



Seeking Justice with the Love of God

March 16, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515

Re: Written statement of the Christian Legal Society for the printed record for the Oversight Subcommittee's Hearing on "Protecting the Free Exchange of Ideas on College Campuses," held on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding a hearing on this most important topic regarding the need to protect the free exchange of ideas on college campuses. The Christian Legal Society submits this written statement for the printed record of the hearing. As Director of the Center for Law & Religious Freedom of the Christian Legal Society, I have worked to protect students' right to meet for religious speech on college campuses for nearly thirty-five years. During that time religious student groups have been the subject of ongoing discrimination by college officials who oppose the free flow of religious ideas on campus.

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 1984, 20 U.S.C. §§ 4071-4074, that protects the right of all students to meet for "religious, political, philosophical or other" speech on public secondary school campuses. *See, e.g., Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (EAA protects religious students); *Straights and Gays for Equality v. Osseo Sch. No. 279*, 540 F.3d 911 (8th Cir. 2008) (EAA protects LGBT students).

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. For that reason, for two decades, CLS student chapters have frequently been threatened with exclusion from campus because they require their leaders to be Christians.

Brief overview of the problem: From the 1970s to the mid-1990s, the Establishment Clause was used by some university administrators to justify discriminatory treatment of religious student groups. But after the Supreme Court removed the Establishment Clause as a credible justification for excluding religious groups in *Widmar v. Vincent*, 454 U.S. 263 (1981), and *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), some university administrators turned to university nondiscrimination policies as the new tool for opposing religious groups on campus. 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.

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. 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.

Basic religious liberty encompasses the right of religious groups to 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.

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.”

An important purpose of college nondiscrimination policies is to protect religious students on campus. When universities misuse nondiscrimination policies to exclude religious student groups, they actually undermine nondiscrimination policies’ purposes and the good they serve. Such misuse of nondiscrimination policies is unnecessary. Reflecting an appropriate sensitivity to religious liberty, most nondiscrimination laws, such as Title VII of the federal Civil Rights Act of 1964, simultaneously prohibit discrimination while protecting religious groups’ ability to maintain their religious identities. 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.

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.¹ 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.

Two specific examples at University of Montana College of Law and 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 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 student government’s policy. 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 effectively exclude religious organizations with religious leadership requirements. In March 2013, the Idaho Legislature enacted legislation to protect religious organizations from exclusion. Idaho Code § 33-107D.

Two former Boise State University students have described their religious organizations’ struggles to be recognized in letters that are attached to this statement, along with a letter from a former student describing the problem as it arose for one CLS student chapter at the University of Montana College of Law.

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*, 561 U.S. 661 (2010). By a narrow 5-4 majority, the Court declined to address the issue of nondiscrimination policies. All nine justices agreed that the Court was *not* deciding the nondiscrimination policy issue. *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.).

Instead, the Court confined its decision to a quirky 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. *Id.* at 694, 698-99; *id.*

¹ 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.”

at 704 (Kennedy, J., concurring). The four dissenting justices, Chief Justice Roberts and Justices Alito, Scalia, and Thomas, would have held that nondiscrimination policies cannot be used to prevent religious groups from choosing their leaders according to their religious beliefs. And in 2012, the Supreme Court ruled unanimously, in the context of the “ministerial exception,” that nondiscrimination laws cannot be used to prohibit religious organizations, such as a church or synagogue, from deciding who its leaders will be. *Hosanna-Tabor Lutheran Church and School v. EEOC*, 132 S. Ct. 694, 710 (2012).

Conclusion: Our nation’s colleges are at a crossroads. They can choose to 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.

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.

Respectfully submitted,
/s/ Kimberlee Wood Colby
Kimberlee Wood Colby
Director, Center for Law & Religious Freedom
Christian Legal Society

October 13, 2017

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

Dear Chairman Franks:

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

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

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

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

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

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

June 11, 2015

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

Dear Chairman Franks:

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

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

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

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

However, The Veritas Forum was also a religious student organization and we believed that Jesus, who he was and what he did, was important to any discussion and understanding of these questions. And in spite of Jesus' undeniable prominence and significance in the history of the world, He was conspicuously lacking from most campus dialogue on these issues. Given our stated goal and belief, it was necessary that to be successful and preserve the integrity of our organization we needed to establish qualifications for leadership that were consistent both with that goal and our religious beliefs. These two elements were inextricably linked.

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

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

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

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

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

Emily Jones

June 10, 2015

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

Dear Chairman Franks:

I am writing to you out of concern for the protection of religious freedom on public college and university campuses. I attended the University of Montana (“UM”) School of Law from 2005 through 2008. During my law school tenure, I and several other students attempted to form a local chapter of the Christian Legal Society (“CLS”), a national organization of Christian lawyers, judges, law students and others that seeks to “proclaim, love and serve Jesus Christ through all we do and say in the practice of law, advocating biblical conflict resolution, legal assistance for the poor and needy, religious freedom and the sanctity of human life.” The aspiration of the local UM chapter of CLS is to “maintain a vibrant Christian Law fellowship on The University of Montana campus which enables its members, individually and as a group, to fulfill the Christian mandate to love God and to love their neighbors as themselves.” During my time at the law school, our group was denied status as a recognized student group at UM by the student body and by its governing Board.

In 2007 CLS-UM sought recognition and an allocation of student activity fees from the Student Bar Association (“SBA”) Executive Board. The Board determines whether a student organization at UM School of Law is eligible for recognition and student activity fee funding and then allocates student activity fees to these recognized student groups. This budget is then submitted to the general student body for a vote. No guidance is given to the students in determining which student groups may receive funding, and no instruction is given regarding maintaining a viewpoint-neutral vote. Thus, the student body can decide to fund or de-fund groups based on those they like or agree with, and those they do not.

In order to ensure that it maintains its distinctive Christian voice – a right conferred on its members by the Constitution’s canons regarding freedom of association and freedom of religious expression – CLS-UM limits those who control that voice, the voting members and officers, to those who affirm its Christian views and endeavor to live a life of integrity conforming to those beliefs. CLS-UM invites anyone, however, to attend and participate in its meetings and events. With full knowledge of CLS-UM’s voting membership and leadership policies, the SBA Board voted to recognize CLS-UM and allocate student activity funds to it in the SBA budget. However, when the Board submitted these allocations to the student body for a vote, they were narrowly rejected amid opposition to CLS-UM.

Following the rejection of the proposed budget, which included funding for CLS-UM, the SBA Board revoked CLS-UM's recognition. The Board then re-submitted the budget to the student body with the funding allocation for CLS-UM excluded. The student body approved this budget. No other student group included in the first budget was excluded from the second budget. As a result, CLS-UM was substantially hindered in its ability to carry out its activities and advocate for its views during the 2007-2008 academic year.

Eventually, the CLS-UM students decided they would, reluctantly and unfortunately, have to go to court to protect their First Amendment rights. They primarily challenged the SBA's method of allocating student activity fees as viewpoint discriminatory and, therefore, a violation of students' freedom of speech. They also challenged the denial of recognition to CLS-UM because of its leadership and voting membership requirements. After the district court ruled against them, they appealed to the Ninth Circuit. *CLS v. Eck*, 625 F. Supp.2d 1026 (D. Mont. 2009), *appeal voluntarily dismissed*, No. 09-35581 (9th Cir. Aug. 10, 2011). The appeal was stayed pending the Supreme Court's decision in *CLS v. Martinez*.

Eventually, UM and CLS reached a settlement agreement by which officials of the UM School of Law agreed to impose new rules upon the SBA student activity fee funding system in order to ensure that student fees were allocated among student groups in a viewpoint- neutral manner. In total, officials at the UM School of Law agreed to approximately 23 new rules for the allocation of student activity fee funding. Law school officials also agreed to recognize CLS as an independent student organization with the same access to law school facilities and channels of communication as enjoyed by other recognized student groups. In return, CLS acknowledged that it was ineligible for SBA funding under the SBA's current interpretation of its bylaws, but law school officials agreed that CLS was eligible to apply for funding through the community grants program administered by the law school.

Please take immediate action to ensure that others do not experience the same disparate treatment that the members of CLS-UM experienced. Religious liberty is the foundation for freedom in America, and sets us apart from much of the rest of world. Please protect our longstanding heritage and constitutional rights of college and university students to express their religious beliefs, to associate with others who share those beliefs, and to receive the same treatment as other student groups receive. Thank you very much for your consideration.

Sincerely,


