



Seeking Justice with the Love of God

April 26, 2017

The Honorable Steve King, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Constitution and Civil Justice
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington D.C. 20515

Re: Written Statement for the Hearing Record for the Subcommittee's Hearing, April 4, 2017,
"First Amendment Protections on Public College and University Campuses"

Dear Chairman King and Ranking Member Cohen:

Thank you for holding a hearing on the urgent need to protect college students' First Amendment rights on campus. The Christian Legal Society ("CLS") submits this written statement for the printed hearing record to speak directly about the problems that religious students are experiencing on many university campuses. CLS has student chapters at law schools nationwide that have repeatedly experienced discriminatory exclusion from campuses because they require their leaders to agree with CLS's basic religious beliefs. Numerous other religious student groups have encountered the same problem.

Unfortunately, exclusion of religious student groups has been a recurrent problem nationwide for over four decades. As early as 1975, CLS established the Center for Law and Religious Freedom to defend students' right to meet for religious speech on college campuses.

In recent years, censorship of religious students' speech increasingly has taken the form of university policies that prohibit religious student groups from stating in their governing documents, such as their constitutions, that they require their leaders to agree with the groups' basic religious beliefs. These universities have told religious groups that, if they want to remain on campus as a recognized student group, they may not require their leaders to share the groups' religious beliefs.

Basic religious freedom, however, requires that religious groups be free to choose leaders who agree with their religious beliefs and teachings. Indeed, it should be common ground-- particularly for those who advocate a strict separation of church and state -- that government officials, including public university administrators, should not interfere with religious groups' choice of their student leaders.

Of course, leaders matter to any association of people formed for a common purpose -- from campus organizations to congressional committees. The leadership of any organization determines whether it is able to carry out its mission. This is particularly true for religious groups

whose leaders conduct their Bible studies, lead their prayers, and facilitate their worship observances. For a student group to expect the student who teaches its Bible studies to believe that the Bible reflects truth is eminently reasonable. To expect the student leading prayer to believe in the God to whom she is praying is completely logical. Yet too many university administrators woodenly characterize these common sense expectations and basic religious freedom principles as “religious discrimination.”

When university administrators conflate religious organizations’ self-governance with religious discrimination, they *misuse* university nondiscrimination policies to punish the very religious students that nondiscrimination policies are supposed to protect. The problem is not with the policies but with their misuse. In the name of “tolerance,” college administrators institutionalize religious intolerance. In the name of “inclusion,” college administrators exclude religious student groups from campus.

In 2015, this Subcommittee heard testimony about the ongoing exclusion of religious student groups from campus. *First Amendment Protections on Public College and University Campuses: Hearing Before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary House of Representatives*, 114th Cong. 39-58 (June 2, 2015) (statement of Kimberlee Wood Colby, Director, Center for Law & Religious Freedom, Christian Legal Society).

Accompanying that testimony were several letters from former students who documented their personal experiences when their religious organizations were excluded from campus. The students’ letters were included in the supplemental hearing record at <http://docs.house.gov/meetings/JU/JU10/20150602/103548/HHRG-114-JU10-20150602-SD003.pdf> (hereinafter “Supp. Hrg. Rec.”). In their letters, these young people recounted their experiences that are representative of too many religious students’ experiences. Their stories highlight events at several well-known colleges, including:

California State University: With over 430,000 students on 23 campuses, Cal State is the largest 4-year university system in the country. In 2015, Cal State administrators implemented a new policy under which it withdrew recognition for religious organizations that had religious leadership requirements on all its campuses. Numerous religious groups were derecognized, including groups that had been at Cal State since the 1950s. Applying a double standard that is fairly typical in these situations, Cal State allowed fraternities and sororities to discriminate on the basis of sex in selecting both their members and leaders but denied religious groups permission to select solely their leaders on the basis of religion.

In her letter to the Subcommittee, Ms. Cinnamon McCellen, who was student president of Rejoyce in Jesus Campus Fellowship (“RJCF”) at the California State University Northridge campus from 2013-2015, explained that when the university derecognized her group, it “reluctantly” left the campus because it “could not pay the weekly rental fee of \$200 that CSU

said we would have to pay to keep meeting in the room that we had held our weekly meetings in for free.” She concluded, “We feel that CSU is engaging in religious discrimination by excluding religious student groups from campus solely because they exercise their basic religious liberty to choose their leaders according to their religious beliefs.” She objected, “To call this discrimination is ridiculous.” Ltr. from Ms. Cinnamon McCellen to Chairman Trent Franks (June 10, 2015) (Supp. Hrg. Rec. at 48-49).

Another Cal State student, Ms. Bianca Travis, student president of the Chi Alpha group at the California State University Stanislaus campus from 2014-2015, noted, “[F]or the first time in almost 40 years, our student group was kicked off campus by the university’s administrators, all because of our religious identity.” She concluded, “That continued discrimination makes the opportunity you are providing [*i.e.*, receiving their letters] all the more important to us: it helps ensure we won’t be forgotten.” Ltr. from Ms. Bianca Travis to Chairman Trent Franks (June 9, 2015) (Supp. Hrg. Rec. at 50).

Eventually the university retreated from its position by providing a letter stating that, under certain circumstances, religious groups’ leadership selection processes could include questions about a candidate’s religious beliefs. But the policy prohibiting religious leadership requirements continues to be the official policy, and the religious groups remain on campus solely at the discretion of university administrators. Moreover, in the past two years, some religious groups have experienced problems obtaining recognition on individual campuses within the Cal State system. Also on the books is a six year-old Ninth Circuit decision that allowed (but did not require) the university to exclude a religious group that required its members and leaders to be religious. *Alpha Delta Chi v. Reed*, 648 F.3d 790 (9th Cir. 2011). By sanctioning the university’s discriminatory treatment of a religious student group, the Ninth Circuit decision renders 25% of *all* college students in the Nation without sufficient protection for their right to meet for religious speech on campus.

Texas A&M: Dr. Ra’sheedah Richardson credits RJCF with “encourag[ing] me to pursue academic excellence and to develop character traits like integrity, wisdom, composure and faithfulness that have been essential for a successful professional career.” She participated in RJCF during her undergraduate and graduate years at Texas A&M (“TAMU”). In 2011, university administrators pressured RJCF to remove its religious requirements for its leaders and voting members in order to remain a recognized student organization. Dr. Richardson explained:

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

Ltr. from Dr. Ra'sheedah Richardson to Chairman Trent Franks (June 10, 2015) (Supp. Hrg. Rec. at 58-59). Only after legal counsel intervened on RJCF's behalf did the university allow it to remain recognized while maintaining its religious requirements.

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

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

Ltr. from Mr. Michael Berry to Chairman Trent Franks, June 5, 2015, at Supp. Hrg. Rec. at 62-64.

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

Only after CLS sought court protection did the university revise its policy to state explicitly that religious student organizations could have religious leadership and membership requirements. As a result, CLS met without problems from 2004 to 2010. But in 2010, the university asked the student government whether the university should discard its policy and no longer allow religious student groups to have religious leadership and membership requirements. Sadly, the student government urged the university to drop its protection for religious student groups, urging "that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those organizations." Ultimately, the Ohio Legislature stepped in to prohibit public universities from denying recognition to religious student organizations because of their religious leadership and membership requirements. Ohio Rev. Code § 3345.023.

Vanderbilt University: In 2012, Vanderbilt University denied recognition to fourteen religious groups because they required their leaders to agree with the groups' religious beliefs.

The university told one religious student group that it must delete five words from its constitution's leadership requirements if it wanted to remain on campus: "personal commitment to Jesus Christ." That group left campus rather than recant their central religious belief.

The university told the CLS student chapter that it was "religious discrimination" to state in its constitution that it expected its leaders to lead its Bible study, prayer, and worship. Nor could CLS require that its leaders agree with CLS's basic religious beliefs.

Mr. Justin Gunter, student president of the CLS chapter at the time, described the university's treatment of the fourteen religious groups:

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

As Mr. Gunter observed, Vanderbilt's policy "contradict[s] the American ideal of a pluralistic society – where individuals and associations may express their opinions and beliefs freely without being censored by a university administrator or government executive." Ltr. from Mr. Justin Gunter to Chairman Trent Franks (Supp. Hrg. Rec. at 60-61).

Tish Harrison Warren, a staff member with InterVarsity Christian Fellowship at Vanderbilt in 2011-2012, who self-describes as a progressive evangelical, wrote a powerful essay to convey her disconcerting realization that "the student organization I worked for at Vanderbilt University got kicked off campus for being the wrong kind of Christians." She explained:

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

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

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

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

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

Temple University School of Medicine: Ryan Finigan, a Second Lieutenant in the United States Air Force, was a third-year medical student and a leader in the Christian Medical and Dental Association ("CMDA") chapter. CMDA required its leaders to contract to live according to biblical morality. University administrators informed the CMDA leaders that their group "would very likely have its official status revoked because" CMDA was "discriminating in our selection of leader by having our leader contract to lead a life according to biblical morality."

In his letter to this Subcommittee, Mr. Finigan implored the Subcommittee to defend students' religious freedom "not only because we should be allowed to practice our faith on our school campus, but also because the CMDA has played a critical role in the training of American physicians." Ltr. from Mr. Ryan Finigan to Chairman Trent Franks (Supp. Hrg. Rec. 65).

University of Montana College of Law: From 2007-2011, the student government at the law school denied recognition to the CLS student chapter because it required its leaders and voting members to agree with its religious beliefs. CLS dismissed its appeal when the law school agreed to adopt over 20 new rules "to ensure that student fees were allocated among student groups in a viewpoint-neutral manner" as required by the First Amendment. Ltr. from Ms. Emily Jones to Chairman Trent Franks (June 10, 2015) (Supp. Hrg. Rec. 68-69).

Boise State University: In 2008, the Boise State University ("BSU") student government derecognized several religious groups because they had religious leadership requirements. For example, the student government informed one religious group that its requirement that its leaders "be in good moral standing, exhibiting a lifestyle that is worthy of a Christian as outlined

in the Bible” violated student government policy. The group’s constitution cited Matthew 18:15-17 (where Jesus instructs His disciples on internal dispute resolution), which the student government said also violated its policy.

In a letter to the Subcommittee, the student president of Cornerstone Ministry at BSU at the time, Mr. Justin Ranger, explained:

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

Ltr. from Mr. Justin Ranger to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 70-71).

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

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

Ltr. from Mr. Jesse Barnum to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 72-73). In order to settle a court challenge brought by several religious student groups, the university agreed to allow religious organizations to maintain religious criteria for leaders.

But in 2012, the university informed the religious organizations that it intended to adopt a new policy, which would have the effect of excluding religious organizations with religious leadership requirements from campus. In response, the Idaho Legislature enacted legislation to protect religious student groups at public universities. Idaho Code § 33-107D.

University of South Carolina School of Law: In 2008, the CLS student chapter was denied access to student activity fee funding that was available to other student groups solely

because it was religious. As the CLS student president at the time, Mr. Robert S. “Trey” Ingram III, explained to the Subcommittee, after the group challenged the policy in court, the university adopted a new policy that allowed all student groups to be funded on the same terms. Ltr. from Mr. Robert S. “Trey” Ingram III to Chairman Trent Franks (June 11, 2015) (Supp. Hrg. Rec. 74-75).

Indiana University: In August 2015, the university announced that it would change its policy so that religious student groups could no longer require their leaders to agree with the groups’ religious beliefs. In an FAQ explaining its new policy, the university forthrightly admitted that “a chapter of a religious student alliance would not be permitted to forbid someone of a different religion, or someone non-religious, from running for a leadership position within the SGSO.” (“SGSO” is the acronym for “self-governed student organization,” which is the university’s term for recognized student organizations.) The FAQ asked, “May SGSOs require students seeking to serve in leadership positions to be members of a particular religion?” The FAQ answered, “No.” But, predictably, the university allowed fraternities and sororities to discriminate on the basis of gender in their selection of members and leaders. “Frequently Asked Questions about SGSOs and Indiana University’s Non-Discrimination Policy, <http://policies.iu.edu/docs/academic-policy-docs/student-orgs-faqs.pdf>.”

Nineteen religious student groups, including Catholic, Muslim, Jewish, and Christian student groups, sent a letter to the administration expressing their concerns about the new policy and its impact on religious groups’ ability to choose their leaders according to their religious beliefs. After seven months of constant communication from students, alumni, donors, and political leaders, the university announced that it would return to its original policy that allowed religious student groups to have religious leadership requirements.

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

Conclusion

With our nation’s colleges at a crossroads, the Subcommittee can influence the road that our Nation’s colleges choose to travel. American universities and colleges can increase campus diversity by respecting religious students’ freedoms of speech and religious exercise. Or they can misuse policies to exclude religious student groups from campus. The road colleges choose is important not only to protect religious students and to preserve a diversity of ideas on

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college campuses, but also to prevent religious intolerance from infecting our broader civil society.

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 are dangerously close to the tipping point — when universities misuse their policies to suppress traditional religious speech and belief, then the pluralism so vital to sustaining our political and religious freedoms will soon cease to exist.

Respectfully submitted,

/s/ Kimberlee Wood Colby

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