



CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

September 9, 2022

Lisa S. Loo
Senior Vice President and General Counsel
Office of General Counsel
Arizona State University
Fulton Center
300 E. University Drive
Tempe, AZ 85287-7405

By email: lisaloo@asu.edu

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter
at Arizona State University

Dear Ms. Loo:

I write on behalf of the Christian Legal Society Student Chapter at Arizona State University (“CLS-ASU”) in order to secure its registration as an official student organization. In both 2018 and 2020, CLS-ASU encountered a delay in its registration. In both situations, Mr. Cárdenas and I worked together and were able to resolve the problem quickly and satisfactorily. Attached is the relevant correspondence from 2018 and 2020.

Unfortunately, the identical registration problem has recurred this year. I am writing to ask your assistance in achieving a quick and satisfactory resolution to the problem, as in 2018 and 2020.

CLS-ASU has been a registered student organization at Arizona State University since at least 1991. In 2004, CLS-ASU brought a lawsuit against the University and certain University officials regarding the re-registration of CLS-ASU as a student organization.

In the resulting Settlement Agreement, dated September 2, 2005, which is included in the attachments, CLS-ASU agreed to dismiss its lawsuit in exchange for the University taking certain actions, which included: 1) an amended nondiscrimination policy that protected religious student organizations from denial of registration because they limit membership or leadership positions to students who share the groups’ religious beliefs; 2) a September 26, 2005 letter (attached to the Settlement Agreement) from then-Vice President for Student Affairs Sally Rampage, confirming that religious student groups will not be denied registration because they limit membership or leadership positions to students who share the religious groups’ religious beliefs and also confirming that certain beliefs and practices of CLS-ASU do not violate the nondiscrimination policy; and 3) agreeing to grant registration to CLS-ASU using the constitution that CLS-ASU submitted on May 6, 2005.

Since this September 2, 2005 Settlement Agreement, CLS-ASU has been a registered student organization, using the constitution that it originally submitted on May 6, 2005. During the most recent re-registration period, CLS-ASU submitted this same constitution; however, a coordinator for student engagement in the Office of Student Connection & Community, [Redacted Name], sent the attached email, dated August 26, 2022, to a CLS-ASU leader to the effect that CLS-ASU needed to add specific language to its constitution in order to be re-registered for the 2022-2023 academic year.

As CLS explained in 2018 and 2020, CLS-ASU and the University remain bound to the constitution to which the University and CLS-ASU agreed in the 2005 Settlement Agreement. I request, therefore, that CLS-ASU, as in 2018 and 2020, again be registered using the constitution it originally submitted on May 6, 2005, and re-submitted for registration for the 2022-2023 academic year. I also request written confirmation that CLS-ASU has been re-registered for the 2022-2023 academic year and will receive all benefits that accompany registration, including but not limited to, being listed on the ASU website's list of student organizations.

Let me briefly review recent legal developments that further reinforce the correctness of the 2005 Settlement Agreement. Federal regulations, Arizona law, Ninth Circuit caselaw, and other recent federal caselaw confirm the right of religious student organizations to have religious leadership requirements. The 2005 Settlement Agreement aligns with these legal developments, which can be briefly summarized as follows:

United States Department of Education regulations: Two United States Department of Education regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), set as a material condition on any grants that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization recognition and other benefits “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states:¹

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards,

¹ 34 C.F.R. § 76.500(d), which regulates Department of Education grants channeled through the State or subgrantee, is basically identical.

which are informed by sincerely held religious beliefs.

Under federal law, therefore, University administrators have a duty to recognize CLS-ASU and grant it any benefits otherwise received by other student groups, or risk the loss of Department of Education grants.

Arizona law: The 2005 Settlement Agreement anticipated the statute enacted in 2011 by the Arizona Legislature, which provides that a university may not deny recognition or any privilege or benefit to a religious student organization because it selects only persons committed to its religious mission as its members or leaders. A.R.S. § 15-1863. As a result, state law also clearly establishes that University administrators must recognize CLS-ASU and grant it the benefits otherwise received by other recognized student groups.

Recent Ninth Circuit Decision: The Ninth Circuit ruled that public school officials likely violated the federal Free Exercise Clause when they derecognized a religious student group because it required its leaders to agree with its religious beliefs. *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 2022 WL 3712506, --- F.4th --- (9th Cir. Aug. 29, 2022). The Ninth Circuit explained that “in our pluralistic society . . . the Free Exercise Clause requires the government to respect religious beliefs and conduct.” *Id.* at *13. The court ordered preliminary injunctive relief for the religious student organization, finding that it “will be irreparably harmed by the denial of full . . . benefits” that accompany recognition given that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* at *18 (quoting *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

University Officials’ Loss of Qualified Immunity under Federal Caselaw: In 2021, three federal court decisions clearly established that education officials forfeit their qualified immunity if they threaten to derecognize a religious student organization because it requires its leaders to agree with its religious beliefs. In 2021, the Eighth Circuit in two separate cases ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing religious student groups because they had religious leadership requirements. Derecognition was unconstitutional viewpoint discrimination against the religious student groups. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021). In the *InterVarsity* case, the University’s Vice President for Student Life, the Associate Dean of Student Organizations, and the Coordinator for Student Development forfeited their qualified immunity by derecognizing the religious student groups because of their religious leadership requirements. *InterVarsity*, 5 F.4th at 861. Similarly, in the *BLinC* case, the Eighth Circuit held “that the district court erred in granting qualified immunity to the individual defendants on [the religious student group’s] free-speech and expressive-association claims.” *BLinC*, 991 F.3d at 972. The officials who lost qualified

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immunity were the Dean of Students, the Assistant Dean of Students, and the Executive Director of the Iowa Memorial Stadium.

Likewise, a Michigan federal district court found that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). The court held that the Dean of Students and the Coordinator of Student Life were “not entitled to qualified immunity because the rights [of a religious organization’s “internal management, free speech, free association, and free exercise” and under the Establishment Clause] violated were clearly established.” *Id.* at 835.

I look forward to resolving this matter quickly and request a written response by September 13 affirming that the University has registered CLS-ASU for the 2022-2023 academic year as required by the 2005 Settlement Agreement. Going forward, please direct any communication from the University to me rather than to the CLS-ASU chapter leaders.

Yours truly,

/s/ Kim Colby

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

cc: José A. Cárdenas, Esq., JCardenas@asu.edu, Senior University Advisor to the President for Social Embeddedness and Civic Engagement & Special Counsel, Office of General Counsel, Arizona State University

Attachments:

Email from General Counsel Cárdenas to Kim Colby, August 20, 2020

Letter from Kim Colby to General Counsel Cárdenas, August 3, 2020,

with the following attachments:

Letter from Kim Colby to General Counsel Cárdenas, September 4, 2018

Settlement Agreement of September 23, 2005

Letter from Sally Rampage, Vice President for Student Affairs, September 26, 2005

Email from General Counsel Cárdenas to Kim Colby, September 13, 2018

Letter from Kim Colby to General Counsel Cárdenas, September 20, 2018

Email from [Redacted Name of Coordinator] to [Redacted Name of Student], August 26, 2022