



June 3, 2021

The Honorable Miguel A. Cardona
 Secretary of Education
 U.S. Department of Education
 400 Maryland Avenue, S.W.
 Washington, D.C. 20202

Dear Secretary Cardona:

We, the undersigned organizations, write to ask that you preserve and uphold 34 CFR §§ 75.500(d) and 76.500(d), regulations that provide protection for faith-based student organizations. These regulations were part of the final rulemaking by the Department of Education, published on September 23, 2020, at 85 FR 59916. The language helps ensure that faith-based student organizations will be treated like other student organizations. It is necessary because colleges often discriminate against religious clubs, including those of many minority faiths, just because they have religious expectations for leaders. The regulation will allow religious student organizations to continue to be an authentic presence on campuses across the nation, expressing and living out their religious ideals and values and adding to the diversity of the student body.

The undersigned represent diverse beliefs, but we agree on affirming the freedom of all students to organize based upon their shared religious beliefs. This freedom is essential to a free and truly pluralistic society.

34 CFR §75.500(d) provides (and 34 CFR §75.600(d) has essentially the same language):

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) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

We believe the choice is clear that this language should remain because that decision is supported by 1) a clear logical basis, 2) a clear legal basis, and (3) a clear harm if it is changed:

First, there is a clear logical basis for this regulatory language. These regulations uphold strong values shared by both political parties—tolerance, robust pluralism, and ensuring emotional support and health for college students. The vast majority of universities strongly encourage involvement in student organizations, in order to enable expression, connection, community, emotional health, and leadership development. They know that diverse groups are necessary in order to enable supportive community for a diverse student body.

The language reflects long-standing First Amendment freedoms. The interwoven freedoms of speech, association, assembly, and the free exercise of religion have protected the expression of disfavored minority viewpoints throughout this country's history. In addition, religious groups are not typically politically-oriented; in fact, the students involved in the campus chapters of the undersigned groups identify across the political spectrum; they hold many diverse religious viewpoints and political perspectives. To undo this regulatory protection for religious student organizations is to harm students from across the political spectrum.

It is crucial to keep robust concepts of pluralism in view, especially in relation to the government's role in respecting student association and expression on public college campuses. We hope that this administration will encourage such efforts, knowing that it teaches students tolerance and respect to be surrounded by diverse perspectives. The undersigned groups allow any student to participate in their student chapters. We do, however, expect leaders to preserve the religious identity of the group by teaching and practicing elements of our faith traditions.

It is common sense to allow all groups to maintain their purposes and beliefs by appointing leaders who agree with and can teach the distinct perspectives the groups represent. In fact, most non-religious groups recognized by universities are allowed to require agreement from their leaders. Religious groups should be treated the same way; they should not be excluded from basic First Amendment freedoms (speech, association, free exercise) just because they are religious. That is exactly why this regulation makes sense; it is an appropriate protection for religious organizations, doing exactly what it says—making sure religious groups are treated like other groups.

Second, there is a clear legal basis for the regulation. The First Amendment's freedoms are all important to preserve. The functioning of religious student organizations on public college campuses fall right at the intersection of many of these rights, which should be clearly protected. This regulation provides an important reminder of the importance of students' freedom of expression.

It does not violate the Establishment Clause or entangle the government in religion to allow religious organizations access within a limited open forum, even when they are participating in religious activities and speech, because it is unconstitutional to exclude groups based on the religious content of their speech. See *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). In fact, it violates the Establishment Clause when the government seeks to dictate what religious groups are to believe or seeks to control who they may select as leaders. Religious people should determine the tenets and traditions of their faith, not the government.

In relation to speech, it is clear that the government may not discriminate against speech it does not like. A group may not be singled out or treated differently because of its specific point of view—that is unconstitutional viewpoint discrimination. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). Closely associated with speech is the right of expressive association, foundational to a tolerant and truly pluralistic society. This right includes the ability to gather for purposes of expression, as well as the ability to choose leaders who support the distinctive religious tenets of the religious group. The Eighth Circuit recently affirmed that a student organization should not be subject to viewpoint discrimination while speaking within a university's limited public forum, and determined that a religious student group's rights were violated when it was targeted based on its specific religious views, including its requirement that its leaders agree with its religious beliefs. *Business Leaders in Christ v. Univ of Iowa*, 991 F.3d 969 (8th Cir. 2021).

In *InterVarsity v. Wayne State*, ___ F.Supp.3d ___, 2021 U.S. Dist. LEXIS 65310 (Apr 5, 2021), the court found that the right of religious organizations to select leaders is clearly established under the Free Exercise Clause as well. *Id.*, at 99. The court relied on several recent Supreme Court rulings, including one addressing Free Exercise in a leadership context, in which the Supreme Court found it particularly important that the government not interfere in matters of faith and doctrine as taught by religious organizations. *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2060-61 (2020). In addition, the Supreme Court has clarified that a group may not be excluded from a generally offered benefit just because that group is religious. *Trinity Lutheran Church v. Comer*, 137 S.Ct. 2012 (2017). If a group is targeted because of its religious beliefs or practices, that is even more clearly problematic. See *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542-46 (1993).

Third, the regulations are important to preserve and harmful to undo because they address real problems. The regulations address a problem that has existed for four decades on too many public college and university campuses: Religious student groups too frequently are subjected to discriminatory treatment because of their religious beliefs, speech, and leadership standards. The regulations are a common-sense solution that protects religious students from discriminatory treatment.

The regulations went through a thorough rulemaking process and was well researched. The Department's summary of comments in favor of the regulations is quite extensive. See 85 FR 59916, 59928-59936. There were extensive and numerous comments in favor of the language, including many who spoke of the impact such groups had on their college experience and beyond, often helping them

to better integrate faith, values and service. When such groups are denied registration or excluded from benefits given to other student organizations, it leads to unequal access and causes religious groups—often the very groups meeting students’ spiritual and emotional needs—to be seen as second-class citizens.

Our affiliated student organizations wish to make a difference in their communities, yet wish to do so in a manner that remains integrated with particular faith motivations and practices. We respectfully ask that you preserve this necessary protection for these beneficial student organizations that wish to serve their campuses and meet the needs of their fellow students. We ask that the Department of Education preserve and uphold 34 CFR §§ 75.500(d) and 76.500(d) as adopted and without modification.

We would welcome an opportunity to meet with you to discuss the importance of these regulations to religious student organizations. We wish you well as you begin carrying out your vital duties as Secretary of Education.

Sincerely,



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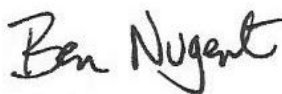
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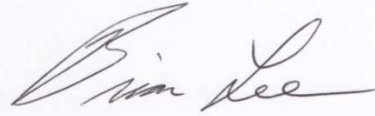


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