CHRISTIAN LEGAL SOCIETY

Seeking Justice with the Love of God

February 6, 2019

The Honorable Amy Sinclair
Chair, Senate Education Committee
Iowa Senate
The Iowa Capitol Building
1007 East Grand Avenue
Des Moines, Iowa 50319
By email: amy.sinclair@legis.iowa.gov

Re: Hearing on SSB 1099 to protect student associations at Iowa's public institutions of higher education

Dear Chairperson Sinclair:

The Christian Legal Society supports SSB 1099, which will provide much needed protection for religious students' ability to meet on college campuses. By passing SSB 1099, the Legislature will conserve Iowans' taxpayer dollars by ensuring that it is not spent on the costly litigation that results when public universities adopt policies to exclude religious student groups from campus because they require their leaders to share their core religious beliefs.

Attached to this statement are actual letters from university officials or student government representatives to religious groups threatening to exclude religious groups from campus because of the religious groups' requirement that their leaders agree with the groups' religious beliefs. (Attachments B, C, D, E, G, I, and K). These letters exemplify the problem that SSB 1099 will remedy in Iowa. I respectfully request that this letter and its attachments be included in the record for the hearing on SSB 1099 before the Senate Education Committee, currently scheduled for February 6, 2019.

As this letter will explain:

- SSB 1099 is a commonsense measure to protect religious students who wish to meet on Iowa college campuses.
- SSB 1099 allows Iowa public universities to maintain whatever policies they wish so long as their policies permit religious student organizations to choose their leaders according to their religious beliefs.
- SSB 1099 conserves scarce tax dollars by preventing costly litigation against colleges that adopt policies that exclude religious groups.
- SSB 1099 would add Iowa to the growing list of states -- Arizona, Idaho, Kansas, Kentucky, Louisiana, North Carolina, Ohio, Oklahoma, Tennessee, and Virginia -- that have enacted similar protections for religious students. (Attachment AA lists the provisions and citations for these states' laws.)

I. For Four Decades, the Christian Legal Society Has Defended Religious Student Organizations' Access to College Campuses.

The Christian Legal Society ("CLS") is a national association of Christian attorneys, law students, and law professors. CLS has student chapters at law schools nationwide, including at Drake Law School and the University of Iowa College of Law. 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 for the students. All students are welcome at CLS meetings. As Christians 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.

CLS has long believed that pluralism, essential to a free society, 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 passage of the federal Equal Access Act of 1984 that protects the right of all students, including religious groups and LGBT groups, to meet for "religious, political, philosophical or other" speech on public secondary school campuses.[1]

As the current Director of the Christian Legal Society's religious liberty advocacy arm, the Center for Law and Religious Freedom, I have worked for over thirty years on securing equal access for religious student groups in the public education context, including higher education. I have testified twice before the Subcommittee on the Constitution and Civil Justice of the Judiciary Committee of the United States House of Representatives on the issue of protecting religious student organizations on college campuses.[2]

II. Religious Student Associations Need the Protection that SSB 1099 Will Provide.

SSB 1099 is a commonsense measure intended to protect religious student associations' meetings on college campuses by prohibiting public college administrators from denying them meeting space because a religious student association requires its leaders to "affirm or agree to the student organization's beliefs or standards of conduct or further the student organization's mission."

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[1] *See, e.g.*, 128 Cong. Rec. 11784-85 (1982) (Sen. Hatfield statement). *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).

[2] Hearing Before the Subcomm. on the Constitution and Civil Justice of the Comm. on the Judiciary, House of Representatives: *First Amendment Protections on Public College and University Campuses*, Rep. No. 114-31 (June 2, 2015) at 39-48 (statement of Kimberlee Wood Colby); Hearing Before the Subcomm. on the Constitution and Civil Justice of the Comm. on the Judiciary, House of Representatives: *State of Religious Liberty in the United States*, Rep. No. 113-75 (June 10, 2014) at 49-76 (statement of Kimberlee Wood Colby).

Of course, it is common sense -- and basic religious liberty -- for a religious association to expect its leaders and members to agree with the association's religious beliefs, standards of conduct, and mission. It should be common ground that *government officials*, including college administrators, should not interfere with religious associations' religious beliefs, standards of conduct, or mission.

Unfortunately, this is a recurrent problem on many college campuses across the country, from California to Idaho to Oklahoma to Ohio – and even Iowa. SSB 1099 would remedy the problems that have occurred in Iowa and protect Iowa students' basic religious freedom. In so doing, Iowa would join the growing list of states (Arizona, Idaho, Kansas, Kentucky, Louisiana, North Carolina, Ohio, Oklahoma, Tennessee, and Virginia) that have adopted similar protections for religious student associations.

A. In its landmark decision in *Widmar v. Vincent,* the Supreme Court held that the University of Missouri – Kansas City could not condition campus access on religious groups' promise not to engage in religious worship and instruction.

In the late 1970s, some university administrators began to claim 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 these unused classrooms gave impermissible financial support to the students' religious beliefs, 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, despite the fact that hundreds of student groups with diverse and contradictory ideological beliefs were allowed to meet.

The Supreme Court rejected these arguments when made by the University of Missouri -- Kansas City in the landmark case of *Widmar v. Vincent.*[4] In an 8-1 ruling, the Court held that UMKC violated the religious student associations' speech and association rights by "discriminat[ing] 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."[5] In other words, religious student groups have a

[4] 454 U.S. 263 (1981).
[5] *Id.* at 269.

First Amendment right to meet on public university campuses for religious speech and association.

The Court then held that the federal and state establishment clauses were not violated by allowing religious student associations access to public college campuses.[6] The Court ruled that college students understand that simply *allowing* a student group to meet on campus does not mean that the University *endorses or promotes* the students' religious speech, teaching, worship, or beliefs. As the Court observed in a subsequent equal access case that protected high school students' religious meetings, "the proposition that schools do not endorse everything they fail to censor is not complicated."[7]

The Supreme Court has reaffirmed *Widmar*'s reasoning in numerous cases.[8] In each case, the Court ruled that an educational institution did not endorse a religious association's beliefs simply because it provided the religious association with meeting space. Access does not equal endorsement.

B. Discrimination against religious student groups continues.

After the Supreme Court made clear that the Establishment Clause could not justify exclusion of religious student groups, some university administrators began to claim that university nondiscrimination policies were violated if the religious student groups required their leaders to agree with their religious beliefs. These administrators began to threaten religious student groups with exclusion from campus if they required their leaders to agree with the groups' religious beliefs.[9]

It is common sense and basic religious freedom – not discrimination – for religious groups to expect their leaders to share the groups' religious beliefs. Nondiscrimination policies

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[6] *Id.* at 270-76.

[7] *Board of Education v. Mergens,* 496 U.S. 226, 250 (1990) (holding that the federal Equal Access Act protects high school students' right to meet for religious speech in public secondary schools).

[8] *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819 (1995) (University of Virginia violated a religious student association's rights of free speech and association when it denied a religious student publication the same funding available to sixteen other nonreligious student publications); *Board of Educ. v. Mergens*, 496 U.S. 226 (1990) (applying *Widmar* analysis to public secondary schools); *Lamb's Chapel v. Center Moriches Union Free School Dist.*,508 U.S. 384 (1993) (requiring school district to allow a religious community group access to a school auditorium in the evening); *Good News Club v. Milford Central School*, 533 U.S. 98 (2001)(requiring school district to allow a religious community group access to elementary school after school). In 1984, Congress applied *Widmar*'s reasoning to public secondary schools when it enacted the Equal Access Act, 20 U.S.C. §§ 4071-74.

[9] *See* 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); Stephen M. Bainbridge, *Student Religious Organizations and University Policies Against Discrimination on the Basis of Sexual Orientation: Implications of the Religious Freedom Restoration Act,* 21 J.C. & U.L. 369 (1994) (detailing University of Illinois' threat to derecognize CLS chapter).

serve valuable and important purposes. Indeed, one of the most important purposes of a college's nondiscrimination policy is to protect *religious* students on campus. Something has gone seriously wrong when college administrators use nondiscrimination policies to punish religious student groups *for their religious beliefs*. Exclusion of religious student groups actually undermines the purpose of a nondiscrimination policy and the good it serves.

> Such misuse of nondiscrimination policies is unnecessary. Nondiscrimination policies and students' religious freedom are eminently compatible, as shown by the many universities with nondiscrimination policies that explicitly recognize the right of religious groups to require that their leaders share the groups' religious beliefs.[10]

Unfortunately, some universities have chosen to misuse their nondiscrimination policies to exclude religious student associations from campus. Alternatively, some universities have excluded religious student associations by claiming to have what they call "all-comers" policies, which purport to prohibit all student associations from requiring their leaders to agree with the associations' political, philosophical, religious, or other beliefs. However, a true "all-comers" policy rarely, if ever, actually exists.

By way of recent example, in the 2015-2016 academic year, Indiana University announced that it intended to change its policy. Under the new policy, religious student groups would no longer be able to choose their leaders according to their religious beliefs. The university specifically stated that a religious student group "would not be permitted to forbid someone of a different religion, or someone non-religious, from running for a leadership position within the [religious group]."[11] Only after months of criticism from alumni and political leaders, as well as the threat of litigation, did Indiana University revert to its prior policy of allowing religious student groups to choose their leaders according to their religious beliefs.

Also in the 2015-2016 academic year, a religious student organization at Southeast Missouri State University had its recognition revoked by the student government because it refused to put a newly required nondiscrimination statement in its constitution. The group tried to persuade the student government to allow religious groups to have religious leadership

[10] For example, the University of Florida has an excellent policy that embeds protection for religious student groups in its nondiscrimination policy: "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." Similarly, 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 in Attachment A**.**

[11] Indiana University's statement is Attachment B.

requirements, but the student government voted *against* language that would protect religious groups' right to have religious leadership requirements. After this vote, additional religious groups communicated to the administration that they would not remove their religious leadership requirements from their constitutions. After several months, the administration sent the religious organizations letters stating that the student government had voted to "abandon their non-discrimination statement and to replace it with the University's non-discrimination statement." However, university policies still lack written protection for the right of religious groups to have religious leadership requirements.

Unfortunately, the University of Iowa is the latest university to threaten religious student groups with exclusion from campus because of their requirement that their leaders agree with the groups' religious beliefs. For over 15 years, the CLS chapter at the University of Iowa has been the target of attempts by student government and other student organizations to remove its status as a recognized student organization simply because of its religious beliefs. The friend-of-the-court brief that CLS filed in the pending lawsuit by a group of Christian business students details several times in the last 15 years when the CLS chapter's ability to remain on campus has been threatened. The brief is at https://www.clsnet.org/document.doc?id=1185.

SSB 1099 allows public universities and colleges to have whatever policies they wish. All SSB 1099 requires is that whatever policy a college chooses to have must respect religious student groups' right to choose their leaders according to their religious beliefs. SSB 1099 thereby protects Iowa public colleges, and the Iowans whose tax dollars fund them, from costly litigation. Equally importantly, SSB 1099 protects religious students from discrimination on Iowa campuses and secures their basic freedoms of speech and religion.

C. SSB 1099 would avoid the problems that other states have experienced, and which some states have addressed through similar legislation.

1. California State University excluded religious student associations with religious leadership requirements from its 23 campuses, including religious groups that had met on its campuses for forty years.

The California State University comprises 23 campuses with 437,000 students. In 2014, Cal State denied recognition to several religious student associations, including Chi Alpha, InterVarsity, and Cru (formerly Campus Crusade for Christ). For example, the student president of a religious student association that had met on the Cal State Northridge campus for forty years received a letter 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.[13]

[13] The letter is Attachment C**.** Ms. Bianca Travis, the student president of the Chi Alpha chapter at California State University Stanislaus campus, described the harm done that group by Cal State's derecognition of religious groups at http://www.becketfund.org/bianca-travis-chi-alpha-fox-friends/.

The letter then listed seven basic benefits that the religious student association had lost because it required its student leaders to agree with its religious beliefs, including: 1) free access to a room on campus for its meetings; 2) the ability to recruit 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 . . . 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, some religious student groups faced paying thousands of dollars for room reservations and insurance coverage that were free to other student groups.

Cal State re-interpreted its nondiscrimination policy to prohibit religious student groups from having religious leadership requirements. But it explicitly allowed fraternities and sororities to continue to engage in sex discrimination in selecting their leaders and members. That is, Cal State denied religious organizations the right to select their leaders according to their religious beliefs, but it allowed fraternities and sororities to select their leaders and members on the basis of sex.

2. The Tennessee General Assembly passed legislation similar to SSB 1099 after Vanderbilt University excluded fourteen Catholic and evangelical Christian organizations from campus, including a Christian group because it required its leaders to have a "personal commitment to Jesus Christ."

In 2011, Vanderbilt University administrators informed the Christian Legal Society student chapter at Vanderbilt Law School that the *mere expectation* that its leaders would lead its Bible studies, prayer, and worship was "religious discrimination." CLS's requirement that its leaders agree with its core religious beliefs was also "religious discrimination."[14]

Vanderbilt subsequently told another Christian student group that it could remain a recognized student organization *only if it deleted five words from its constitution: "personal commitment to Jesus Christ."* The students left campus rather than recant their commitment to Jesus Christ.[15]

Catholic and evangelical Christian students patiently explained to the Vanderbilt administration that nondiscrimination policies should protect, not exclude, religious organizations from campus. But in April 2012, Vanderbilt denied recognition to fourteen Christian organizations.[16] While religious organizations could not keep their religious leadership requirements, Vanderbilt permitted fraternities and sororities to engage in sex discrimination in selecting leaders and members.

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[14] Vanderbilt's email to CLS is Attachment D.

[15] Vanderbilt's email is Attachment E.

[16] 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.

After Vanderbilt adopted its new policy, the University of Tennessee reportedly claimed to have a similar policy. In response, the Tennessee General Assembly enacted T.C.A. § 49-7-156 to protect the right of a religious student association on a public college campus to "require[] that only persons professing the faith of the group and comporting themselves in conformity with it qualify to serve as members or leaders."[17]

3. The Kansas Legislature passed legislation similar to SSB 1099 in order to protect religious student associations at Kansas public universities.

In 2016, the Kansas Legislature enacted K.S.A. §§ 60-5311 – 60-5313 in order to ensure that Kansas taxpayers' money would not be spent on unnecessary litigation resulting from its public universities misinterpreting existing policies -- or adopting future policies – to exclude religious groups from campus because they had religious leadership requirements. In 2004, the CLS student chapter at Washburn School of Law had allowed an individual student to lead a Bible study. But it became clear that the student did not hold CLS's traditional Christian beliefs. CLS told the student he was welcome to attend future CLS Bible studies, but that he would not be allowed to lead them. Even though the student admitted that he disagreed with CLS's religious beliefs, he filed a "religious discrimination" complaint with the Washburn Student Bar Association, which then threatened to penalize CLS for its refusal to allow a student who disagreed with its religious beliefs to lead its Bible study. Only after CLS filed a federal lawsuit did the Student Bar Association reverse course.

4. The Oklahoma Legislature passed legislation similar to SSB 1099 in order to protect religious student associations at Oklahoma public universities.

In 2011, the University of Oklahoma Student Association sent a memorandum to all registered student organizations that would prohibit religious student associations' religious leadership and membership criteria.[18] After unwelcome publicity, the university disowned the attempt. In 2014, the Oklahoma Legislature enacted language similar to SSB 1099. The "Exercise of Religion by Higher Education Students Act," 70 Okla. St. Ann. § 2119, protects students' religious expression at Oklahoma universities and colleges. It protects religious student organizations from exclusion from state college campuses because of their religious expression or because they require their leaders to agree with the organizations' core religious beliefs.[19]

5. The Idaho Legislature passed legislation similar to SSB 1099 after Boise State University threatened to exclude religious student associations that required their leaders to share the associations' religious beliefs.

[17] T.C.A. § 49-7-156 is Attachment F.
[18] The memorandum is Attachment G.
[19] 70 Okla. St. § 2119 is Attachment H.

In 2008, the Boise State University student government threatened to exclude several religious organizations from campus, claiming that 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 in its constitution of Matthew 18:15-17 also violated the policy. The student government informed a religious group that "not allowing members to serve as officers due to their religious beliefs" conflicted with BSU's policy.[20] In response to a threatened lawsuit, BSU reversed course and agreed to allow religious organizations to maintain religious criteria for leaders.

In 2012, however, BSU informed the religious organizations that it intended to adopt a new policy, which would exclude religious organizations with religious leadership requirements from campus. In response, the Idaho Legislature enacted Idaho Code § 33-107D to prohibit public colleges from "tak[ing] any action or enforc[ing] any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders adhere to its sincerely held religious beliefs or standards of conduct."[21]

6. The Ohio Legislature passed legislation like SSB 1099 after The Ohio State University threatened to exclude religious student associations if they required their leaders to share the associations' religious beliefs.

In 2003-2004, the CLS student chapter at the OSU College of Law was threatened with exclusion because of its religious beliefs. After months of trying to reason with OSU administrators, a lawsuit was filed, which was dismissed after OSU 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." Religious groups then met without problem from 2005-2010. In 2010, however, OSU asked the student government whether it should change its policy to no longer allow religious groups to have religious leadership and membership requirements. The undergraduate and graduate student governments voted to remove protection for religious student groups.[22]

In response, in 2011, the Ohio Legislature prohibited public universities from "tak[ing] any action or enforc[ing] any policy that would deny a religious student group any benefit available to any other student group based on the religious student group's requirement that its leaders or members adhere to its sincerely held religious beliefs or standards of conduct." Ohio

[20] The letters are Attachment I.
[21] Idaho Code § 33-107D is Attachment J.
[22] The student government resolutions are Attachment K.

Rev. Code § 3345.023.[23]

7. The Arizona Legislature passed legislation to protect religious student associations and students' religious expression.

In 2011, Arizona enacted A.R.S. § 15-1863, which protects religious student associations' choice of their leaders and members.[24] In 2004, Arizona State University College of Law had threatened to deny recognition to a CLS student chapter because it limited leadership and voting membership to students who shared its religious beliefs. A lawsuit was dismissed when the University agreed to allow religious student groups to have religious leadership and membership requirements.

8. The Virginia General Assembly, North Carolina General Assembly, Kentucky Legislature, and Louisiana State Legislature have passed legislation to protect religious student associations' religious freedom.

To protect religious student organizations that had been sometimes threatened with exclusion from various public university campuses in North Carolina, the North Carolina General Assembly enacted N.C.G.S.A. §§ 115D-20.1 & 116-40.12. The law prohibits colleges from denying recognition to a student organization because, among other things, it "determine[s] that only persons professing the faith or mission of the group, and comporting themselves in conformity with, are qualified to serve as leaders of the organization." N.C.G.S.A. § 116-40.12. The Virginia General Assembly passed a similar law in 2013, as did the Kentucky Legislature in 2017 and the Louisiana State Legislature in 2018.

D. SSB 1099 aligns with federal and state nondiscrimination laws that typically protect religious organizations' ability to choose their leadership on the basis of religious belief.

No federal or state law, regulation, or court ruling requires a college to adopt a policy that prohibits religious groups from having religious criteria for their leaders and members. To the contrary, federal and state nondiscrimination laws typically *protect* religious organizations' ability to choose their leaders on the basis of their religious beliefs.

The leading example, of course, is the federal Title VII, which explicitly provides that religious associations' use of religious criteria in their employment decisions does not violate the Civil Rights Act of 1964 and its prohibition on religious discrimination in employment. In three separate provisions, Title VII exempts religious associations from its general prohibition on religious discrimination in employment. 42 U.S.C. § 2000e-1(a) (does not apply to religious associations "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on" of the associations' activities); 42 U.S.C. § 2000e-2(e)(2) (educational institution may "employ employees of a particular religion" if it is

[23] Ohio Rev. Code § 3345.023 is Attachment L.
[24] A.R.S. §§ 15-1862-64 is Attachment M.

controlled by a religious association or if its curriculum "is directed toward the propagation of a particular religion"); 42 U.S.C. § 2000e-2(e)(1) (any employer may hire on the basis of religion "in those certain instances where religion … is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.").

In 1987, the Supreme Court upheld the constitutionality of Title VII's exemption against an Establishment Clause challenge.[26] Concurring in the opinion, Justice Brennan insisted that "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to … select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions."[27]

In 2012, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,*[28] the Supreme Court *unanimously* rejected the federal government's argument that federal nondiscrimination laws could be used to trump religious associations' leadership decisions. The 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*."[29] 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."[30]

E. SSB 1099 will conserve taxpayers' dollars by preempting costly lawsuits.

SSB 1099 will help Iowa's colleges avoid costly litigation for which the taxpayers and students foot the bill.[31] SSB 1099 protects colleges from adopting policies that are highly problematic. Such policies expose colleges – and state taxpayers – to costly lawsuits. As seen in Section C, sometimes the impetus for policies that harm religious groups comes from student government rather than university administrators. SSB 1099 provides administrators with a substantive reason for resisting student government's potential harassment of, and discrimination against, religious student associations. SSB 1099 steers college administrators in the right direction and helps insulate them from pressure that special interest groups may sometimes exert to penalize student groups that do not share their views.

Judge Kenneth Ripple of the Federal Court of Appeals for the Seventh Circuit explained the unfair burden on religious groups, when he wrote:

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[26] *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987).
[27] *Id.* at 342-43 (Brennan, J., concurring).
[28] 132 S. Ct. 694 (2012).
[29] *Id*. at 710.
[30] *Id*. at 713 (Alito, J., concurring).
[31] Prof. John D. Inazu, "*The Perverse Effects of the 'All Comers' Requirement,"* Sept. 15, 2014, Library of Law and Liberty Blog, *available at* http://www.libertylawsite.org/2014/09/15/the-perverse-effects-of-the-all-comers-requirement/.

> For many groups, the intrusive burden established by this requirement can be assuaged partially by defining the group or membership to include those who, although they do not share the dominant, immutable characteristic, otherwise sympathize with the group's views. Most groups dedicated to forwarding the rights of a "protected" group are able to couch their membership requirements in terms of shared beliefs, as opposed to shared status . . . .
>
> *Religious students, however, do not have this luxury—their shared beliefs coincide with their shared status.* They cannot otherwise define themselves and not run afoul of the nondiscrimination policy. . . .The Catholic Newman Center cannot restrict its leadership—those who organize and lead weekly worship services—to members in good standing of the Catholic Church without violating the policy. Groups whose main purpose is to engage in the exercise of religious freedoms do not possess the same means of accommodating the heavy hand of the State.
>
> *The net result of this selective policy is therefore to marginalize in the life of the institution those activities, practices and discourses that are religiously based.* While those who espouse other causes may control their membership and come together for mutual support, others, including those exercising one of our most fundamental liberties — the right to free exercise of one's religion— cannot, at least on equal terms.[32]

Conclusion

SSB 1099 is needed to ensure that religious students continue to be welcome and respected on Iowa campuses. If university students are taught that the government can dictate to religious groups what religious beliefs their leaders may or may not hold, religious freedom will be diminished not just for the religious students on campus, but eventually for all Iowans whose religious freedom will be at risk if their fellow citizens hold such an impoverished understanding of this most basic human right.

Yours truly,

/s/ Kimberlee Wood Colby
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[32] *Alpha Delta Chi v. Reed*, 648 F.3d 790, 805-806 (9th Cir. 2011) (Ripple, J., concurring) (emphasis added).