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President Joseph F. Sheley
California State University, Stanislaus
One University Circle
Turlock, CA 95382

Dear President Sheley,

I am writing to inform you about a serious problem and ask for your assistance in solving it. As you may know, the Chi Alpha student chapter at CSU Stanislaus—which has been a part of the student body for almost 40 years—has been kicked off campus for expressing its sincere religious beliefs. As the National Director of Chi Alpha, an international Christian student ministry organization, the exclusion of our chapter at CSU Stanislaus represents a significant problem. Below, I set out the background of Chi Alpha and the dispute, why I think the University's actions raise a number of legal issues, and how we can move forward together.

Background on Chi Alpha. Chi Alpha Campus Ministries is the college outreach ministry of the General Council of the Assemblies of God. Based in Springfield, Missouri, Chi Alpha has more than 300 student groups on campuses in the U.S. and around the world. The Assemblies of God is a Christian denomination that traces its roots back to 1906 Los Angeles and the sermons of William J. Seymour, an African-American minister who was one of the founders of the Pentecostal movement. The denomination has grown to become one of the most robust, diverse religious communities in the world, with much of its growth in the U.S. driven by young people and immigrants, and most of its growth internationally in the Global South. Forty percent of U.S. members of the Assemblies of God are already from minority groups, and we expect to reach majority-minority status in about five years.



The Chi Alpha CSU Stanislaus chapter already reflects this remarkable diversity: the chapter is led by an African-American woman, Bianca Travis, and the majority of our 45-plus Stanislaus members are African-American or Latino. This diversity is no accident—it's one of Chi Alpha's Core Values. That's because we believe a diverse community reflects the love of Jesus for *everyone* on campus. And the key to our unity in diversity—what draws our different Chi Alpha communities together—is a deep, authentic love for Jesus and a desire to show His love to fellow students. That is, what makes each student chapter not just overlook, but rejoice in, our differences is our *shared faith*.

Chi Alpha has been a chartered student organization at the University for almost 40 years. Our members meet together weekly to help support and encourage each other, and the national Chi Alpha organization provides resources to strengthen those efforts. And, like Chi Alpha chapters worldwide, our Stanislaus group has been active in the student community. For instance:

- We've raised thousands of dollars annually to provide financial assistance, education, school supplies, and clothing for children in India and Philippines rescued out of human trafficking.
- We've worked closely with the International Student Office to welcome international students and help them both find housing and feel at home.
- For the past ten years, we have helped CSU Stanislaus's housing office on dorm move-in days.
- For five years, we worked with the CSU Stanislaus police department to hand out free food and water at the annual Warrior Day celebrations.
- For four years, we worked with the CSU Stanislaus police department to serve students and their families during commencement.
- For the past eleven years, we've regularly given out free espresso to students on campus.

Chi Alpha has also been active in the local community. For the past six years, we served in local election booths twice a year. We also ran all of the ticketing booths for the Stanislaus County Fair for three years.

Despite this lengthy history of positive engagement in student and community life, CSU Stanislaus has recently begun treating Chi Alpha unfairly.

Background of the dispute. Since at least 2001, the Chi Alpha chapter at CSU Stanislaus has had a copy of its constitution on file with the University and needed only to turn in the names of new officers and members to receive its charter each year. The deadline for this information has generally been about a month from the start of the Fall semester. In 2014, the deadline was October 17.

On September 11 of this year, Bianca Travis received a letter from Alissa Aragon, the Student Organization Advisor of the Office of Student Leadership & Development. The letter said that Chi Alpha was not permitted to hold events on campus until it changed its constitution. This, she said, was because Chi Alpha's constitution was not in compliance with the University's new interpretation of Executive Order 1068 (which was released in 2011). When asked why this was taking place before the October 17 deadline, Ms. Aragon told Ms. Travis that Chi Alpha had been "randomly" selected for immediate compliance.

The University's new interpretation of EO 1068 required Chi Alpha to change its constitution to state "that membership is open to all CSU students" and that Chi Alpha "leaders cannot be selected on the basis of faith[.]" Ms. Aragon's letter was on University letterhead and copied the Director of Student Leadership & Development, Clarissa Lonn-Nichols, and the Dean of Students, Ronald Noble.

On October 10, 2014, Chi Alpha submitted an updated constitution that had adopted all of the requests made in the September 11 letter. This constitution included the following language to comply with the University's new interpretation of EO 1068:

"Eligibility for membership or appointed or elected student officer positions may not be limited on the basis of race, religion, national origin, ethnicity, color, age, gender, gender identity, marital status, citizenship, sexual orientation, or disability. The organization shall have no rules or policies that discriminate on the basis of race, religion, national origin, ethnicity, color, age, gender, gender identity, marital status, citizenship, sexual orientation or disability."

Chi Alpha included a statement after this language explaining that (a) it believed that the University's new interpretation violated its religious beliefs and (b) that it was complying under duress.

Chi Alpha understands that, as of September 2014, the University interprets its anti-discrimination policy to prohibit religious student organizations from requiring their members or officers to share the religious beliefs that the organizations exist to further. Chi Alpha believes that the University's post-September 2014 interpretation of its anti-discrimination policy burdens Chi Alpha's sincere religious exercise, improperly interferes with the internal affairs of a religious organization, and violates the law, including but not limited to the First Amendment of the U.S. Constitution and Article I Sections 1, 2, and 4 of the California Constitution. Chi Alpha agrees to comply with the University's post-September 2014 interpretation of its anti-discrimination policy only under duress and only to the extent that Chi

Alpha retains the ability to select leaders that fully support Chi Alpha's mission and are capable of carrying out that mission.

On October 18, Ms. Aragon refused to reinstate Chi Alpha's charter but said she would do so if the final sentence—which stated that Chi Alpha was complying under duress—was removed. Ms. Travis twice asked if Chi Alpha had to remove the entire statement or just the last sentence; Ms. Aragon twice confirmed the latter.

On November 11, Chi Alpha resubmitted an updated constitution that removed the last sentence. The next day, Ms. Aragon deviated from her previously-stated position and said she would not reinstate Chi Alpha's charter unless the rest of the statement—which stated that Chi Alpha believed it had a legal right to require its leaders to share its religious beliefs—was removed.

On November 18, Ms. Aragon and her supervisor, Ms. Lonn-Nichols, held a meeting with Ms. Travis, B.J. Miller (Chi Alpha's student vice-president), Dr. Richard Weikart (Chi Alpha's faculty advisor), and Jeremy Anderson (the regional Chi Alpha director of student ministries). Ms. Lonn-Nichols opened the meeting by expressly conditioning reinstatement of Chi Alpha's charter on removing the rest of the statement. All Chi Alpha representatives in the room confirmed their intent to comply with the University's EO 1068 interpretation and said that they just needed, as a matter of conscience, to express their disagreement with being forced to give up selecting student leaders who shared their faith. Even with these assurances and the presence of the required non-discrimination language in the constitution, both Ms. Lonn-Nichols and Ms. Aragon said that Chi Alpha must remove the rest of the statement or it would not have its charter reinstated. When Chi Alpha asked Ms. Lonn-Nichols to put this requirement and her rationale in writing, she ended the meeting and said, "I'm done playing games with you."

After prayerfully considering Ms. Lonn-Nichols' ultimatum, Chi Alpha decided that it could not remove the rest of the statement. On December 1, Ms. Aragon sent Ms. Travis an email stating that Chi Alpha was not chartered at the University and instructing her to remove Chi Alpha's booth from the Campus Quad by December 5. Because of the University's actions, Chi Alpha was forced to cancel 15 previously-approved events in the fall semester and is being denied equal access to campus for the spring semester.

Legal Issues. Through its policies and actions, the University has conditioned Chi Alpha's chartered status on the removal of a purely expressive religious statement from its constitution. It is my understanding that this violates the First Amendment's guarantees of free speech, free exercise of religion, and free association, equal protection, as well as several other federal and California laws. I

describe the legal issues concerning freedom of speech and the free exercise of religion below.

Freedom of Speech. The University is restricting Chi Alpha's speech because of its content, even though that content has no operative effect on the University's interests and that the speech serves only to express Chi Alpha's internal religious beliefs.

The First Amendment protects Chi Alpha's rights to be free from governmentally compelled speech or silence. *See Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796-97 (1988) ("[T]he First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say."). Since the University is banning Chi Alpha's "expression because of its message, its ideas, its subject matter, or its content," the University's actions are subject to "the most exacting scrutiny." *Doe v. Harris*, 772 F.3d 563, 574 (9th Cir. 2014) (striking down California law that regulated the speech of sex offenders).

To pass this scrutiny, the University must have a compelling interest in restricting Chi Alpha's religious expression, and be doing so in the least restrictive way possible. *TBS, Inc. v. FCC*, 512 U.S. 622, 642 (1994). But here, the University has no interest at all. Chi Alpha has already promised, both in writing and in person, to abide by the University's non-discrimination policy. And its mild expression of religious disagreement is far less likely to cause a prominent public dispute than is controversial anti-war attire that is broadly protected as "pure speech." *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 508 (1969). Indeed, with the exception of Chi Alpha members and University administrators, few would have even known of Chi Alpha's verbal expression of dissent because it was made in the context of the constitution. The University cannot have an interest in censoring dissenting ideas, particularly where those ideas are important solely to the members of a voluntary religious association. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion"). This is doubly true given the "essentiality of freedom in the community of American universities," where the First Amendment rejects "any strait jacket" that "cast[s] a pall of orthodoxy' over the free exchange of ideas in the classroom." *Dube v. State University of New York*, 900 F.2d 587, 597-98 (2d Cir. 1990) (quoting *Sweezy v. New Hampshire*, 354 U.S. 237, 250 (1957), and *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967), and finding that university officials could be personally liable for damages for censoring free speech).

The University's actions here go well beyond this standard and unreasonably violate clearly established constitutional rights. A comparison to other cases is

instructive: government defendants often try to excuse compelled speech by noting that the speakers could still *express disagreement* with a governmentally compelled message. *Frudden v. Pilling*, 742 F.3d 1199, 1205 (9th Cir. 2014) (banning a school from forcing students to wear its message of “Tomorrow’s Leaders”). Courts uniformly reject those arguments, *id.* at 1205-06, and would look even more dimly on the University’s attempt here to both compel speech *and* censor disagreement with that speech.

In Chi Alpha’s view, since the University is “not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike [it],” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 661 (2000), it certainly may not censor speech for no reason at all.

Free Exercise of Religion. The University gives its administrators unbridled discretion to control Chi Alpha’s access to charter reinstatement. And its administrators have exercised that discretion to arbitrarily restrict the kind of religious speech that Chi Alpha may engage in. Under the Free Exercise Clause a law burdening religious exercise is generally permissible only if it is “neutral” and “generally applicable.” *Employment Division v. Smith*, 494 U.S. 872, 880 (1990). Laws cannot meet this standard where they allow the government discretion to create “individualized exemptions” on a case-by-case basis or where they are enforced unevenly. *Id.* at 884 (citing *Sherbert v. Verner*, 374 U.S. 398, 401 (1963)); *accord Tenaflly Eruv Ass’n, Inc. v. The Borough of Tenaflly*, 309 F.3d 144, 166-67 (3d Cir. 2002) (striking down law that was not enforced uniformly). That is just as true in the university context as any other. *See, e.g., Rader v. Johnston*, 924 F. Supp. 1540 (D. Neb. 1996) (striking down college actions both because the policy in question had several exemptions and because of administrative insensitivity toward religious conduct).

Because the University permits such broad discretion over granting student group charters and because University administrators have exercised that discretion to single out and arbitrarily target Chi Alpha’s religious speech for censorship, the University’s actions would have to stand up under strict scrutiny in court. And those actions fail that scrutiny for the reasons outlined above. Indeed, since the University can’t have an interest in banning the wholly expressive religious dissent of a voluntary association, even if the University’s actions *were* the result of a neutral and generally applicable law, they would fail simply because they are an irrational restriction on religious expression. *In re Levenson*, 587 F.3d 925, 931 (9th Cir. 2009) (under even rational-basis review, “[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.”).

Moving forward. On behalf of Chi Alpha and of the Assemblies of God, I am writing this letter in the hope that we can resolve this dispute together. Chi Alpha

has been a part of the University's student body for almost 40 years and is filled with students who want to resume building unified diversity on campus as soon as possible. I am sure you agree with me that CSU Stanislaus should not discriminate against Chi Alpha or treat students like Bianca Travis as second-class citizens simply for their expression of religious dissent. If anything, CSU Stanislaus should be *encouraging* active, community-serving student groups like Chi Alpha, not excluding them. Therefore I would request that we meet to discuss this issue and how CSU Stanislaus and Chi Alpha can work together going forward. Please let me know when we might have such a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Martin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

E. Scott Martin
National Director
Chi Alpha, U.S.A.

cc: Richard Weikart, Organization Faculty Advisor, rweikart@csustan.edu