



CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

September 26, 2022

Mr. Quinn Williams
General Counsel
University of Wisconsin System
1856 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

By email: qwilliams@uwsa.edu

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

Dear Mr. Williams:

This letter is in response to your September 22 email suggesting that we resolve this matter by eliminating three words—“be a Christian”—from the constitution submitted by the Christian Legal Society Student Chapter at University of Wisconsin-Madison (“CLS-UW”). We are unwilling to do this for the following reasons:

1. Common sense dictates that the *Christian* Legal Society be allowed to require that its leaders “be a Christian.”
2. CLS-UW does not want to see other religious student organizations subjected to government censorship. If University officials prohibit a Christian student group from requiring its leaders to be Christian, they must likewise prohibit a Jewish student group from requiring its leaders to be Jewish or Orthodox or Conservative or Reformed. Similarly, University officials must prohibit a Muslim student group from requiring its leaders to be Sunni or Shia. Nor could a Catholic student organization require its leaders to be Catholic.
3. For the past 12 years, University officials have approved the CLS-UW constitution with its leadership eligibility requirement of “be a Christian.” CLS-UW has not changed its constitution, and the Board of Regents has not changed Regent Policy Document 30-6 governing recognition of religious and political student organizations. Twelve years of registration under the same constitution and the same policy cannot be dismissed as “inadvertence.”
4. Federal regulation prohibits a public university that receives a United States Department of Education grant, either directly or through the State or a subgrantee, from denying recognition and funding to a student organization “because of the religious student organization’s *beliefs, practices, policies, speech, membership standards or leadership standards.*” 34 C.F.R. §§ 75.500(d)

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- & 76.500(d). If CLS-UW is de-registered because its constitution states that a leader must “be a Christian,” University officials will be in violation of clearly established federal law. *See, e.g., InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021) (university officials forfeited qualified immunity when they derecognized religious student organization because of its religious leadership requirements).
5. As the past 12 years attest, CLS-UW’s constitution does not violate Regent Policy Document 30-6, which specifically guarantees that religious student organizations may select their *members or officers* “on the basis of commitment to a set of beliefs.” Policy 30-6 does not prohibit a religious organization from stating in its constitution that an officer must identify with its faith.
 6. Policy 30-6 further permits religious and political student organizations to “exclude[]” students from “officer positions . . . on the basis of . . . creed” if based on “commitment to the beliefs of the organization.” Religious groups are the quintessential example of creedal organizations that require “commitment to the beliefs of the organization.”
 7. Because Policy 30-6, on its face, exempts at least three major types of student organizations (*i.e.*, political, creedal, and Greek organizations), the Free Exercise Clause requires that religious organizations also be exempted. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2020); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).
 8. Government officials’ explicit censorship of a religious organization’s religious leadership requirements violates the First Amendment in myriad ways, including the following clearly established law:
 - a. Separation of church and state prohibits government officials from interfering with a religious organization’s leadership requirements. *Hosanna-Tabor Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012);
 - b. University officials’ censorship of religious student groups violates the Free Speech Clause’s prohibition on viewpoint and content discrimination. *See, e.g., Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 815 (1995); *Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006); *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775 (7th Cir. 2010); and
 - c. A nondiscrimination policy that, on its face or as applied, exempts secular conduct must also exempt religious conduct. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2020); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

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Finally, because the law is clearly established, University officials are likely to forfeit qualified immunity if they derecognize a religious student organization because it requires its leaders to agree with its religious beliefs and, therefore, refuses to censor its honest statement of its religious leadership eligibility requirements as found in its constitution. *See Univ. of Iowa, supra; InterVarsity Christian Fellowship/USA v. Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021).

As our letter of September 9 made clear, CLS-UW simply wants to be re-registered as a student organization with the same constitution that the University has approved for at least the past 12 years. CLS-UW urges University officials to avoid violations of the First Amendment, as well as federal regulations, by continuing to interpret Regent Policy Document 30-6 to allow CLS-UW to be a registered student organization while maintaining its religious leadership eligibility requirements as stated in its constitution for at least the past 12 years.

Without this common-sense and constitutional interpretation, University officials will necessarily have to de-register many other religious organizations that require their leaders to belong to their faiths. University officials will also have to de-register many political, creedal, Greek, and other organizations that Policy Document 30-6 currently exempts. CLS-UW simply seeks to maintain the status quo: CLS-UW remains a registered student organization alongside other creedal, religious, political, and single-sex student organizations.

Because the October 14th deadline for re-registering is fast approaching, we request confirmation that CLS-UW is a registered student organization for the 2022-23 academic year by COB Wednesday, September 28, 2022.

Yours truly,

/s/ Kim Colby

Kimberlee Wood Colby

Of Counsel

Center for Law & Religious Freedom

Christian Legal Society