).

⁵ 408 U.S. 169 (1972).

2. *Widmar v. Vincent* (1981)

In the 1970s, discrimination against religious student associations began to emerge when some college administrators claimed that the Establishment Clause would be violated if religious student groups were allowed to meet in empty classrooms to discuss their religious beliefs on the same basis as other student groups were allowed to meet to discuss their political, social, or philosophical beliefs. The administrators claimed that merely providing heat and light in unused classrooms gave impermissible financial support to the students' religious speech, even though free heat and light were provided to all student groups. The administrators also claimed that college students were "impressionable" and would believe that the university endorsed religious student groups' beliefs, even though hundreds of student groups with diverse, and contradictory, ideological beliefs were allowed to meet on campus.⁶

In 1981, the University of Missouri -- Kansas City (UMKC) made similar arguments before the United States Supreme Court in the landmark case of *Widmar v. Vincent*.⁷ UMKC had adopted a policy that prohibited the use of buildings or grounds "for purposes of religious worship or religious teaching" by the approximately 100 student groups that met on its campus.⁸ In order to be recognized, a student group had to affirm that its meetings did not include "religious worship or religious teaching." A group of evangelical Christian students, calling themselves "Cornerstone," had met for a number of years on campus.⁹ But the Cornerstone students refused to eliminate religious worship and religious teaching from their meetings, even though their decision meant their group would lose recognition and the ability to meet on campus. UMKC refused to renew Cornerstone's recognition, claiming that allowing a student group to

⁶ "A 2007 study of faculty on college campuses found that 53 percent of university professors had 'cool' or negative feelings toward evangelicals. This raises serious questions about how Christian students can expect to be treated on secular campuses." Kirsten Powers, *The Silencing: How the Left is Killing Free Speech* xiii (citing Gary A. Tobin and Aryeh K. Weinberg, "Profiles of the American University: Volume II: Religious Beliefs & Behavior of College Faculty," Institute for Jewish & Community Research, 2007, <http://www.jewishresearch.org/PDFs2/FacultyRegion07.pdf>).

⁷ 454 U.S. 263 (1981).

⁸ 454 U.S. at 265 & n.3. The University of Missouri currently has over 750 recognized student organizations. See <http://getinvolved.missouri.edu/> (last visited Feb. 9, 2015).

⁹ *Id.* at 265.

engage in worship and religious instruction on campus violated the “establishment clauses” of both the federal and state constitutions.

In an 8-1 ruling, the Supreme Court held that the university had violated Cornerstone’s speech and association rights. The Court found that “UMKC has discriminated against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion. These are forms of speech and association protected by the First Amendment.”¹⁰

The Court then held that the federal Establishment Clause was not violated by allowing religious student associations access to public college campuses.¹¹ The Court ruled that college students understand that recognizing a student group does not mean that the university *endorses* the students’ religious speech or beliefs. Relying on *Healy*, the Court again ruled that recognition is not endorsement. As the Court observed in a subsequent equal access case protecting high school students’ religious meetings, “the proposition that schools do not endorse everything they fail to censor is not complicated.”¹²

3. *Rosenberger v. University of Virginia* (1995)

In *Rosenberger v. Rector & Visitors of the Univ. of Virginia*,¹³ the Court reaffirmed *Widmar*’s reasoning. The Court ruled that the University of Virginia violated a religious student organization’s rights of free speech and association when it denied a religious student publication the same funding available to sixteen other nonreligious student publications. Access for a religious student group, even to student activity fee funding, does not mean that the university endorses the group’s religious viewpoints.¹⁴

¹⁰ *Id.* at 269.

¹¹ *Id.* at 270-75. The Court also held that the state constitution did not justify suppressing the religious student group’s free speech and association rights. *Id.* at 275-76.

¹² *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (holding that the Equal Access Act protects students’ right to meet for religious speech in public secondary schools).

¹³ 515 U.S. 819 (1995).

¹⁴ The Court has repeatedly applied this principle over the past four decades in granting religious groups access to the public square. See, e.g., *Good News Club v. Milford Central School*, 533 U.S. 98 (2001) (religious community group’s access to elementary school); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (religious community group’s access to high school auditorium in evenings); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990)

B. For the past twenty years, some university administrators have misused college nondiscrimination policies to exclude religious student groups from campus.

After the Supreme Court removed the Establishment Clause as a credible justification for excluding religious groups, university nondiscrimination policies became the new justification. At too many colleges, religious student groups have been told that they cannot meet on campus if they require their leaders to agree with their religious beliefs.¹⁵ Beginning in the early 1990s, religious student groups, including CLS student chapters, began to encounter some university administrators who *misused* nondiscrimination policies to exclude religious student groups from campus, simply because they required their leaders to agree with their religious beliefs.¹⁶

But it is common sense and basic religious liberty – not discrimination – for religious groups to expect their leaders to share their religious beliefs. Nondiscrimination policies are good and essential. But nondiscrimination policies are intended to *protect* religious students, not *prohibit* them from campus. The problem is not with the nondiscrimination policies. The problem is that colleges *misinterpret* and *misuse* these policies to exclude religious student groups from campus. In the name of “tolerance,” college administrators institutionalize religious intolerance. In the name of “inclusion,” college administrators exclude religious student groups from campus.

(religious student group’s access to high school recognition); *Fowler v. Rhode Island*, 345 U.S. 67 (1953) (religious community group’s access to park); *Niemotko v. Maryland*, 340 U.S. 268 (1951) (religious persons’ access to park).

¹⁵ See Michael Paulson, “Colleges and Evangelicals Collide on Bias Policy,” *The New York Times*, June 9, 2014, p. A1, available at http://www.nytimes.com/2014/06/10/us/colleges-and-evangelicals-collide-on-bias-policy.html?_r=0 (last visited May 29, 2015) (“For 40 years, evangelicals at Bowdoin College have gathered periodically to study the Bible together, to pray and to worship. . . . After this summer, the Bowdoin Christian Fellowship will no longer be recognized by the college. . . . In a collision between religious freedom and antidiscrimination policies, the student group, and its advisers, have refused to agree to the college’s demand that any student, regardless of his or her religious beliefs, should be able to run for election as a leader of any group, including the Christian association.”).

¹⁶ See, e.g., Michael Stokes 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, 668-72 (1996) (detailing University of Minnesota’s threat to derecognize CLS chapter).

Basic religious liberty presupposes that religious groups may choose leaders who agree with their religious beliefs and religious standards of conduct. Indeed, it should be common ground, particularly among those who advocate strong separation of church and state, that government officials, including public college officials, should not interfere with religious groups' internal selection of their leaders.

Of course, the leadership of any organization affects its ability to carry out its mission. This is particularly true for religious groups because leaders conduct the Bible studies, lead the prayers, and facilitate the worship at their meetings. To expect the person conducting the Bible study to believe that the Bible reflects truth seems obvious. To expect the person leading prayer to believe in the God to whom she is praying seems reasonable. Both are a far cry from any meaningful sense of discrimination. Yet some university administrators woodenly characterize these common sense expectations and basic religious liberty principles as "religious discrimination."

Caution needs to be taken before affixing the stigmatizing label of "discrimination" to religious groups' exercise of a fundamental religious liberty. To our society's credit, affixing the label of "discrimination" to an action immediately casts that action as bad and intolerable. But for that very reason, the push to recast as "discrimination" religious groups' right to have religious leadership requirements must be carefully weighed (and ultimately rejected) if religious liberty and pluralism are to survive in our society.¹⁷

An important purpose of college nondiscrimination policies is to protect religious students on campus. It is simply wrong to use nondiscrimination policies to punish religious student groups for being religious. When universities misuse nondiscrimination policies to exclude religious student groups, they actually undermine nondiscrimination policies' purposes and the good they serve.¹⁸

¹⁷ "It is tempting and common, but potentially misleading and distracting, to attach the rhetorically and morally powerful label of 'discrimination' to decisions, conduct, and views whose wrongfulness has not (yet) been established." Richard W. Garnett, *Religious Freedom and the Nondiscrimination Norm*, ch. 4 in Austin Surat, ed., *Legal Responses to Religious Practices in the United States* 194, 197 (Cambridge University Press, 2012).

¹⁸ Joan W. Howarth, *Teaching Freedom: Exclusionary Rights of Student Groups*, 42 U.C. Davis L. Rev. 889, 914 (2009) ("application of the nondiscrimination policy against faith-based groups undermines the very purpose of the nondiscrimination policy: protecting religious freedom").

Such misuse of nondiscrimination policies is unnecessary. Reflecting an appropriate sensitivity to religious liberty, most nondiscrimination laws, such as the federal Title VII, simultaneously prohibit discrimination while protecting religious groups' ability to maintain their religious identities.¹⁹ In interpreting their policies, college administrators should show a similar tolerance and respect for religious groups and their basic religious liberty to be led by persons who share their religious beliefs.²⁰

Nondiscrimination policies and students' religious liberty are eminently compatible. As a commendable best practice, many universities embed robust protection for religious liberty within their nondiscrimination policies, thereby creating a sustainable environment in which nondiscrimination principles and religious liberty harmoniously thrive.²¹ Because it is possible to have strong nondiscrimination policies *and* religious liberty, the better approach is to facilitate both, rather than demand that religious liberty lose.

¹⁹ See 42 U.S.C. § 2000e-1(a) (protecting right of religious associations' to employ only "individuals of a particular religion"); 42 U.S.C. § 2000e-2(e)(2) (protecting religious educational institutions' right to employ only "employees of a particular religion"); 42 U.S.C. § 2000e-2(e)(1) (allowing any employer to hire on the basis of religion "where religion . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise").

²⁰ The Supreme Court itself "declin[e]s to construe" federal laws "in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979). How much more should college administrators avoid interpreting nondiscrimination policies to create an entirely avoidable conflict with students' First Amendment rights.

²¹ Many universities have policies that protect religious groups' religious leadership criteria. The University of Florida has a model nondiscrimination policy that strikes the appropriate balance between nondiscrimination policies and religious liberty, which reads: "A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy." The University of Texas provides: "[A]n organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith." The University of Houston likewise provides: "Religious student organizations may limit officers to those members who subscribe to the religious tenets of the organization where the organization's activities center on a set of core beliefs." The University of Minnesota 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." These policies are found in Attachment G.

II. Colleges Have Threatened to Exclude Religious Student Groups from Campus Because They Require that Their Leaders Agree with the Groups' Religious Beliefs.

A. Vanderbilt University

In 2011, Vanderbilt University denied recognition to a Christian Legal Society student chapter because the group expected its leaders to lead Bible study, prayer, and worship, and to affirm that they agreed with the group's core religious beliefs.²² Vanderbilt University demanded that another Christian group delete five words from its leadership requirements if it wanted to remain on campus: "personal commitment to Jesus Christ."²³ The group left campus rather than recant their core religious belief.

In the end, Vanderbilt University forced fourteen Catholic and Evangelical Christian student groups from campus.²⁴ But "the right to religious freedom" must not be redefined as "the right to recant." Religious freedom must remain the right to hold traditional religious beliefs without fear of expulsion from campus.²⁵

²² This email is Attachment A.

²³ This email is Attachment B.

²⁴ The excluded groups are: Asian-American Christian Fellowship; Baptist Campus Ministry; Beta Upsilon Chi; Bridges International; Campus Crusade for Christ (CRU); Christian Legal Society; Fellowship of Christian Athletes; Graduate Christian Fellowship; Lutheran Student Fellowship; Medical Christian Fellowship; Midnight Worship; The Navigators; St. Thomas More Society; and Vanderbilt + Catholic.

Two videos feature Vanderbilt students discussing their exclusion from campus. See Foundation for Individual Rights in Education (FIRE), "Exiled from Vanderbilt: How Colleges Are Driving Religious Groups Off Campus," available at <https://www.youtube.com/watch?v=dGPZQKpzYac&feature=youtu.be> (last visited May 28, 2015); and Vanderbilt Alumni, "Leadership Matters for Religious Organizations," available at <https://www.youtube.com/watch?v=X5bdOIaLBzI> (last visited May 28, 2015). Another short video captures highlights of a remarkable "town hall meeting" on January 31, 2012, during which administrators attempted to explain their stance to several hundred students. https://www.youtube.com/watch?v=msT_II7mNcA&list=UUIRloSC2IISi2Mwf5eQJhsQ&index=1&feature=plcp (last visited May 28, 2015).

²⁵ Tish Harrison Warren, an InterVarsity staffperson at Vanderbilt University during the 2011-12 academic year, wrote about the experience: "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 [the Vanderbilt administrators] if they truly thought it was fair to equate racial prejudice with

Even though Vanderbilt University is a private university, its misuse of a nondiscrimination policy to exclude religious groups from campus is germane to this hearing because its exclusion strategy parallels the strategies of some public universities. For example, both Vanderbilt University and some public universities have applied a double standard to religious and Greek groups: the religious groups are prohibited from having religious leadership requirements, while fraternities and sororities are permitted to engage in sex discrimination in their selection of both leaders and members.²⁶

B. 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, including InterVarsity, Cru (formerly Campus Crusade for Christ), Chi Alpha, Rejoyce in Jesus Campus Fellowship, and Ratio Christi. Several of the excluded groups had met for over forty years on California State University campuses with requirements that their leaders agree with the groups' religious beliefs.²⁷ But under a new policy, as one California State University administrator explained to the media, "What they cannot be is faith based where someone has to have a profession of faith to be that leader."²⁸

asking Bible study leaders to affirm the Resurrection. The vice chancellor replied, 'Creedal discrimination is still discrimination.'" Tish Harrison Warren, "The Wrong Kind of Christian," *Christianity Today*, August 27, 2014, <http://www.christianitytoday.com/ct/2014/september/wrong-kind-of-christian-vanderbilt-university.html?start=2> (last visited May 28, 2015).

²⁶ Colleges frequently invoke Title IX's exemption for fraternities and sororities to justify their unequal treatment of religious groups compared to Greek groups. But that response is a red herring. Title IX gives fraternities and sororities an exemption *only* from Title IX's own prohibition on sex discrimination in higher education. It does not give fraternities and sororities a blanket exemption from all nondiscrimination laws or policies, including a university's own nondiscrimination policy or an "all-comers" policy. If a university exempts fraternities and sororities from its nondiscrimination or "all-comers" policies, it must also exempt religious groups. See *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010); cf., *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 545-46 (1993).

²⁷ Ms. Bianca Travis, the student president of the Chi Alpha chapter at California State University Stanislaus campus, described the harm done her religious group by the university's de-recognition of religious groups. http://video.foxnews.com/v/4141090722001/faith-under-fire-at-cal-state/?playlist_id=930909787001#sp=show-clips (last visited May 28, 2015).

²⁸ KMVT News, "Another Fraternity Controversy – But It's Not What You Think," March 22, 2015, print and video available at <http://www.kmvt.com/news/latest/Another-Fraternity-Controversy-But-Its-Not-What-You-Think-297181301.html> (last visited May 29, 2015).

The student president of a religious student group that had met for forty years on California State University's Northridge campus received a letter withdrawing her group's recognition that read:

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.

. . . . The Rejoyce in Jesus Campus Fellowship organization will 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. In withdrawing University recognition, your organization is no longer afforded the privileges of University recognition (sic) Clubs and Organizations.²⁹

The letter then listed seven basic benefits of recognition that the university had denied the religious student group because it required its student leaders to agree with its religious beliefs. These included: 1) free access to meeting space; 2) the ability to attract new student members through club fairs; and 3) access to a university-issued email account or website. As the letter explained, “[g]roups of students not recognized by the university who reserve rooms through [University Student Union (“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.” As a result of being “de-recognized,” some religious student groups paid thousands of dollars to rent meeting space and obtain insurance coverage that had been free for forty years – and was still free to recognized student organizations.

The problem at California State University centers on its own Executive Order 1068, issued in December 21, 2011, which re-interpreted the university's nondiscrimination policy to prohibit religious student groups from maintaining religious leadership requirements. The order also purported to adopt an “all-

²⁹ The letter is Attachment C.

comers” policy that would prohibit all student groups, including religious groups, from choosing their leaders according to the groups’ beliefs.³⁰

But the executive order’s attempt to establish an “all-comers” policy fails because the order explicitly allows fraternities and sororities to continue to engage in sex discrimination in selecting leaders and members. California State University employs the same double standard as Vanderbilt University: fraternities and sororities may select their leaders and members on the basis of sex, but religious organizations may not select their leaders on the basis of their religious beliefs.

In 2013, the university employed “Constitutional Review Student Assistants” to comb through student associations’ constitutions and censor those constitutions that did not conform to the new executive order. As a result of this review, California State notified several religious student organizations that they would no longer be recognized as student organizations unless they stopped requiring their leaders to agree with the groups’ religious beliefs.

Demonstrating that the order falls most heavily, if not exclusively, on religious student groups, California State University granted religious student associations a one-year moratorium from August 2013 to August 2014. That the religious groups were the only groups seeking a moratorium strongly suggests that other groups could adapt their leadership requirements to comply with the new policies whereas the religious groups could not.

In recent weeks, California State University has provided certain religious groups with a letter clarifying that, under specific circumstances, their leadership selection processes may include questions about a candidate’s religious beliefs. But the use of such questions remains limited; the answers to such questions may not be considered as part of leadership eligibility requirements by the organization

³⁰ The California State University executive order is Attachment D. The executive order evidently was issued in order to moot a religious student group’s appeal to the Supreme Court, seeking review of a Ninth Circuit ruling that allowed the university to apply its nondiscrimination policy to prohibit religious student groups from using religious criteria for leadership and membership. *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 805-806 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1743 (2012). The student group’s petition was filed December 14, 2011, and the executive order was issued December 21, 2011. Review was denied March 19, 2012. One-quarter of the nation’s college students live in the Ninth Circuit, which includes California, Alaska, Washington, Oregon, Hawaii, Arizona, Nevada, Idaho, and Montana within its jurisdiction.

corporately; they may be considered only by the individual voters as informing their decisions.

Nor has Executive Order 1068 been revised in any way. Instead all religious groups are at the mercy of administrators' unbridled discretion. As a result, California State University continues to deny religious student groups their religious liberty and free speech rights to choose leaders according to the groups' religious beliefs.

In December 2014, members of Congress sent a letter to California State University, expressing their disapproval of the religious student groups' exclusion. To date, no response has been received.

C. Students of other faiths are recent targets of religious intolerance at California public universities.

Sowing intolerance for one faith eventually reaps intolerance for other faiths. In recent months, student government leaders at UCLA and Stanford have targeted Jewish students for inquisitions about whether their Jewish faith or their known involvement in Jewish organizations should disqualify them from serving in student government. At UCLA, the student government "tangled in a debate about whether [a student's] faith and affiliation with Jewish organizations, including her sorority and Hillel, a popular student group, meant she would be biased in dealing with sensitive governance questions that come before the board."³¹ Similarly, "[a] candidate for the student Senate at Stanford University filed a complaint after she was asked how her Jewish faith would inform her decisions."³²

D. Boise State University

In 2008, the Boise State University student government threatened to exclude several religious organizations from campus, claiming their religious leadership requirements were discriminatory. The BSU student government

³¹ "In U.C.L.A. Debate over Jewish Student, Echoes on Campus of Old Biases," *The New York Times*, March 5, 2015, available at http://www.nytimes.com/2015/03/06/us/debate-on-a-jewish-student-at-ucla.html?_r=0 (last visited May 29, 2015).

³² "Stanford Student Candidate Files Complaint Over Jewish Faith Questions," *Jewish Telegraphic Agency*, April 13, 2015, available at http://www.jta.org/2015/04/13/news-opinion/united-states/stanford-u-student-senate-candidate-asked-about-jewish-faith?utm_source=Newsletter+subscribers&utm_campaign=5f8397c435-daily_briefing_4_14_15_old_subj_line_4_14_2015&utm_medium=email&utm_term=0_2dce5bc6f8-5f8397c435-25362373 (last visited May 29, 2015).

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 the student government’s policy. The student government also found that the group’s citation of Matthew 18:15-17, in which Jesus is quoted, also violated the policy. The student government informed another religious group that “not allowing members to serve as officers due to their religious beliefs” conflicted with the policy.³³

In 2009, to settle a lawsuit, BSU reversed course and agreed to allow religious organizations to maintain religious criteria for leaders. In June 2012, however, BSU informed the religious organizations that it intended to adopt a new policy, which would exclude religious organizations with religious leadership requirements. In March 2013, the Idaho Legislature enacted legislation to protect religious organizations from exclusion.³⁴

E. The Ohio State University

From October 2003 through November 2004, the Christian Legal Society student chapter at the Ohio State University Moritz College of Law was threatened with exclusion because of its religious leadership requirements. After months of discussions with university administrators, a lawsuit was filed, which was dismissed after the university revised its policy “to allow student organizations formed to foster or affirm sincerely held religious beliefs to adopt a nondiscrimination statement consistent with those beliefs in lieu of adopting the University’s nondiscrimination policy.” CLS then met without problems from 2005-2010.

In September 2010, the university asked the student government whether the university should change its policy to no longer allow religious groups to have religious leadership and membership requirements. On November 10, 2010, the OSU Council of Graduate Students unanimously adopted a resolution urging the University to drop its protection of religious student groups. The OSU Undergraduate Student Government passed a similar resolution. On January 18, 2011, the OSU Council on Student Affairs voted to remove the 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

³³ These letters are Attachment E.

³⁴ Idaho Code § 33-107D.

position within those organizations.”³⁵ In June 2012, the Ohio Legislature prohibited public universities from denying recognition to religious student organizations.³⁶

III. Religious Liberty on College Campuses is at a Critical Tipping Point.

That this is an ongoing national problem is demonstrated by the Supreme Court’s decision in 2009 to hear *Christian Legal Society v. Martinez*.³⁷ But in its decision, the narrow 5-4 majority explicitly refused to address the issue of nondiscrimination policies. All nine justices agreed that the Court was *not* deciding the nondiscrimination policy issue.³⁸

Instead, the Court confined its decision to an unusual policy, unique to Hastings College of the Law, which required *all* student groups to allow any student to be a member and leader of the group, regardless of whether the student agreed with – or actively opposed – the values, beliefs, or speech of the group. Under this “all-comers” policy, no student group at Hastings had any associational rights whatsoever. According to Hastings administrators, the Democratic student group must allow a Republican to be president, just as CLS must allow any student to be its president, regardless of whether the student agreed with CLS’s religious beliefs.

Five justices upheld this novel policy that wiped out all student groups’ First Amendment rights. But in doing so, the majority was unequivocal that if a university allows *any* exemption to its “all-comers policy,” it cannot deny an exemption to a religious group.³⁹

In addition to the inherent unworkability of “all-comers” policies,⁴⁰ the *Martinez* decision has been heavily criticized on multiple grounds.⁴¹ Deeply

³⁵ The student government resolutions are Attachment F.

³⁶ Ohio Rev. Code § 3345.023.

³⁷ *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. 661 (2010).

³⁸ *Id.* at 678 & n.10; *id.* at 698 (Stevens, J., concurring); *id.* at 704 (Kennedy, J., concurring); *id.* at 728-29 (Alito, J., dissenting) (joined by Roberts, C.J., Scalia, J., and Thomas, J.).

³⁹ *Id.* at 694, 698-99; *id.* at 704 (Kennedy, J., concurring).

⁴⁰ “All-comers” policies are unworkable and actually undermine a nondiscrimination policy. There are several reasons for this: 1) fraternities and sororities are completely incompatible

flawed in numerous ways, the *Martinez* majority implicitly accepted as its basic premise the notion that by recognizing a student group, a college endorses that group's specific religious or political beliefs. But, as discussed above, the Court has repeatedly rejected that precise premise for forty years: recognition is not endorsement.⁴²

For evidence of what the Supreme Court will do when it actually decides a case involving university nondiscrimination policies and religious liberty, consider the Court's subsequent unanimous ruling in *Hosanna-Tabor v. EEOC*.⁴³ The Court

with an "all-comers" policy; 2) single-sex a cappella groups and club sports teams are also incompatible; 3) minority groups cannot protect themselves against leaders who oppose their values; for example, an "all-comers" policy would require an African-American group to admit white supremacists to leadership positions; 4) the vulnerability of minority religious groups is increased; and 5) consistent and uniform administrative enforcement of an "all-comers" policy is nearly impossible, increasing a college's legal exposure.

⁴¹ See, e.g., Michael Stokes Paulsen, *Disaster: The Worst Religious Freedom Case in Fifty Years*, 24 Regent U. L. Rev. 283 (2012); John D. Inazu, *Justice Ginsburg and Religious Liberty*, 63 Hastings L.J. 1213, 1231-1242 (2012); John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 5-6, 145-149 (Yale University Press 2012); Richard W. Garnett, *supra* note 17, at 194, 208-211, 219-225; Douglas Laycock, *Sex, Atheism, and the Free Exercise of Religion*, 88 U. Det. Mercy L. Rev. 407, 428-29 (2011); Mary Ann Glendon, *Religious Freedom – A Second-Class Right?*, 61 Emory L. J. 971, 978 (2012); Richard Epstein, *Church and State at the Crossroads: Christian Legal Society v. Martinez*, 2010 Cato Sup. Ct. Rev. 105 (2010); William E. Thro & Charles J. Russo, *A Serious Setback for Religious Freedom: The Implications of Christian Legal Society v. Martinez*, 261 Ed. Law Rep. 473 (2010); Carl H. Esbeck, *Defining Religion Down: Hosanna-Tabor, Martinez, and the U.S. Supreme Court*, 11 First Amendment L. Rev. 1 (2012); Note, *Freedom of Expressive Association*, 124 Harv. L. Rev. 249 (2010).

⁴² An attorney with the Student Press Law Center stated that "the rationale of this opinion could end up doing more violence to student expression rights than any decision in the last 22 years." Adam Goldstein, *Supreme Court's CLS Decision Sucker-Punches First Amendment* (June 28, 2010), available at http://www.huffingtonpost.com/adam-goldstein/supreme-courts-cls-decisi_b_628329.html (last visited May 28, 2015).

⁴³ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012). Legitimate questions have been raised whether the 2010 decision in *Martinez* survives the Court's 2012 decision in *Hosanna-Tabor* or the 2013 decision in *Agency for International Development v. Alliance for an Open Society*, 133 S. Ct. 2321 (2013) (holding that the government violated an organization's First Amendment rights by conditioning federal funding on the organization adopting a policy expressing views that the organization did not agree with). See, e.g., William E. Thro, *Undermining Christian Legal Society v. Martinez*, 295 Ed. Law Rep. 867 (2013).

ruled unanimously, in the context of the “ministerial exception,” that nondiscrimination laws cannot be used to prohibit religious organizations from deciding who their leaders will be. The Supreme Court acknowledged that nondiscrimination laws are “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.”⁴⁴ In their concurrence, Justice Alito and Justice Kagan stressed 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.”⁴⁵

Conclusion

Our nation’s colleges are at a crossroads. They can respect students’ freedoms of speech, association, and religion. Or they can misuse nondiscrimination policies to exercise intolerance toward religious student groups who refuse to abandon their basic religious liberty. The road colleges choose is important not only for the students threatened with exclusion -- and not only to preserve a diversity of ideas on college campuses -- but also because the lessons taught on college campuses inevitably spill over into our broader civil society.⁴⁶

Misuse of nondiscrimination policies to exclude religious persons from the public square threatens the pluralism at the heart of our free society.⁴⁷ Those who insist that we must choose between religious liberty and nondiscrimination policies demand a zero-sum game in which religious liberty, nondiscrimination principles, and pluralism ultimately lose.

⁴⁴ *Id.* at 710.

⁴⁵ *Id.* at 713 (Alito, J., concurring).

⁴⁶ For example, a federal appellate judge has opined that a church might be denied the opportunity to rent a public school auditorium on weekends, which other community groups are allowed to rent, because its meetings might not be “open to the general public” if the church reserved Communion to baptized persons. *Bronx Household v. Bd. of Educ.*, 492 F.3d 89, 120 (2d Cir. 2007) (Leval, J., concurring).

⁴⁷ Constitutional scholar Professor Richard Garnett provides a thoughtful analysis of how best to reconcile nondiscrimination policies and religious liberty. Richard W. Garnett, *supra* note 17, at 194. See also, Richard W. Garnett, *Confusion about Discrimination, The Public Discourse*, Apr. 5, 2012, available at <http://www.thepublicdiscourse.com/2012/04/5151/> (last visited May 28, 2015).

The genius of the First Amendment is that it protects everyone's speech, no matter how unpopular, and everyone's religious beliefs, no matter how unfashionable. When that is no longer true—and we seem dangerously close to the tipping point – when nondiscrimination policies are misused as instruments for the intolerant suppression of religious speech and traditional religious beliefs, then the pluralism so vital to sustaining our political and religious freedoms will no longer exist.

ATTACHMENT A

----- 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]

ATTACHMENT B

----- 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 C

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:

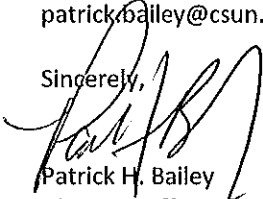
- Recruiting California State University, Northridge students through official campus recruitment programs (such as Meet the Clubs, Matafest, AS Fair, etc.).
- Utilizing the university name as a designation for your organization.
- Have a university issued email account and or website. If your club or 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 D

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD

December 21, 2011

CHANNEL ISLANDS

CHICO

MEMORANDUM

DOMINGUEZ HILLS

TO: CSU Presidents

EAST BAY

FROM: Charles B. Reed
Chancellor

FRESNO

FULLERTON

SUBJECT: Student Activities – Executive Order 1068

HUMBOLDT

Attached is a copy of Executive Order 1068, Student Activities, which supersedes Executive Order 1006.

LONG BEACH

This executive order includes the following changes:

LOS ANGELES

MARITIME ACADEMY

- Revision of the formal chartering and recognition policies for student organizations to include an open membership requirement in addition to the nondiscrimination in student organizations requirement
- Transfer of the Minor Representative Student Officers section into the CSU policy on minimum academic qualifications for student office holders
- Transfer of the Student Judiciary section into the executive order on student conduct procedures

MONTEREY BAY

NORTHRIDGE

POMONA

SACRAMENTO

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

SAN BERNARDINO

SAN DIEGO

If you have questions regarding this executive order, please contact the Associate Director of Student Programs at (562) 951-4707 or the Assistant Director of Student Programs at (562) 951-4693.

SAN FRANCISCO

SAN JOSÉ

CBR/rm

SAN LUIS OBISPO

Attachment

SAN MARCOS

c: Provosts/Vice Presidents for Academic Affairs
Vice Presidents for Administration and Finance
Vice Presidents for Student Affairs
Executive Staff, Office of the Chancellor

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4707

Executive Order: 1068

Effective Date: December 21, 2011

Supersedes: Executive Order 1006

Title: Student Activities

This executive order establishes systemwide policies, procedures, and guidelines for student organizations and activities. All provisions in this executive order are expected to be implemented by the 2012-2013 academic year.

Student Organizations

Campuses shall establish and publish procedures for formal chartering and recognition of student organizations in compliance with the following policies:

Formal Chartering and Recognition Policies

Campuses shall comply with all student organization filing requirements described in California Code of Regulations, Title 5, Article 4, Nondiscrimination in Student Organizations, Sections 41500 (*Withholding of Recognition*), 41501 (*Definition of Recognition*), 41503 (*Filing Requisites*), and 41504 (*Penalties*). These sections require each student organization to deposit with the vice president of student affairs or his/her designee copies of all constitutions, charters, or other documents relating to its policies. Documents shall be refiled within 90 days after any substantive change or amendment.

No campus shall recognize any fraternity, sorority, living group, honor society, or other student organization that discriminates on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability. The prohibition on membership policies that discriminate on the basis of gender does not apply to social fraternities or sororities or other university living groups. Student organizations shall deliver to the vice president for student affairs or his/her designee a statement signed by the president or similar officer of the local student organization attesting that the organization has no rules or policies that discriminate on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability. This statement shall be renewed annually.

No campus shall recognize any fraternity, sorority, living group, honor society, or other student organization unless its membership and leadership are open to all currently enrolled students at

that campus, except that a social fraternity or sorority or other university living group may impose a gender limitation as permitted by Title 5, California Code of Regulations, Section 41500. Student organizations may require applicants for leadership positions to have been members for a specified period of time, and may require officers to compete for those positions in elections of the membership.

In recognizing student organizations, campuses are encouraged to consider such factors as the mix of students who reside on campus, students who commute, part-time and full-time students, students who are working while attending college, and other factors that will provide opportunities that meet the diverse needs of students seeking to affiliate with student organizations.

Withholding and Withdrawing Official Recognition

Official recognition of student organizations that fail to abide by the open membership policy or that discriminate on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability shall be withdrawn.

In addition, official recognition of a student organization may be withdrawn for hazing or conspiracy to haze as defined in the California Code of Regulations, Title 5, *Standards for Student Conduct*, Section 41301(b)(8). Individual students may be disciplined for hazing under Section 41301(b)(8).

Campuses may establish codes of conduct for student organizations and procedures for sanctions against the organizations. Sanctions may include actions such as withdrawal of recognition, suspension of recognition for a specified period of time, probation (warning that might lead to a more severe sanction), restriction of privileges, reprimand, and restitution for losses caused.

Minimum Number of Students

Official recognition of a student organization requires a minimum of five CSU students who are currently enrolled in at least one class. A maximum of twenty percent of the members of a student organization may be individuals who are not CSU students, e.g., community members, students at other colleges. Only students enrolled at the CSU campus may vote on issues that come before the student organization. The vice president of student affairs or designee may waive the twenty percent and voting provisions for fraternities and sororities to accommodate such organizations as the National Panhellenic Council that includes representatives from non-CSU campuses. Documentation for this waiver shall include copies of national charters or other appropriate documentation, and these documents shall be submitted to the vice president of student affairs or designee. Campuses retain authority to include additional requirements for recognition and/or to make the requirements listed here more limiting.

Club Advisors

Each officially recognized student organization must have a university advisor who is either a faculty member or professional member. Campuses may permit part-time faculty and professional staff to serve as advisors. Advisors should not be selected from auxiliary

organizations. Campuses should develop a training and orientation program for university advisors to student organizations.

Training/Orientation Programs

The CSU Alcohol Policies and Prevention Program (Board Resolution REP 07-01-03) requires campuses to provide orientation programs for student organization advisors and for student officers that outline policies, expectations, and information on alcohol use/abuse. This orientation may be provided to officers of student organizations in writing or electronically, and an acknowledgement of completion of this orientation that includes the name of the student organization and student officer(s) shall be retained by the vice president of student affairs or designee.

In addition, campuses shall advise student organizations and student officers about the California State University Student Conduct Code in Title 5, California Code of Regulations, Section 41301.

Role of Auxiliary Organizations in Recognizing Student Organizations

Campuses may not delegate the process of approving or managing student organizations or their activities. Auxiliary organizations may not manage student organizations or approve student activities. Auxiliary organizations may not provide auxiliary funds or facilities to student organizations that are not currently recognized by the campus. Funding and use of facilities are available only to student organizations that are currently recognized by the campus.

Off-Campus Student Activities

Campuses shall comply with Section 41301, *Standards for Student Conduct*, of Title 5 of the California Code of Regulations. This section clarifies the university's authority for off-campus behavior that includes students who are members of clubs and organizations. The Student Conduct Code sets the standard of expected behavior and describes conduct that is unacceptable and subject to discipline through the university's disciplinary process.

Overall Program Evaluations

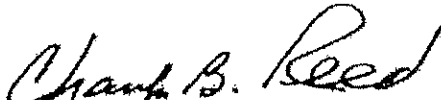
Campuses shall assess student organizations and activities programs biennially. The review shall include the assessment of such factors as risk management, program quality, student satisfaction, student participation growth, and how the student organizations and activities support the goals of the university. Campuses may develop an individual assessment instrument or select an existing assessment instrument, e.g., The Council for the Advancement of Standards in Higher Education (CAS) or CSU Quality Improvement (QI). The biennial reports shall be submitted to the Office of the Chancellor in August of every even-numbered year.

Club Sports Insurance

Officially recognized student club sports at all CSU campuses must carry adequate liability and secondary medical insurance as determined in collaboration with the campus risk managers or the Office of Risk Management in the Chancellor's Office for all participants and coaches,

including non-students and volunteers. The insurance shall cover travel, practices, and competition. Each campus may develop its own method for insurance coverage requiring participants to pay or other fiscally sound approaches as authorized by the campus vice president for student affairs or his/her designee. In no case may a campus use state appropriations to pay for club sports insurance. No student, non-student, or volunteer may participate in a club sport without approved insurance, and no club may be recognized or organized to participate in practices, competition, or travel without approved insurance.

Insurance documents should include appropriate hold harmless provisions as follows: "Insured shall hold harmless, indemnify, and defend the state of California, the Trustees of the California State University, the (*campus*) and the officers, employees, volunteers and agents of each of them from and against any and all liability, loss, damage, expense, costs of every nature, and causes of actions arising out of or in connection with the use by the insured of said property or participation in said activity."


Charles B. Reed, Chancellor

Dated: December 21, 2011

ATTACHMENT E



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 208-426-4133

<http://astbois.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 modification 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 "Russell O'Leary".

Russell O'Leary
Chief Justice
ASBSU Judiciary

ATTACHMENT F

Resolution 1011-AU-006

Supporting the Repeal of the Registered Student Organization Exemption

Author: Jonathan Nutt(.19), President

Sponsor: The Executive Committee

Introduced: November 12, 2010

WHEREAS, new legal precedence set by the U.S. Supreme Court case Christian Legal Society Chapter of the University of California, Hastings College of Law v. Martinez Et al. brings reason to review the current Registered Student Organization exemption that enables “a student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs;” and

WHEREAS, the President of the United States of America recently committed to a nationwide effort ending discrimination in all its forms in schools and communities; and

WHEREAS, the University has fostered a culture of inclusion for over 40-years and the exemption is in direct conflict with the vision and goals of the University set forth in the Academic Plan, Diversity Action Plan and motto *disciplina in civitatem* (education for citizenship); and

WHEREAS, the exemption is counterintuitive to the Philosophies and Guiding Principles outlined in the Registration Guidelines for Student Organizations at Ohio State and without intelligible principle and therefore difficult to interpret, enforce, and adjudicate; and

WHEREAS, the Council of Graduate Students has previously taken positions affirming mutual respect and fair treatment of all individuals at The Ohio State University to support an environment of diversity that enriches the community and enhances the educational process; and

THEREFORE LET IT BE RESOLVED, that the Council of Graduate Students urges The Ohio State University to repeal the exemption outlined in the Registration Guidelines for Student Organizations at Ohio State that states “A student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs;” and

LET IT BE FURTHER RESOLVED, that the Council of Graduate Students charges its Graduate Student Representatives in University committees to vote in accordance with this resolutions; and

Council of Graduate Students | The Ohio State University

LET IT BE FURTHER RESOLVED, that the Council of Graduate Students charges its President to communicate to the Ohio State University President, the Executive Vice President and Provost, the Vice Provost and Chief Diversity Officer, the Vice President of Student Life, the Dean of the Graduate School, the Undergraduate Student Government, the Inter-Professional Council and all other appropriate groups the Council's position as established by this resolution.

Date Approved: NOVEMBER 12, 2010
UNANIMOUSLY

A handwritten signature in blue ink, appearing to read "Robert G. Hill", is written over a horizontal line.

President | Council of Graduate Students

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

January 18th, 2011

Submitted by Bryan Ashton
On behalf of The Council on Student Affairs

CHARGE:

Recommend a course of action in regards to the religious student organization carve-out to the non discrimination clause in the Student Organization Registration guidelines at The Ohio State University.

RESEARCH:

The Council began the process of reviewing the carve-out in the beginning of November through an Ad-Hoc committee. This committee finished their work at the end of November and produced a recommendation in favor of a blanket removal of the carve-out (attached). On November 30th, CSA hosted an open forum, in which we heard opinions from student organization leaders and university community members about the issue. During the quarter both Undergraduate Student Government and the Council of Graduate Students passed resolutions in favor of the removal of the Carve Out (attached). Voting CSA members were also provided with numerous reading materials and encouraged to engage in constituency outreach.

FINDINGS:

The Council voted (12-1) in favor of accepting the Ad-Hoc committee's recommendation of a blanket removal of the carve-out. The Council recommends that this change be placed into effect for the next student organization registration year and that appropriate University resources be allocated to help organizations transition and maintain their compliance and registration status.

The Council, in accepting this recommendation, endorses the position that every student, regardless of religious belief, should have the opportunity to participate in student organizations as well as have the opportunity to apply or run for a leadership position within those organizations. The Council believes that the Office of Student Life in conjunction with the Office of Legal Affairs should address acceptable officer selection procedures with groups who request such assistance.

Attached to this recommendation is the report of the Ad-Hoc committee as well as the Student Government resolutions that were introduced. Much debate and strong feelings were drawn from these resolutions and reports, so they are included in the recommendation.

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

November 29, 2010

Submitted by Bryan Ashton
On behalf of Student Organization Carve Out Ad-Hoc

CHARGE: Recommendation a course of action in regards to the religious student organization carve-out to the non discrimination clause in the Student Organization Registration guidelines.

MAKE UP: The Ad-Hoc Committee consisted of representatives from Residence Life, the Law School, IPC, USG, CGS, Muslim Student Association, Staff, and Faculty. Ex-Officio members included representatives from Legal Affairs and Student Activities.

RESEARCH:

The group heard from Michael Layish of Legal Affairs, as well as Kerry Hodak from Student Activities in regards to their experiences with the carve-out and the history of its implementation. The group also discussed the implications of the removal of the carve-out or continuing with the carve-out in place for religious student organizations. Each student government was asked to do constituency outreach and in the process CGS passed a resolution regarding the issue. The committee then spent three meetings debating the merit of the removal of the carve-out, upholding the carve-out, and the examination of a leadership exemption.

FINDINGS:

The Ad-Hoc Committee voted unanimously (8-0) in favor of recommending that the carve-out, in relation to its application to general members, be removed. There was discussion and dissent to the idea of a blanket removal, with three members of the committee voting in favor of adopting a carve-out, similar to current carve-out, however applied only to leadership positions in the organization. The recommendation of the Ad-Hoc Committee was (5-3) in favor of a blanket removal of the current carve-out. Below are opinions in favor of a blanket carve-out (Brandon Edwards) and opinions in favor of a leadership position carve-out (Maria Ahmad).

OPINIONS:

Blanket Removal

Put simply, the debate placed before the Council on Student Affairs regarding carve out language for religious-based Student Organizations requires a choice of the lesser of two evils. By removing the carve-out for religious-based Student Organizations, Ohio State runs the risk of diminishing the voice of student organizations built upon a sincerely held religious belief. By denying these organizations the privileges associated with registration, we threaten discrimination against those groups that are organized around a certain interpretation of religious doctrine. However, by keeping the religious Student Organization exemption currently in place,

Council on Student Affairs Recommendation Religious Student Organization Carve-Out

Ohio State's Office of Student Activities leaves open the option of groups discriminating against members of the student body interested in membership. Keeping the carve out institutionalizes the ability of Student Organization members to openly discriminate against students with opinions and behaviors different than their own. The question is: should we potentially discriminate against Student Organizations or should we allow those Student Organizations to discriminate against individual students. It is my opinion, and the unanimous opinion of the CSA Student Organization Guideline Review Ad-Hoc Committee, that the former is a preferred action in lieu of the potential ramifications of the latter. We must protect the rights of students to join the organizations of their choosing instead of tolerating the discriminatory tendencies of individual Student Organizations.

As a public University entrusted with the stewardship of taxpayers dollars, we must not allow Student Organizations to discriminate against federally mandated protected classes. Additionally, we must consider where the funding comes from for the benefits bestowed to Registered Student Organizations. Each student pays a \$25 Student Activity Fee, and this money allows Registered Student Organizations access to a number of benefits. It is irresponsible to require this fund of every student but not allow individual students the right to join any Student Organization of their choosing due to discriminatory rules put in place by those groups.

It is the opinion of some that carve out language still be included in governing the selection of Student Organization Officers. In response to that, I advocate that we allow democracy to run its course. It is entirely rational to impose voting membership requirements relating to attendance at meetings and fulfillment of other membership characteristics. By restricting membership to those dedicated to its mission through demonstrated participation, each Student Organization has the ability to create an electorate as devoted to the organization as possible. It is in that spirit that we should allow voting members to install the leadership of their choosing, free from institutionalized guidelines precluding certain members the privilege of seeking officer status. We must trust the capacity of each Student Organization member to vote for the candidate most in line with his or her values and goals for the organization. Democracy should decide that someone is unfit for officership rather than guidelines that allow precautionary discrimination.

Justice Anthony Kennedy summed up the spirit of the need for carveout removal in his concurring opinion on *CLS v. Martinez*: "a vibrant dialogue is not possible if students wall themselves off from opposing points of view."

--Brandon N. Edwards, November 28, 2010

Leadership Position Carve Out

Student Life is made up of students for students. Student groups are run by students. Any student is able to create a new group on campus with any mission or purpose that they desire. But once the group is started, it is crucial for the group to have some rights that will keep them stable and active. Religious student groups are created for two main purposes. The first purpose is to foster the beliefs and maintain the identity of those who follow that faith on campus. The second purpose is to let others on campus know about the faith through various means. Seeing the second purpose, it is obvious that groups that want to affiliate their self as an official OSU group, will plan events that would be open to all students and fulfilling their purpose, and using the student's activity fee.

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

However the first purpose cannot be fulfilled without having a leader who shares the basic beliefs and concepts of the religious thought that the group was founded upon. One cannot help instill faith in another unless the former also believes. To have a leader who does not believe in the basics of that faith become the face of the group, and that religion, is deceitful and unfair to those who join. This partiality can be more readily applied to religious groups over others such as ethnic ones because religion is something one can choose to follow, not something one is born with. We do not even have to look at the degrees of religiosity but to have someone who claims and seems to be believing in and following the group's mission is not only ideal but necessary.

It may be true that groups should use their own wisdom in choosing their leaders through having a criteria and elections. However, student groups come in all sizes and to do this may be difficult for smaller and new groups. These student groups should have some rights as to who can and cannot be the representative of their group. If a group sees it necessary to not let that individual become the leader, the latter has the ability to start his or her own group which is simple to do at this University. This will also foster more diversity and give scope to larger group of students who may not have wanted to be part of another group's mission. Having a carve out for leadership does not have to be used by those who do not want to, but it should be there for those groups who want it. If about 23 of 900 student groups are using the carve out presently, and need to, then they should be able to.

-Maria Ahmad

ATTACHMENT G



New Student Organization Registration Application

Submit completed forms to Student Activities, along with required \$10 non-refundable fee.

A student organization that wishes to use university facilities must be registered with Student Activities. A group of three (3) or more enrolled students is eligible under the university's *Institutional Rules*, Section 6-202, if:

- 1) its membership is limited to enrolled students, staff and faculty of The University of Texas at Austin;
- 2) it does not deny membership on the basis of race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, gender identity or gender expression, except that a) an organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith; and b) an organization may restrict membership based on the provisions of Title IX of the Education Amendments of 1972;
- 3) it is not under disciplinary penalty prohibiting registration; and
- 4) it conducts its affairs in accordance with the Regents' *Rules and Regulations*, university regulations and administrative rules.

Please Note: If the registered student organization is approved, the following information (1–6) will be posted on the Student Activities Web site.

1. Name of proposed registered student organization _____

2. Type of organization: ☐ Political ☐ Educational/Departmental ☐ Honorary
(Check one only) ☐ Student Governance ☐ Professional ☐ Social
☐ Recreational ☐ Religious ☐ Service
☐ International/Cultural ☐ Special Interest

3. State the registered student organization's official purpose _____

4. Indicate any membership requirements* beyond those stated in the *Institutional Rules* above _____

* Does your registered student organization intend to limit membership to a single gender? ☐ Yes ☐ No

For Office Use Only

Receipt Number _____

Staff Signature _____ Date _____

ORGANIZATIONS POLICY

1. General Statement of Purpose

The University recognizes:

1. the importance of organized student activities as an integral part of the total educational program of the University;
2. that college learning experiences are enriched by student organizational activity; and
3. that organizations provide a framework for students within which they may develop their own special talents and interests.

Inherent in the relationship between the University and organized student groups is the understanding that the purposes and activities of such groups should be consistent with the main objectives of the University.

All student organizations must register annually with the Department of Campus Activities and must then comply with the procedures and policies regarding registration as set forth.

The Dean of Students Office recognizes the role of Greek Coordinating Councils in establishing and upholding policies for member groups. However, membership in said councils does not exempt fraternities and sororities from judicial referrals to the Dean of Students Office for violations of Student Life Policies, including Organizations Policies.

The University Hearing Board, with the approval of the Dean of Students, delegates to Greek coordinating councils general supervision over those chapters of social sororities and fraternities which choose to be members of these councils.

The term "general supervision" shall include all the duties, powers and responsibilities exercised by the Greek coordinating council prior to the adoption of this policy, with the provision that membership in the Greek coordinating councils is optional with the local chapter.

It is understood that the Greek coordinating councils and their member groups will operate under the provisions of the Student Life Policies, including the Organizations Policy.

2. Procedure for Registration of New Organizations

2.1 Permanent Organizations

- a. The group will file its name, statement of purpose, constitution or statement regarding its method of operation, faculty/staff advisor (if applicable), and the names of its officers or contact persons with the Department of Campus Activities.
- b. In cases where a potential faculty/staff advisor is unknown to the group, the Campus Activities staff will assist in identifying a university faculty or staff member who may wish to serve as an advisor. Organizations are encouraged to have a faculty/staff advisor.
- c. Should the group not have elected its officers or completed other work connected with its formation at the time they initially see the Campus Activities staff, the Campus Activities staff shall make arrangements for them to use university facilities for organizational purposes on a meeting-to-meeting basis until the organizational process is completed and the required information can be filed.
- d. At the time of filing, three officers or contact persons for the organization will sign a statement indicating that they are familiar with and will abide by the aforementioned responsibilities of student organizations. They will also sign the standard hazing and discrimination

disclaimer required of all student organizations.

- e. Having ascertained that the group's purpose is law-ful and within university regulations and that the group has filed the required forms and disclaimers, the Director of Campus Activities, or designate, will sign the application. Appropriate university personnel are notified by Campus Activities that the group is then eligible for all of the rights of student organizations.
- f. Should the staff feel that the organization does not meet the requirements for registration, a written copy of the decision and reasons will be furnished to the applying organization. The group may appeal the decision to the Dean of Students.
- g. The Campus Activities staff shall make arrangements for the group to use university facilities on a meeting-to-meeting basis until the appeals process is completed.
- h. Decisions of the University Hearing Board may be appealed to the Dean of Students.

2.2 Registration for a Limited Purpose: Temporary Status In some cases, groups will organize with some short-term (one which can be accomplished in less than one academic year) goal in mind such as the passage of some particular piece of legislation or the holding of some particular event. The organization's structure will expire on the date indicated on the registration form. Requests for extension of Temporary Status may be made to the Director of Campus Activities.

2.3 Membership Regulations

- a. Registered student organizations have freedom of choice in the selection of members, provided that there is no discrimination on the basis of race, color, religion, national origin, sex, age, disability, veteran status, or sexual orientation.
- b. Membership in registered student organizations is restricted to currently enrolled University of Houston students, faculty, staff and alumni.
- c. Hazing-type activities of any kind are prohibited.

2.4 Officers Regulations

- a. Student organizations are free to set qualifications and procedures for election and holding office, with the following provisions:
 1. All officers must be regular members of the organization.
 2. There is no discrimination on the basis of race, color, religion, national origin, sex, age, disability, veteran status, or sexual orientation except where such discrimination is allowed by law.
 3. Religious student organizations may limit officers to those members who subscribe to the religious tenets of the organization where the organization's activities center on a set of core beliefs.
- b. Persons not currently enrolled at the University of Houston may not hold office or direct organizational activities.

2.5 Records

All registered student organizations must maintain the following records in the Campus Activities Office:

- a. An organizational information form listing the current officers and faculty/staff advisor (if applicable) is due at the beginning of each school year. Any changes during the year, other than membership, are to be recorded within 10 days with the Department of Campus Activities.

University of Florida's Policy
(<https://www.union.ufl.edu/involvement/index.asp>)

Student Organization Registration Policy Update

The University of Florida has modified its policies relating to the registration of religious student groups as Registered Student Organizations (RSOs). The modification was made to accommodate any student group whose religious mission requires its membership to share the organization's religious beliefs, while at the same time continuing to protect the University's nondiscriminatory educational program.

More than 760 student organizations covering a wide variety of interests are registered at the University. UF has always welcomed registration of religious organizations. More than 60 religious student organizations, of which about 48 are Christian, are registered as RSOs at UF.

The University considers participation in registered student organizations to be an important educational opportunity for all of our students. The University applies its nondiscrimination in membership policy to registered student organizations to ensure that these important learning opportunities are not denied to any student due to discrimination based on race, sex, religion or certain other prohibited bases.

A small number of religious student groups have expressed a religious need to ensure that all of their members share the religious beliefs of the organization.

To the greatest extent possible-while fulfilling our nondiscriminatory educational mission and complying with the law-the University wants to be sure that a full range of religious student organizations feel just as free to register as any other type of student organization. This ensures that all of our students will find meaningful educational opportunities to participate in registered student organizations.

As we are committed to serving all of our students well, the University has carefully considered how to address the concerns expressed by some religious student groups and individuals without compromising our educational program. After doing so, the University has made the decision to modify its nondiscrimination policy as follows:

"Student organizations that wish to register with the Center for Student Activities and Involvement (CSAI) must agree that they will not discriminate on the basis of race, creed, color, religion, age, disability, sex, sexual orientation, marital status, national origin, political opinions or affiliations, or veteran status as protected under the Vietnam Era Veterans' Readjustment Assistance Act.

A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or

leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy."

This modification of the University's registration policy recognizes a meaningful distinction between sincerely held current religious beliefs (which may be considered in selecting members or leaders of religious RSOs)-and religious or other status (e.g., religion of birth or historical affiliation). The modification takes effect immediately and is now reflected in the CSAI's Handbook of Student Activities as well as its registration and constitution guidelines and Web site. A letter has been sent to each religious student group that has recently sought and not received registration to ensure that it is aware of the modification and to invite its registration.

University of Minnesota's "Constitution and By-Laws Instructions" in *Student Groups Official Handbook*, available at <http://sua.umn.edu/groups/handbook/constitution.php> (last visited December 7, 2012)

3. University of Minnesota Policy: Student groups must comply with all University policies and procedures, as well as local, state, and federal laws and regulations. This includes, but is not limited to, the Board of Regents Policy on Diversity, Equal Opportunity and Affirmative Action as they relate to group membership and access to programs. Religious student groups may require their voting membership and officers to adhere to the group's statement of faith and its rules of conduct. Your constitution needs to include a statement about your group's responsibility to operate in accordance with these policies.