IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

INTERVARSITY CHRISTIAN FELLOWSHIP/ USA, *et al*., *Plaintiffs*, v. THE UNIVERSITY OF IOWA, *et al*., *Defendants*.	Civil Action No. 18-cv-00080-SMR-SBJ **PLAINTIFFS' REPLY TO DEFENDANTS' RESISTANCE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** **ORAL ARGUMENT REQUESTED**

Christopher C. Hagenow
Hagenow & Gustoff, LLP
600 Oakland Rd. NE
Cedar Rapids, IA 52402
(319) 849-8390 phone
(888) 689-1995 fax
chagenow@whgllp.com

Eric S. Baxter*
Lead Counsel
Daniel H. Blomberg*
The Becket Fund for Religious Liberty
1200 New Hampshire Ave. NW, Suite 700
Washington, DC, 20036
(202) 955-0095 phone
(202) 955-0090 fax
ebaxter@becketlaw.org
dblomberg@becketlaw.org

Counsel for Plaintiff

**Admitted pro hac vice*

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INTRODUCTION

The first two pages of the University's brief admit everything necessary to rule for InterVarsity. The University concedes that InterVarsity is a religious group, that University Policy forbids InterVarsity from requiring or even strongly encouraging its leaders to agree with its faith, that InterVarsity was deregistered because it refused to give up its practice of selecting faithful leaders, and that the University grants broad exemptions from the Policy to its own programs and to other student groups—including the largest and most popular groups on campus—to allow them to select leaders and members in what otherwise would be a clear violation of the Policy. The First Amendment does not permit that kind of discriminatory treatment of religion. The University was accordingly wrong to deregister InterVarsity along with Sikh, Muslim, Latter-day Saint, and Protestant groups, and is still wrong to subject them to a discriminatory rule against religious leadership selection. The University knows this, which is why its officials began warning *students* a decade ago that using University power to engage in such discrimination would expose them to personal liability. The University was right then and wrong now. This Court should so rule.

ARGUMENT

I. The University violates constitutional free speech, association, and exercise protections.

A. The University infringes InterVarsity's free speech rights.

State regulation of speech in a limited forum must be both reasonable in light of the forum's purpose and viewpoint neutral. Neither requirement is met here. The University's leadership restrictions conflict with the forum's core purpose of allowing like-minded students to promote their shared interests, and the restrictions have been targeted at religious groups.

Reasonableness. The University admits that "providing students a forum for association with like-minded individuals is an important purpose" of its Registered Student Organization (RSO) program. Opp.15-16. It also admits that "[*w*]*ho* speaks on [an organization's] behalf . . . colors

what concept is conveyed." Opp.18. Just so. Groups cannot effectively promote like-mindedness if they cannot select leaders who share their mission. Thus, the University's religious leadership ban is an unreasonable limitation on this admittedly "important" purpose of the forum.

The University claims that there are "several other equally important purposes" for the forum. Opp.15-16. These include "developing student leadership," "providing a quality campus environment," "accommodat[ing] academic needs" and "ensur[ing] public safety." Opp.16. Yet the University does not even attempt to explain how these purposes are threatened by allowing religious organizations to select religious leaders. There are more than 500 groups on campus that students can also join to develop leadership experience, Opp.21, *all* of which can select their leaders based on (secular) mission alignment. *See* Reply SoF ¶¶ 32-43. Is the University claiming that religious organizations with authentic leaders somehow uniquely degrade the "campus environment," including for religious students? How exactly do religious groups with believing leaders disrupt "academic needs?" Does the University really mean that letting Jewish groups select Jewish leaders or Muslim groups select Muslim leaders threatens the "public safety?" *But see* JCRL/Uddin Amicus Br. at 10-12 [Dkt. 27] (noting need for minority faiths to have representative leadership). The University's positions are unreasonable on their face, and it makes no attempt to explain them.

Nor does it sincerely believe them. Later in its brief, it admits that the purposes of the forum are *served*, and a "rich diversity of people" cultivated, by allowing student groups to select leaders and members who reflect the groups' mission or identity. Opp.32-33. The University also admits that its rules permit InterVarsity to dissuade nonbelievers from becoming leaders by "outlin[ing] . . . [its] religious beliefs in detail" in its constitution, "focus[ing]" its activities on "the life and message of Jesus," "organizing 'religious outreach opportunities,'" and allowing "existing leadership" to decline inviting "into a leadership role" students who "aspire[] to live a life counter to

[InterVarsity's] values." Opp.26-27. If it is acceptable for InterVarsity to employ such backdoor measures, it is unreasonable to ban stating leadership expectations up front.

The University's claim that the leadership restrictions are necessary "to comply with state and local law" and to "enforce state and federal civil rights law[]" is equally indefensible. Opp.19-20. No laws restrict a religious group's selection of its religious leaders. The Iowa Civil Rights Act prohibits religious discrimination in *employment*, but—even there—it explicitly exempts "[a]ny bona fide religious institution." Iowa Code § 216.6(1) & (6)(d). So does Title VII. *See* 42 U.S.C. § 2000e-1(a) (nondiscrimination provisions "shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion"); IVCF App. 356-57 (admitting that federal law does not require the University "to control who student organizations select as their leaders"). Indeed, any such leadership limitation would run afoul of the First Amendment. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 181 (2012) (protecting religious groups' selection of religious leaders).

The University clings to *CLS v. Martinez* as its lifeline. But the purpose of the forum in *Martinez* was to promote "tolerance, cooperation, and learning among students," which the university accomplished by requiring "all groups" to "accept all comers as voting members even if those individuals disagree[d] with the mission of the group." 561 U.S. 661, 674, 689 (2010). But here, even under the University's broadest articulation, the forum has a different purpose: to "encourage[] the formation of student organizations around the areas of interests of its students" and to allow students to "associate" with other "like-minded students," which inherently help "provid[e] a quality campus environment" and "accommodate academic needs," while remaining fully consistent with "ensur[ing] public safety." Reply SoF ¶ 160.

The University cannot reasonably claim that these policies are just another way of articulating

the hands-free, social experiment in "tolerance" and "cooperation" stipulated to in *Martinez*. Indeed, the University rejected an "all-comers" policy after fully considering it. Reply SoF ¶¶ 16-18. It explicitly protected fraternities and sports teams to let them remain segregated by sex. *Id*. ¶¶ 27, 43, 186-88. It has never challenged a cappella groups that discriminate based on "sex," veterans' groups that discriminate based on "service in the U.S. military," advocacy groups that discriminate based on "sexual orientation" or "gender identity," or social organizations that discriminate based on "race" and "national origin." *Id*. ¶¶ 24, 39. And until recently, it not only tolerated religious groups' selecting their leaders based on religion, it actually threatened "personal liability" against student leaders on campus if they failed to recognize this "constitutional right[]." *Id*. ¶¶ 79, 87. Besides making the protections for fraternities and sports teams more explicit, the University has the same Policy it always had. Its recent about-face against religious groups, while continuing down the same path with all others, shows that its restriction against religious leaders is unreasonable. A forum restriction is reasonable only if the government "respect[s] the lawful boundaries it has itself set." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

Viewpoint Neutrality. The University's abrupt shift also reveals the lack of viewpoint neutrality. Both on its face and as applied, the Policy discriminates. First, the Policy is not neutral on its face. Its new "Title IX" exemption means that fraternities, sororities, and sports teams are free to engage in sex discrimination in selecting their leaders and members. Reply SoF ¶¶ 27, 43-47, 186-190. No such privilege is extended to religious groups.[1] Moreover, Title IX itself includes a religious exemption and does "not apply" to religious groups if it "would not be consistent" with their

[1] This is a situation where governments "must" exempt religious groups to protect their right to manage their internal affairs. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334 (1987); *Hosanna-Tabor*, 565 U.S. at 188.

"religious tenets." 20 U.S.C. § 1681(a)(3). Thus, even if the University had good reason to adopt Title IX's sex-discrimination accommodation, its selective adoption is still discriminatory.

Second, the Policy is not neutral as applied. As the University admits, many student groups and University programs are allowed to select leaders and make other distinctions based on categories covered by the Policy. Reply SoF ¶¶ 32-50. But InterVarsity was told it may not even "strongly encourage" its leaders to "subscribe" to its beliefs, *id.* at ¶¶ 10, 195, while other groups are allowed, for instance, to "encourage [their] members to be women," *id.* at ¶¶ 125, 40.[2] As long as the Policy permits fraternities and sports clubs to select leaders based on sex, it is viewpoint discrimination for the University to deny InterVarsity the right to select its leaders based on religion. *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 866 (7th Cir. 2006); *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 804 (9th Cir. 2011) (viewpoint discrimination where "some nonreligious but officially recognized groups appear to discriminate on prohibited grounds").

The University's dodge that of 38 other groups deregistered "only eight of those were religious groups" is unavailing for several reasons. First, at least ten of the groups were religious (including Cru, Wall-Breakers, and Young Life). Reply SoF ¶ 14. And the remaining groups were deregistered because they were defunct, failed to meet deadlines, or did not have the Human Rights Policy language in their constitutions—not because they had leadership standards deemed to violate the Policy. Reply SoF ¶¶ 12, 14. The University has not identified a single nonreligious group that has ever been deregistered for having leadership or membership standards based on any other protected category, despite the abundance of such groups. *See* Reply SoF ¶¶ 30-43, 186-190, 208-218.

[2] The Policy also prohibits discrimination based on "creed," Reply SoF ¶ 24, which includes "any strongly held philosophical beliefs." IVCF App. 0027, 0151. Yet secular ideological organizations are widely permitted to restrict leadership on the basis of their "creed." Reply SoF ¶¶ 33-34.

B. The University infringes InterVarsity's freedom of association.

The University effectively concedes that InterVarsity is an expressive association entitled to First Amendment protection. Opp.25. But it argues that in the context of a limited public forum, freedom of association "merge[s]" with free speech. Opp.18. If true, InterVarsity is still entitled to judgment for the same reasons set forth above. *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1001 (8th Cir. 2012) ("*CEF*") (once viewpoint discrimination shown, nature of forum no longer relevant).

The University also asserts—without evidence—that its Policy does not significantly alter InterVarsity's expression because InterVarsity can promote its views by including them in its constitution, making its beliefs central to its activities, and controlling access to leadership positions by invitation. Opp.26-27. But that argument makes no attempt to meet the legal standard, which requires courts to "give deference to an association's view of what would impair its expression." *Boy Scouts of Am. v. Dale*, 530 U.S. 604, 653 (2000). Instead, the University asks this Court to defer to *the University's* evidence-free blanket denials, and to ignore not only InterVarsity's views, but its sworn declarations. This Court would also have to ignore well-established law: "By regulating the identity of [a party's] leaders" the government can "color the [party's] message." *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 230-31 & n.21 (1989). That law doubly applicable here: "[w]hen it comes to the expression . . . of religious doctrine, there can be no doubt that . . . the content and credibility of a religion's message depend vitally upon" the messenger. *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., and Kagan, J., concurring). Pushing a religious group to accept leaders who do not embrace its message will "cause the group as it currently identifies itself to cease to exist." *Walker*, 453 F.3d at 863; *Dale*, 530 U.S. at 654. Relatedly, a core part of InterVarsity's message is that "Christian faith must be real and authentic to the individual," which it believes is undermined by "leaders who express our faith without personally accepting it." IVCF

App. 1953. The University fails to address this fundamental point. That it may be comfortable with core religious activities being led by hypocrites doesn't mean that the religious groups must agree.

Moreover, the University's position is irrational. If an organization can print and preach its beliefs, and not invite to leadership anyone who rejects those beliefs, and bring a successful claim if such a person somehow makes it into leadership anyway, *see Martinez*, 561 U.S. at 706 (Kennedy, J., concurring), there is no legitimate reason to stop the organization from simply requiring its leaders to affirm its beliefs in the first instance.

Finally, the University cites *Martinez* for the contention that the risk of hostile takeovers is "more hypothetical than real." Opp.26. But *Martinez* is distinguishable, not least because it concerned an all-comers policy and for the reasons noted above. In any event, Justice Kennedy's controlling concurrence did not share the plurality's disregard for the risk of hostile takeovers, stating that if even an all-comers policy were used to "challenge [a group's] leadership in order to stifle its views," a "substantial case" would be made. *Id*. at 706 (Kennedy, J., concurring).

C. The University infringes InterVarsity's free exercise rights.

The University concedes, as it must, that if its Policy is not neutral or generally applicable, then "strict scrutiny applies" under the Free Exercise Clause. Opp.29. It then argues that its policy *is* neutral, generally applicable, and in any event passes strict scrutiny. Each argument fails.

General Applicability. The University identifies the interest undergirding its Policy as "allowing all students equal access to the public education for which they—and Iowa taxpayers have paid." Opp.29. The University thus insists that InterVarsity cannot "exclud[e] . . . students from its leadership team on the basis of religion." Opp.7. But the University concedes that *it* grants exemptions from its Policy—either through admitted nonenforcement or express categorical exceptions—for "sports clubs, sororities and fraternities," "sports teams," and "[student] groups and [University] programs[.]" Opp.31-32. It also concedes that it allows student groups, Greek groups,

sports teams, sports clubs, and even University programs to exclude students on the basis of "race, national origin, sex, sexual orientation, gender identity, status as a U.S. veteran, and/or military service." Reply SoF ¶¶ 34-40, 209-213, 215, 218. Finally, the University does not rebut InterVarsity's argument that the Policy allows a "silent" exemption for political and other groups to exclude students based on their adherence to political or ideological beliefs. Opp.33-34.

As noted in the Department of Justice's Statement of Interest in *BLinC*, "[a] governmental entity engages in discrimination that triggers heightened scrutiny under the Free Exercise Clause where it grants exemptions from a neutral and generally applicable rule for one or more secular reasons, but fails to grant the same exemption for religious reasons." DOJ Br. at 21 [*BLinC* Dkt 96]. That applies here. The extraordinarily broad exemptions for fraternities and sports clubs, which count almost 20% of the student body as their members, leave students excluded from countless membership, leadership, or program positions annually—compared to a handful leadership positions at InterVarsity each year. Op.Br.17. Moreover, the University does not even try to explain how its exemptions do not threaten its interests in equal access "in a similar or greater degree than" InterVarsity's leadership requirement. *Mitchell Cty. v. Zimmerman*, 810 N.W.2d 1, 16 (Iowa 2012) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). Thus, the Policy must face strict scrutiny.

Neutrality. The University admits that it forbids InterVarsity from selecting leaders "on the basis of religion." Opp.7; *accord* Op.Br.18. Thus, its Policy fails to meet even the "minimum requirement of neutrality" that a law operate "without regard to religion." Op.Br.18 (citing *Lukumi*, 508 U.S. at 533 and *Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012, 2020-21 (2017)). For that reason, the Policy "triggers the most exacting scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2020-21.

The University argues that InterVarsity must show "discriminatory intent" to show a lack of neutrality. Opp.31. But "the free exercise clause is not confined to actions based on animus." *Shrum v. City of Coweta*, 449 F.3d 1132, 1144-45 (10th Cir. 2006); *see also Hassan v. City of New York*, 804 F.3d 277, 309 (3d Cir. 2016) (assertions that "overt hostility and prejudice are required" to make Free Exercise claims "easily fail"); *accord Cent. Rabbinical Cong. v. New York City Dep't of Health*, 763 F.3d 183, 197-98 (2d Cir. 2014).

Further, InterVarsity *has* submitted evidence showing that the University has acted with discriminatory intent toward InterVarsity. Op.Br.18. Indeed, the University "freely admits that its review process for student constitutions is inconsistent," that the Policy "has not been applied identically to each campus group," and that it conducted its review process in a way that started with religious groups and subjected them to more scrutiny than other groups. Reply SoF ¶¶ 181-82, 218. And if there was any doubt before, there isn't now. To hear the University tell it, InterVarsity's well-established, long-accommodated religious leadership requirement somehow overnight transformed into ugly "private discrimination" that the University tolerates only under compulsion, but for which it need not offer "state support." Opp.7. Yet the University gladly funds much larger groups and million-dollar programs that "exclude opposite-sex individuals" and "Caucasians," among many others, because it asserts doing so contributes to a "rich diversity of people" in a way that allowing similar accommodations for religious groups inexplicably would not. Opp.32-33. "A double standard is not a neutral standard." *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012). The University's "exception-ridden policy" is "the antithesis of a neutral and generally applicable policy," and thus "must run the gauntlet of strict scrutiny." *Id*.

D. The University fails strict scrutiny.

Viewpoint-based discrimination against religion is "invalid unless . . . it is justified by a compelling government interest and is narrowly drawn to serve that interest." *Brown v. Entm't Merchs.*

Ass'n, 564 U.S. 786, 799 (2011); *Lukumi*, 508 U.S. at 533. Because such discrimination is a "blatant" and "egregious" form of speech regulation, *Rosenberger*, 515 U.S. at 829, it is "rare" that it would "ever be permissible." *Brown*, 564 U.S. at 799. The discrimination here is not the exception.

The University claims its compelling interests are in "providing a safe environment for a great diversity of student voices, free of discrimination on the basis of protected characteristic, while allowing all students equal access to the public education for which they—and Iowa taxpayers—have paid." Opp.29. But the University undermines this argument by admitting that it grants broad *exemptions* from the Policy precisely to ensure the "rich diversity" that obtains when groups are allowed to associate around shared beliefs or identities. Opp.32. Further, the University's argument relies on the kinds of "broadly formulated" interests that have been held insufficient for decades, failing to meet its burden to prove the "asserted harm of granting specific exemptions to particular religious claimants." *Gonzales v. O Centro*, 546 U.S. 418, 431 (2006). There is no evidence, for example, that students feel unsafe when InterVarsity is allowed to select leaders who embrace its faith. To the contrary, the only evidence in the record is that no student ever complained about InterVarsity's religious leadership standards, and that the University itself awarded InterVarsity for its service to the student body at a time when InterVarsity was still allowed to select religious leaders. Reply SoF ¶¶ 4-5, 9. Thus, the University has made no showing that it has an "actual problem" justifying making InterVarsity select leaders who reject its faith. *Brown*, 564 U.S. at 799.

Moreover, the University's wildly underinclusive application of its alleged compelling interests undercuts its claims. "Precision of regulation must be the touchstone in First Amendment context." *Knox v. Serv. Emps. Int'l Union*, 567 U.S. 298, 314 n.3 (2012) (internal quotation marks omitted). Here, however, the University has never in the past even attempted to ensure access by every student to every organization, and still today concedes that it does not have an all-comers

policy. And even for those categories in its Policy, the University has not sought to enforce equal access for all covered individuals. Fraternities and sororities select members and leaders on the basis of sex and, it appears, race. Reply SoF ¶¶ 186, 216. Sports teams and musical groups are allowed to remain sex segregated. *Id.* at ¶¶ 39, 43-48. And various other organizations segregate based on other protected categories. *Id.* at ¶ 39. This "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. And, again, because the University's interpretation and application of its Policy "leaves appreciable damage to [its] supposedly vital interest[s] unprohibited," the ban on religious leadership selection "cannot be regarded as protecting an interest of the highest order." *Lukumi*, 508 U.S. at 547 (quotation and alteration marks omitted). The University can have no compelling interest in pursuing its alleged interests vis-à-vis religious groups alone. *Brown*, 564 U.S. at 803 n.9 (no "compelling interest in each marginal percentage point by which [government] goals are advanced.").

The University also tries to hide behind the difference between flat compulsion and discriminatory favoritism. Opp.27. But that ship has sailed. *CEF*, 690 F.3d at 1001-02 (rejecting similar argument); *Trinity Lutheran*, 137 S. Ct. at 2024 (same).

Finally, Defendants have not proven that there are no more narrowly tailored ways to achieve their interests. To meet this standard, they must prove that the Policy "is necessary," is "not underinclusive," and "could be replaced by no other regulation." *281 Care Comm. v. Arneson*, 766 F.3d 774, 787 (8th Cir. 2014). But as demonstrated in Intervarsity's opening brief, there is no evidence that the Policy is necessary. Op.Br.20. Rather, the Policy had previously been applied to allow all student groups to require their leaders to embrace their missions, an approach that yielded over 500 student groups and zero complaints before 2017 and which is still followed at other Iowa universities. *Id*. Further, there is plenty of evidence that the Policy is underinclusive. And finally,

the University failed to prove that the Policy could not be replaced by another approach—such as perhaps University "counterspeech" giving its views on leadership. *281 Care*, 766 F.3d at 793.

II. The University violates the Religion Clauses.

The Religion Clauses protect InterVarsity's selection of its religious leadership. Op.Br.21. Defendants concede everything necessary to rule for InterVarsity. For instance, they admit not only that InterVarsity is a religious group, but that religious student groups at the University can do everything churches do, Reply SoF ¶ 147; that some are essentially churches, *id.* at ¶¶ 32, 147; and that they are "voluntary" and "separate legal entities from the University" that exist regardless of registered status, *id.* at ¶ 20. Indeed, InterVarsity performs many of the functions of a church, such as worship, prayer, and religious teaching. *Id.* at ¶ 4. Similarly, the University does not contest that InterVarsity's student leaders perform significant religious functions, receive religious training, and are the primary embodiment of InterVarsity's religious mission. *Id.* at ¶¶ 5-8. That is more than enough to rule for InterVarsity as a matter of law. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833 (6th Cir. 2015) (issue is "pure question of law").

Defendants' sole counter is that religious groups forfeit their rights by accepting *de minimis* financial support from an account funded by their own student members. Opp.34. Not so. First, Defendants miss the point: most of the harm of derecognition results from denial of equal access to speech opportunities and forums, not funding. Second, even as to funds, the argument is inconsistent with the RSO Policy, which promises to grant funds without "inhibit[ing] the group's exercise of First Amendment rights." IVCF App. 0367. Third, government cannot strip religious groups of their First Amendment rights as a condition of "participat[ing] in an otherwise generally available public benefit program," *Trinity Lutheran*, 137 S. Ct. at 2024, and religious groups do

not waive Religion Clause rights by merely "accepting federal and state funds." *Petruska v. Gannon Univ.*, 462 F.3d 294, 309 (3rd Cir. 2006); Op.Br.22 (listing protected entities such as hospitals and nursing homes which receive state funding).[3]

The University also suggests that the Religion Clauses are inapplicable to groups that "exist within the confines of a limited public forum." Opp.35. But it is undisputed that InterVarsity *exists* regardless of the University's recognition. The only question is whether the University can require a religious group to allow the State to entangle itself in internal religious affairs as a condition of registered status. The answer is no. *Trinity Lutheran*, 137 S. Ct. at 2024. And that's doubly true for religious leadership matters, since the Religion Clauses set a "structural" limitation that "categorically prohibits state and federal governments from becoming involved in religious leadership disputes." *InterVarsity*, 777 F.3d at 836.

And it would be passing strange for the Religion Clauses to have *more* application to paid employment positions that are predominantly used for nonreligious purposes and otherwise covered by important nondiscrimination laws such as Title VII, but *none* to purely volunteer positions that perform almost wholly religious functions for purely volunteer entities which exist for solely religious purposes. IVCF App. 1952-53. No court has accepted such an argument. *EEOC v. Roman Catholic Diocese of Raleigh*, 48 F. Supp. 2d 505, 513–14 (E.D.N.C. 1999), *aff'd*, 213 F.3d 795 (4th Cir. 2000) (position that could be filled by "an employee or volunteer" protected); *Schleicher v. Salvation Army*, 518 F.3d 472, 474 (7th Cir. 2008) (positions that "receive no wages" protected).

[3] For example, it is well established that the exception protects religious universities which accept Title IV funds. *Compare Gannon Univ.*, 462 F.3d at 306 *and EEOC v. Catholic Univ. of Am.,* 83 F.3d 455, 465 (D.C. Cir. 1996), *with* U.S. Dep't of Educ., Fed. Student Aid, Fed. Sch. Code List (2018) https://ifap.ed.gov/fedschcodelist/attachments/1819FedSchoolCodeList.xlsx (listing both universities as Title IV recipients, with 100 Jewish, Catholic, and Protestant seminaries).

III. InterVarsity is entitled to a permanent injunction.

Defendants make no response to three of the four grounds for a permanent injunction, which means those issues "are therefore deemed waived." *Dysart v. Gwin*, 2009 WL 1588653, *6 (E.D. Mo. June 5, 2009) (collecting cases); Op.Br.23-24. Defendants' only argument is that irreparable harm is not currently occurring because the University is not *presently* treating InterVarsity as deregistered. Opp.35. But the University admits that it has only "temporarily" agreed to "treat" InterVarsity as if it had registered status (and only due to this Court's rulings), and that its Policy against InterVarsity's selection of religious leaders remains in force. Reply SoF ¶ 15. Thus, the University's Policy still violates InterVarsity's constitutional rights and requires injunction.

The University also briefly repeats the meritless arguments from its Rule 56(d) motion in its opposition brief. As InterVarsity will explain in its forthcoming response to the motion, these arguments fall well below the standard set by Rule 56(d) and should be rejected on that basis alone. Moreover, given its concessions to this Court, both in its papers and in the voluminous existing record, there is no need for further development of the record to rule on the three claims raised in InterVarsity's motion for partial summary judgment. Delay is particularly unwarranted in light of the sensitive First Amendment rights at issue.

CONCLUSION

InterVarsity respectfully requests the Court grant summary judgment, enter a permanent injunction, and find that Defendants violated InterVarsity's clearly established constitutional rights.

Respectfully submitted,

/s/ *Eric S. Baxter*
Eric S. Baxter*
Lead Counsel
Daniel H. Blomberg*
The Becket Fund for Religious Liberty
1200 New Hampshire Ave. NW, Suite 700

Washington, DC, 20036
(202) 955-0095 PHONE
(202) 955-0090 FAX
ebaxter@becketlaw.org

Christopher C. Hagenow
Hagenow & Gustoff, LLP
600 Oakland Rd. NE
Cedar Rapids, IA 52402
(515) 868-0212 phone
(888) 689-1995 fax
chagenow@whgllp.com

Counsel for Plaintiff
**Admitted pro hac vice*