

No. 19-3389

**United States Court of Appeals
for the Eighth Circuit**

INTERVARSITY CHRISTIAN FELLOWSHIP/USA AND INTERVARSITY
GRADUATE CHRISTIAN FELLOWSHIP,

Plaintiffs-Appellees,

v.

THE UNIVERSITY OF IOWA, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Iowa
No. 3:18-cv-00080

APPELLEES' APPENDIX VOL. 10

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APPENDIX INDEX

VOLUME 10

Tab 19: District Court Appendix Volume V-A	2782
• Melissa Shivers Deposition.....	2784
• Baxter Declaration #5	3001

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

INTERVARSITY CHRISTIAN
FELLOWSHIP/ USA, and INTERVARSITY
GRADUATE CHRISTIAN FELLOWSHIP,

Plaintiffs,

v.

THE UNIVERSITY OF IOWA; BRUCE
HARRELD, in his official capacity as
President of the University of Iowa and in his
individual capacity; MELISSA S. SHIVERS,
in her official capacity as Vice President for
Student Life and in her individual capacity;
WILLIAM R. NELSON, in his official
capacity as Associate Dean of Student
Organizations, and in his individual capacity;
ANDREW KUTCHER in his official capacity
as Coordinator for Student Organization
Development; and THOMAS R. BAKER, in
his official capacity as Student Misconduct
and Title IX Investigator and in his individual
capacity,

Defendants.

Civ. Action No. 18-cv-00080

APPENDIX VOLUME V-A

**OF PLAINTIFFS' STATEMENT
OF MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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APPENDIX INDEX

Volume V-A

Tab 1 – Deposition Transcript of Melissa Shivers.....	2391
Tab 2 – Exhibit 1	2474
Tab 3 – Exhibit 2	2478
Tab 4 – Exhibit 3	2480
Tab 5 – Exhibit 4	2482
Tab 6 – Exhibit 5	2489
Tab 7 – Exhibit 6	2492
Tab 8 – Exhibit 7	2493
Tab 9 – Exhibit 8	2495
Tab 10 – Exhibit 9	2533
Tab 11 – Exhibit 10	2536
Tab 12 – Exhibit 11	2539
Tab 13 – Exhibit 12	2607
Tab 14 – Baxter Declaration	2608
Tab 15 – Michael Anderson Invoice	2609



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

INTERVARSITY CHRISTIAN
FELLOWSHIP/USA, et al.,

Plaintiffs,

vs.

THE UNIVERSITY OF IOWA,
et al.,

Defendants.

Civil Action No.
18-cv-00080-SMR-SBJ

DEPOSITION OF

MELISSA SHIVERS, PH.D.

TAKEN ON
WEDNESDAY, MARCH 27, 2019
8:55 A.M.

2500 CROSSPARK ROAD, ROOM W219
CORALVILLE, IOWA 52241

IVCF App. 2784

IVCF App 2391

2	4
1 APPEARANCES	1 INDEX
2	2 Page
3 APPEARING ON BEHALF OF THE PLAINTIFFS:	3
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23	23
24	24
25	25
3	5
1 APPEARANCES CONTINUED	1 EXHIBITS
2	2 Exhibit Page
3 APPEARING ON BEHALF OF THE DEFENDANTS:	3
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16 (319) 335-2830 (Fax)	16
17 Nathan-levin@uiowa.com	17 7 EMAIL STRING 71
18	18
19	19 8 RESISTANCE FOR SUMMARY 78
20	20 JUDGEMENT
21	21
22	22 9 STUDENT LIFE ARTICLE 87
23	23
24	24 10 STUDENT LIFE ARTICLE 88
25	25

<p style="text-align: right;">6</p> <p>1 EXHIBITS CONTINUED</p> <p>2 Exhibit Page</p> <p>3</p> <p>4 11 MOTION FOR PARTIAL SUMMARY 112</p> <p>5 JUDGEMENT</p> <p>6</p> <p>7 12 FSL BY THE NUMBERS 122</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 A. Okay.</p> <p>2 Q. If you can, try to provide verbal answers</p> <p>3 since he can't catch a nod or an uh-huh or unh-unh</p> <p>4 or something like that. So a yes or a no or</p> <p>5 something like that to those questions.</p> <p>6 If my question doesn't make sense, if it's</p> <p>7 confusing at all, please just ask me to repeat it.</p> <p>8 I want to make sure that we're communicating clearly</p> <p>9 so we're on the same page.</p> <p>10 Can you please state your name for the</p> <p>11 record?</p> <p>12 A. Melissa Shivers.</p> <p>13 Q. How long have you been employed with the</p> <p>14 University of Iowa?</p> <p>15 A. Nineteen, 20 months.</p> <p>16 Q. And what position do you currently hold at</p> <p>17 the university?</p> <p>18 A. Vice president for Student Life and I'm</p> <p>19 also the interim associate vice president for</p> <p>20 Diversity, Equity, and Inclusion.</p> <p>21 Q. Okay. Is that the same position you've</p> <p>22 held during the 19-20 months that you've been with</p> <p>23 the university?</p> <p>24 A. No.</p> <p>25 Q. Okay. Can you tell us about what you</p>
<p style="text-align: right;">7</p> <p>1 DEPOSITION OF</p> <p>2 MELISSA SHIVERS, PH.D.</p> <p>3 TAKEN ON</p> <p>4 WEDNESDAY, MARCH 27, 2019</p> <p>5 8:55 A.M.</p> <p>6</p> <p>7 MELISSA SHIVERS, having been first duly sworn, was</p> <p>8 examined and testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. BLOMBERG:</p> <p>11 Q. Good morning, Dr. Shivers. My name is</p> <p>12 Daniel Blomberg. I'm counsel for the InterVarsity</p> <p>13 plaintiffs in this case. And so I'm just going to</p> <p>14 ask you some questions about the facts of the case.</p> <p>15 Have you ever been deposed before?</p> <p>16 A. I have not.</p> <p>17 Q. Okay. So let me just give you a couple</p> <p>18 ground rules as we go through just to help our</p> <p>19 conversation.</p> <p>20 A. Okay.</p> <p>21 Q. First, if you could wait for me to finish</p> <p>22 my question, I will try to wait for you to finish</p> <p>23 your answer. And that will make it easier for Ryan</p> <p>24 to type everything down so we can make sure we get a</p> <p>25 complete record.</p>	<p style="text-align: right;">9</p> <p>1 previously did with the university?</p> <p>2 A. Yes. I've served as the vice president</p> <p>3 for Student Life since July of 2017, and assumed the</p> <p>4 interim role on May 26, 2018.</p> <p>5 Q. Okay. What roles before coming to the</p> <p>6 University of Iowa, what roles have you held in</p> <p>7 other universities?</p> <p>8 A. Associate vice chancellor and dean of</p> <p>9 students at the University of Tennessee in</p> <p>10 Knoxville. I was also the assistant vice chancellor</p> <p>11 for Student Life at the University of Tennessee at</p> <p>12 Knoxville. I worked at the University of Georgia as</p> <p>13 director of Intercultural Affairs. Prior to that I</p> <p>14 was at Clemson University as the director of</p> <p>15 Intercultural Affairs.</p> <p>16 Q. Knoxville and Clemson, those are some</p> <p>17 beautiful places to be.</p> <p>18 MR. CARROLL: Can you slow down just a</p> <p>19 little bit speaking?</p> <p>20 THE WITNESS: Yes.</p> <p>21 MR. CARROLL: I'll do it for him.</p> <p>22 THE WITNESS: Okay, sorry.</p> <p>23 MR. CARROLL: That's only for him. I</p> <p>24 don't care about Dan.</p> <p>25 THE WITNESS: Thank you. I have a</p>

<p style="text-align: right;">10</p> <p>1 tendency to --</p> <p>2 MR. CARROLL: No, I'm just kidding.</p> <p>3 MR. BLOMBERG: I do the same thing.</p> <p>4 MR. CARROLL: It's human nature.</p> <p>5 MR. BLOMBERG: Yes.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. BLOMBERG:</p> <p>8 Q. And where were you educated?</p> <p>9 A. My undergraduate career was at Georgia</p> <p>10 Southern University. My masters is from Clemson</p> <p>11 University and my Ph.D. is from the University of</p> <p>12 Georgia.</p> <p>13 Q. Okay. Do you understand that you're here</p> <p>14 testifying both on your own behalf and on behalf of</p> <p>15 the university today?</p> <p>16 A. Yes.</p> <p>17 Q. Let me show you a document real quick.</p> <p>18 MR. BLOMBERG: Can you give me Document 1,</p> <p>19 please, there? Ryan, could you please mark this?</p> <p>20 THE REPORTER: Exh bit 1?</p> <p>21 MR. BLOMBERG: Yep.</p> <p>22 THE REPORTER: Exh bit 1 has been marked.</p> <p>23 (WHEREUPON, Exhibit 1 was marked for</p> <p>24 identification.)</p> <p>25 BY MR. BLOMBERG:</p>	<p style="text-align: right;">12</p> <p>1 A. As the vice president for Student Life, I</p> <p>2 oversee 16 departments that range from University</p> <p>3 Housing and Dining to Student Counseling, Student</p> <p>4 Health, and Student Wellness. And then also</p> <p>5 included in that are Student Organizations, our</p> <p>6 Center for Student Involvement and Leadership.</p> <p>7 Q. Okay. Would that be kind of the student</p> <p>8 experience side of the duties that you have?</p> <p>9 A. Certainly, the out-of-class student</p> <p>10 experience.</p> <p>11 Q. Okay. And are there -- who are your</p> <p>12 direct reports in that particular component of your</p> <p>13 duties?</p> <p>14 A. Okay. The interim associate vice</p> <p>15 president for Student Life and dean of students is</p> <p>16 Dr. Angie Reams. She is a direct report. Dr. Sarah</p> <p>17 Hansen -- sorry, Sarah Hansen does not have a</p> <p>18 doctorate. Sarah Hansen is the associate vice</p> <p>19 president for Student Life. Lori Berger is the</p> <p>20 director for Human Resources. Bret Gothe is the</p> <p>21 assistant to the vice president for Student Life.</p> <p>22 Von Stange is the assistant vice president and</p> <p>23 senior director for University Housing and Dining.</p> <p>24 Scott Seagren is our director of Budget and Finance</p> <p>25 for the division. And I think at this point those</p>
<p style="text-align: right;">11</p> <p>1 Q. Do you recognize that document?</p> <p>2 A. It would be helpful to know if there's</p> <p>3 anything in particular about the document that you</p> <p>4 would want me to specifically acknowledge.</p> <p>5 Q. Certainly. Can you just take a minute and</p> <p>6 you can look through it and then see if you've ever</p> <p>7 seen this document before.</p> <p>8 A. Yes, I have.</p> <p>9 Q. And so you understand on page one where it</p> <p>10 says that the university has identified you to speak</p> <p>11 on topics one, three, and nine of Exh bit A?</p> <p>12 A. Yes.</p> <p>13 Q. And are you prepared to speak on topics</p> <p>14 one, three, and nine of Exhibit A?</p> <p>15 A. Yes.</p> <p>16 Q. Thank you.</p> <p>17 Did you review any documents in</p> <p>18 preparation for today's deposition?</p> <p>19 A. I did not.</p> <p>20 Q. All right. Did you speak to anyone to</p> <p>21 prepare for today's deposition other than your legal</p> <p>22 counsel?</p> <p>23 A. No.</p> <p>24 Q. Okay. Can you please describe for me your</p> <p>25 duties at the university in your current position?</p>	<p style="text-align: right;">13</p> <p>1 are all of my direct repots.</p> <p>2 Q. Okay. And just to make sure I understand,</p> <p>3 has the dean of students position been filled yet?</p> <p>4 A. It has not. Dr. Reams is serving in the</p> <p>5 interim role effective January 14, 2019.</p> <p>6 Q. Okay. And then on the subject of student</p> <p>7 groups, about how often do you in your role interact</p> <p>8 with student groups directly, on say a weekly basis?</p> <p>9 A. Maybe once or twice, and that's typically</p> <p>10 University of Iowa Student Government and Graduate</p> <p>11 Professional Student Government.</p> <p>12 Q. Okay. And how often do you interact with</p> <p>13 your subordinates on a weekly basis who are</p> <p>14 responsible for managing and serving those student</p> <p>15 organizations?</p> <p>16 A. Interim associate vice president, Dr.</p> <p>17 Angie Reams, we have once a month meetings face to</p> <p>18 face.</p> <p>19 Q. Okay.</p> <p>20 A. And so the organizations and the Center</p> <p>21 for Student Involvement and Leadership report up</p> <p>22 through her, so I work more directly with Dr. Reams</p> <p>23 than I would most of the staff.</p> <p>24 Q. Okay. About how many subordinates do you</p> <p>25 have that are directly focused on managing or</p>

<p style="text-align: right;">14</p> <p>1 serving student organizations?</p> <p>2 A. I don't recall the total number.</p> <p>3 Q. Do you have an estimate, like between one</p> <p>4 and three or five and 10?</p> <p>5 A. That serve student organizations?</p> <p>6 Q. Mm-hmm. Yes, ma'am.</p> <p>7 A. Gosh, I'd probably say an estimate of</p> <p>8 seven to eight that work with various student orgs.</p> <p>9 Q. And what would be -- can you identify some</p> <p>10 of those individuals that you recall who work with</p> <p>11 student organizations?</p> <p>12 A. Sure. Erin McHale works with fraternities</p> <p>13 and sororities, as does Meghan, Kyle Fowler, Andy</p> <p>14 Kutcher, Paul Mintner, Bill Nelson in some sort of</p> <p>15 loose way in supervision of those particular staff</p> <p>16 that I've mentioned, Tab Wiggins. I'm forgetting</p> <p>17 quite a few folks. Nellie Link works with Student</p> <p>18 Orgs but more so Programming. That may be -- and</p> <p>19 then also the folks over in Recreational Services</p> <p>20 but I don't know that they work necessarily with</p> <p>21 Student Orgs other than the sport clubs.</p> <p>22 Q. Okay. As a student yourself, were you</p> <p>23 ever involved in student organizations?</p> <p>24 A. I was involved in student organizations.</p> <p>25 Q. So what -- how? Like how? In what</p>	<p style="text-align: right;">16</p> <p>1 Q. In what ways was it good? What are some</p> <p>2 of the specific ways that it helped you?</p> <p>3 A. My ability to be able to think about</p> <p>4 service and be oriented related to service</p> <p>5 organizations. It was really important to be able</p> <p>6 to serve in the community. It was critically</p> <p>7 important for me.</p> <p>8 Q. And the sorority helped you with being</p> <p>9 able to engage in that way?</p> <p>10 A. Yes. And I also think that I came to the</p> <p>11 university with a servant heart and spirit. So</p> <p>12 being able to be involved in service organizations</p> <p>13 and doing kind of service work was really just a</p> <p>14 part of what we did even in growing up, so that</p> <p>15 wasn't particular new.</p> <p>16 Q. Okay. So you'd say you came with that</p> <p>17 focus and the sorority kind of gave you an avenue to</p> <p>18 pursue it?</p> <p>19 A. Sure. Yes.</p> <p>20 Q. Okay. Anything else about the sorority</p> <p>21 experience other than service that was helpful to</p> <p>22 you?</p> <p>23 A. No, I think I was able to make friends, of</p> <p>24 course.</p> <p>25 Q. Were there any other student groups that</p>
<p style="text-align: right;">15</p> <p>1 groups?</p> <p>2 A. So I was certainly involved in Alpha Kappa</p> <p>3 Alpha Sorority, Inc., and that was really the extent</p> <p>4 of my student involvement. And then as an advisor</p> <p>5 to a sorority.</p> <p>6 Q. Okay. Was that a different sorority or</p> <p>7 was that the same sorority?</p> <p>8 A. Same sorority, different institution.</p> <p>9 Q. Okay. So it was Alpha Kappa Alpha?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And what did you do with --</p> <p>12 MR. CARROLL: Yes.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. BLOMBERG:</p> <p>15 Q. And what did you do with Alpha Kappa</p> <p>16 Alpha?</p> <p>17 A. In terms of the advisor? I was graduating</p> <p>18 my undergraduate career, so I didn't have a lot of</p> <p>19 time with the sorority. It was more so as a</p> <p>20 graduate advisor that I had a more active role in</p> <p>21 serving in service organizations.</p> <p>22 Q. And what, you know, how was your</p> <p>23 experience being a part of the sorority? Was that a</p> <p>24 good experience for you?</p> <p>25 A. I had a good experience.</p>	<p style="text-align: right;">17</p> <p>1 you were active with?</p> <p>2 A. No.</p> <p>3 Q. Are you familiar with the university's</p> <p>4 policy entitled registration of student</p> <p>5 organizations?</p> <p>6 A. Yes.</p> <p>7 Q. And what is your understanding of how that</p> <p>8 policy applies to the leadership selection of</p> <p>9 student groups?</p> <p>10 A. Students are able to join student</p> <p>11 organizations based on their particular interests or</p> <p>12 wanting to learn more about a student organization.</p> <p>13 Students are able to be members of those</p> <p>14 organizations through the process of how it has been</p> <p>15 defined in terms of what is the purpose of the</p> <p>16 organization and then students decide. Depending on</p> <p>17 the organization there's certain ways that students</p> <p>18 become more acclimated. So they learn more about</p> <p>19 student orgs through the registration fairs, through</p> <p>20 the student organization fairs to determine whether</p> <p>21 or not that's an organization that they are</p> <p>22 interested in.</p> <p>23 And then in terms of the student</p> <p>24 organizations and how they go through their process</p> <p>25 of identifying or allowing individuals to apply for</p>

<p style="text-align: right;">18</p> <p>1 leadership positions I think varies. I don't know 2 the intimate details of how all of those work for 3 every single student will work. 4 Q. And with that process of kind of 5 identifying a student organization, a student fair, 6 is that an important process for recruitment and 7 membership selection? 8 A. I'm sorry, can you ask the question again? 9 Q. Certainly. It wasn't a great one. 10 The process of going to the student fairs 11 to find the student groups and find out what they're 12 about, would you say that's an important part of a 13 student group's recruitment? 14 A. I think it's important for students to 15 have an avenue to learn about different 16 organizations on campus. Yes. 17 Q. And would it be important, too, for the 18 student groups to have an avenue to be able to speak 19 to those students who want to learn about them? 20 A. Yes. 21 Q. Can you describe -- you mentioned Bill 22 Nelson earlier. Can you describe your work with 23 him? 24 A. When I arrived on campus, Bill was not a 25 direct report to me. He reported to the former dean</p>	<p style="text-align: right;">20</p> <p>1 A. That may be helpful. 2 Q. Yeah. So Bill Nelson was involved in 3 managing the university's response with Business 4 Leaders in Christ. 5 A. Yes. 6 Q. In fall 2017. Summer 2017 and fall 2017. 7 And the university made the decision to deregister 8 Business Leaders in Christ -- I'll call them BLinC -- 9 -- in late fall of 2017. Were you aware of that 10 process? 11 A. I arrived on campus in July of 2017. At 12 that point I think this issue was already moving 13 forward. I became aware of it when the appeal was 14 put into place by BLinC, when they submitted their 15 appeal. 16 Q. When you say their appeal, what are you 17 referring to? 18 A. The appeal to, I think, the sanction that 19 Dr. Nelson, when he or the department deregistered 20 BLinC. And then BLinC I think appealed the 21 deregistration. 22 Q. Okay. And what was the nature of your 23 understanding? What did you understand to be 24 happening at that point? 25 A. I worked really hard to not be as</p>
<p style="text-align: right;">19</p> <p>1 of students, Dr. Lyn Redington. So I had very 2 little interaction with Dr. Nelson until Dr. 3 Redington landed another position at a different 4 institution and then Dr. Nelson, and at that point, 5 Dr. Reams, who is the associate dean, both started 6 to report to me. Through that process is when I was 7 able to engage more with Dr. Nelson in terms of 8 learning more about the day-to-day work of the 9 Center for Student Involvement and Leadership. 10 Q. And when was it that Dr. Redington kind of 11 transitioned out and Dr. Nelson started directly 12 reporting to you? 13 A. I don't recall the exact date but it would 14 have been April or May of 2018. 15 Q. What was your interaction with him as it 16 regarded the school's decisions and review of the 17 Business Leaders in Christ student group? 18 A. I don't recall. 19 Q. Is there anything that would help refresh 20 your recollection about, you know, the interaction 21 and the kind of information you were aware of with 22 him? 23 A. Could you ask the question differently I 24 think? 25 Q. Certainly.</p>	<p style="text-align: right;">21</p> <p>1 intimately involved in that. I just understood the 2 issues of the case related to what had been assumed 3 or suggested by the student who levied the claims 4 regarding BLinC. 5 Q. And why do you say you worked really hard 6 not to be aware of it or understand? 7 A. Well, I just didn't know at any point in 8 time if they were going to need me to chime in in a 9 different objective way. 10 Q. Okay. What was your understanding of the 11 way that the registration of student organizations 12 policy applied to BLinC in fall of 2017? 13 A. I don't recall. 14 Q. Do you have a recollection of what the 15 policy's application would be for student groups at 16 that time as it related to leadership selection? 17 A. The policy -- human rights policy doesn't 18 give room for a differentiation between leadership 19 and membership. That was what I understood. 20 Q. So when you say -- when you say that, are 21 you saying that you believe that the policy allowed 22 differentiation between membership and leadership or 23 -- 24 A. That it did not allow differentiation -- 25 Q. Okay.</p>

<p style="text-align: right;">22</p> <p>1 A. -- between membership and leadership.</p> <p>2 Q. Okay. And so what was your understanding</p> <p>3 of how the policy would apply to a religious student</p> <p>4 group who wanted to ask its leaders to embrace its</p> <p>5 religious beliefs?</p> <p>6 A. Can you ask me that again?</p> <p>7 Q. Mm-hmm. So BLinC was a religious student</p> <p>8 group.</p> <p>9 A. Mm-hmm.</p> <p>10 MR. CARROLL: Yes?</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. BLOMBERG:</p> <p>13 Q. And so would -- what was your</p> <p>14 understanding about if the policy would allow BLinC</p> <p>15 to request that its leaders embrace its religious</p> <p>16 beliefs?</p> <p>17 A. I don't know that I understood or believed</p> <p>18 that the policy allowed for that as presented.</p> <p>19 Q. Was it your understanding that the policy</p> <p>20 would not permit BLinC to require its leaders to</p> <p>21 share its beliefs?</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss that understanding with</p> <p>24 anyone else at the university?</p> <p>25 MR. CARROLL: Other than counsel?</p>	<p style="text-align: right;">24</p> <p>1 do you mean?</p> <p>2 A. That there was -- that this organization</p> <p>3 had been deregistered.</p> <p>4 Q. Okay. So you made President Harreld aware</p> <p>5 that BLinC was being deregistered because of its</p> <p>6 religious leadership requirement?</p> <p>7 A. Letting him know generally that this is a</p> <p>8 student organization who was being deregistered.</p> <p>9 Q. And was he made aware -- let me say that</p> <p>10 again.</p> <p>11 Did you make him aware of the reason for</p> <p>12 which the student group was being deregistered?</p> <p>13 A. I don't recall the exact language that I</p> <p>14 used in communicating that.</p> <p>15 Q. And how did you communicate with him?</p> <p>16 A. Probably via phone.</p> <p>17 Q. And about when was that? Was that --</p> <p>18 A. Ooh.</p> <p>19 Q. -- early fall, late fall 2017, some other</p> <p>20 time period?</p> <p>21 A. I can't recall.</p> <p>22 Q. And would that be a part of your duties as</p> <p>23 vice president to make the president aware of things</p> <p>24 that are happening within your division?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">23</p> <p>1 BY MR. BLOMBERG:</p> <p>2 Q. Other than counsel?</p> <p>3 A. No.</p> <p>4 Q. So you didn't discuss it with Bill Nelson?</p> <p>5 A. Oh, sorry, yes. I did discuss it with</p> <p>6 Bill.</p> <p>7 Q. Okay.</p> <p>8 A. Once I was learning more about the case.</p> <p>9 Q. And what was the nature of that</p> <p>10 discussion?</p> <p>11 A. I don't recall the exact details of the</p> <p>12 discussion.</p> <p>13 Q. What generally do you recall?</p> <p>14 A. That there was a concern about the policy</p> <p>15 and perhaps if there is a -- if there was room there</p> <p>16 as it relates to the statement of faith that I think</p> <p>17 was included or submitted by the student</p> <p>18 organization BLinC and that there may have been some</p> <p>19 challenge to that because of the human rights</p> <p>20 policy.</p> <p>21 Q. Did you speak with President Harreld at</p> <p>22 all about that?</p> <p>23 A. Only making him aware that this was coming</p> <p>24 forward.</p> <p>25 Q. And when you say was coming forward, what</p>	<p style="text-align: right;">25</p> <p>1 Q. Did you seek any feedback from him at all</p> <p>2 about the decision?</p> <p>3 A. Feedback --</p> <p>4 Q. Input into the decision? I'm sorry, I</p> <p>5 interrupted you. Go ahead.</p> <p>6 A. No, not input into the decision.</p> <p>7 Q. On January 23, 2018, a Federal District</p> <p>8 Court found that the university -- it appeared that</p> <p>9 the university was selectively enforcing its policy</p> <p>10 against BLinC and required the university to</p> <p>11 reregister BLinC for 90 days. Are you familiar with</p> <p>12 that decision?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Did you ever look at that</p> <p>15 decision?</p> <p>16 A. Yes.</p> <p>17 Q. Did you read it?</p> <p>18 A. I reviewed it.</p> <p>19 Q. And when you say you reviewed it, how does</p> <p>20 reviewed it differ from read it?</p> <p>21 A. I read it. They're the same in my mind.</p> <p>22 Q. Okay. Okay. So you read the decision</p> <p>23 from the District Court in January 2018?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have anyone else in your office</p>

<p style="text-align: right;">26</p> <p>1 read it?</p> <p>2 A. In my office related to the staff that</p> <p>3 were associated with the case, Dr. Nelson and those</p> <p>4 folks I think also received it and read it.</p> <p>5 Q. Did you give it to them to read or was</p> <p>6 that coming from a different location?</p> <p>7 A. I can't recall.</p> <p>8 Q. And are you aware of if they read it in</p> <p>9 entirety or how, you know, what the instruction was</p> <p>10 for them as to how they should review it?</p> <p>11 A. I am not aware of if they read it in</p> <p>12 entirety but it was certainly shared with the hope</p> <p>13 that they would read it in its entirety.</p> <p>14 Q. And I just remembered, I have a cup of</p> <p>15 water. If at any point you need water or you need</p> <p>16 to take a break, please let me know. You're welcome</p> <p>17 to do that.</p> <p>18 A. Okay.</p> <p>19 Q. Sorry I didn't say that earlier.</p> <p>20 A. That's okay. Thank you.</p> <p>21 Q. And so you mentioned Dr. Nelson read it.</p> <p>22 Are you aware of anyone else of your subordinates</p> <p>23 who read the court's opinion?</p> <p>24 A. I imagine that Andy Kutcher would have</p> <p>25 read it as he was intimately involved. And that's</p>	<p style="text-align: right;">28</p> <p>1 Q. Yeah. So don't tell me anything of</p> <p>2 substance of those conversations that were attorney-</p> <p>3 client privileged.</p> <p>4 A. Right.</p> <p>5 Q. But you had a conversation with President</p> <p>6 Harreld with counsel present?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Was that just one conversation</p> <p>9 or was it more than one conversation?</p> <p>10 A. I can't recall. I can't recall.</p> <p>11 Q. Do you -- so it could be one, it could be</p> <p>12 10?</p> <p>13 A. It could be one. It could be two.</p> <p>14 Q. Okay.</p> <p>15 A. Certainly, I don't imagine there were 10.</p> <p>16 Q. Okay. And about when would those</p> <p>17 conversations have taken place? The opinion came</p> <p>18 down January 23rd. Do you have an estimate between,</p> <p>19 you know, February, March, April?</p> <p>20 A. I don't. I can't recall when we would</p> <p>21 have met.</p> <p>22 Q. Would it have been before the summer of</p> <p>23 2018?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. Did you direct anyone in your office to be</p>
<p style="text-align: right;">27</p> <p>1 all that I can recall right now in terms of my</p> <p>2 subordinates that would have read it.</p> <p>3 Q. Do you know if the decision was sent to</p> <p>4 President Harreld?</p> <p>5 A. I do not know.</p> <p>6 Q. Did you ever report on it to President</p> <p>7 Harreld?</p> <p>8 A. I did not.</p> <p>9 Q. Did you ever have any discussions about</p> <p>10 the decision with President Harreld?</p> <p>11 A. Yes.</p> <p>12 Q. And what were the nature of those</p> <p>13 discussions?</p> <p>14 MR. CARROLL: Other than -- other than</p> <p>15 your counsels in the room.</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. BLOMBERG: That's right.</p> <p>18 THE REPORTER: With counsel in --</p> <p>19 MR. CARROLL: Right. I want you to be</p> <p>20 clear.</p> <p>21 THE WITNESS: Yes. With counsel in the</p> <p>22 room.</p> <p>23 MR. BLOMBERG: Okay.</p> <p>24 THE WITNESS: It wasn't --</p> <p>25 BY MR. BLOMBERG:</p>	<p style="text-align: right;">29</p> <p>1 trained on the application of the decision?</p> <p>2 A. Can you ask me that again?</p> <p>3 Q. Mm-hmm. So the court said, you know,</p> <p>4 issued the ruling that said that selective</p> <p>5 enforcement raises a First Amendment problem. Did</p> <p>6 you have anyone in your office get trained about</p> <p>7 what the First Amendment required for the</p> <p>8 application of the university policy to student</p> <p>9 groups?</p> <p>10 A. We certainly reviewed the First Amendment</p> <p>11 and our policies, but training, I'm not sure exactly</p> <p>12 what you mean by training.</p> <p>13 Q. Well, what do you mean by review? What</p> <p>14 kind of review took place when you were looking at</p> <p>15 the First Amendment?</p> <p>16 A. Making sure that we understood what the</p> <p>17 findings were or what had been suggested to us as</p> <p>18 the concerns related to the selective enforcement</p> <p>19 and then looking at our current policies.</p> <p>20 Q. And what was your understanding of what</p> <p>21 the court's ruling was as it related to selective</p> <p>22 enforcement?</p> <p>23 A. It was the human rights policy was in</p> <p>24 alignment and was supported, yet the application, I</p> <p>25 think there as a sense of belief that it was a</p>

<p style="text-align: right;">30</p> <p>1 complaint-based process and that those issues had 2 not been addressed across all of the organizations 3 in the same way, at least based on the judge's 4 assessment. 5 Q. Was there a sense in the judge's 6 assessment that some groups were having the policy 7 applied differently to them than other groups? 8 A. I think so. 9 Q. Do you have any recollection of which 10 groups were having the policy applied differently 11 than BLinC had had it applied? 12 A. I do not recall which orgs. 13 Q. About when did this review take place? 14 A. I cannot recall. 15 Q. And was this what you were talking about 16 earlier with the decision going out to various 17 people, was that the review, people looking at the 18 decision or was there something in addition to it? 19 A. That, looking at the decision. 20 Q. Okay. And were there any meetings that 21 took place other than the ones with counsel and 22 President Harreld to discuss the application of the 23 decision to university policy? 24 A. I think I met with the staff once. 25 Q. Okay.</p>	<p style="text-align: right;">32</p> <p>1 Q. No, go ahead. Sorry. 2 A. -- to include the human rights policy. 3 Q. Were you involved in setting up that 4 review process? 5 A. I was in the meeting where we ta ked about 6 the review process. 7 Q. And was that the meeting that we ta ked 8 about earlier with Andy and Paul and Bill or is that 9 a different meeting? 10 A. I can't recall. I think it may have been 11 the same meeting. 12 Q. Okay. And who was tasked with leading the 13 review process? 14 A. Dr. Nelson worked with his team and that 15 would include Andy Kutcher and other staff members I 16 think within the Center for Student Involvement and 17 Leadership. 18 Q. Do you know if you or your subordinates 19 were instructed to look for beliefs, specifically, 20 as a part of that review? 21 A. I can't recall. 22 Q. Do you recall whether there was a 23 requirement to check to see if a student 24 organization required individuals to embrace certain 25 beliefs to be either a member or a leader?</p>
<p style="text-align: right;">31</p> <p>1 A. Meaning Dr. Nelson, Andy Kutcher, and Paul 2 Mintner. 3 Q. And what was the nature of that meeting? 4 A. Just to make sure that we understood as 5 one group about what the implications were. 6 Q. Okay. And would you say that your 7 understanding coming out of that meeting was the 8 same as what we've just discussed regarding how the 9 decision applied to the human rights policy? 10 A. Yes. 11 Q. Was there a review that was instituted of 12 all registered student organizations and their 13 constitutions? 14 A. Yes. 15 Q. And what was the nature of that review? 16 A. To look through to ensure that all of 17 those organizations had the human rights policy as a 18 part of their constitution and that if there was any 19 contradictory language to the human rights policy. 20 Q. And what would they do if they found 21 contradictory language? What was the next step? 22 A. If they found contradictory language I 23 think the next step was to reach out to those 24 student organizations and advise them to update 25 their constitutions to include -- sorry.</p>	<p style="text-align: right;">33</p> <p>1 A. I can't recall. 2 Q. Were you at all aware that subordinates 3 may have been looking for those kinds of beliefs? 4 A. Can you ask me that again? 5 Q. Mm-hmm. Yeah. 6 A. And explaining which belief? 7 Q. Yeah. So were you aware that your 8 subordinates working on this review were instructed 9 to look for constitutional requirements by the 10 student organizations that required their leaders or 11 members to agree with or embrace certain beliefs? 12 A. No, I do not recall. 13 Q. So you didn't have any knowledge of an 14 instruction of that nature? 15 A. Not that I can recall. 16 Q. Do you know if reviewers were instructed 17 to look at religious groups first in their review? 18 A. I do not recall. 19 Q. Who would know about these instructions? 20 A. I think certainly Dr. Nelson. The task 21 was to look at all of the groups, all of our student 22 organizations. 23 Q. And then -- and like you were saying 24 earlier, to look to see that they had the human 25 rights clause in there and then also they didn't</p>

<p style="text-align: right;">34</p> <p>1 have any contradictory language?</p> <p>2 A. Yes. That's all of them.</p> <p>3 Q. And then – I guess what I'm asking about</p> <p>4 is the university has stated that the reviewers were</p> <p>5 tasked with looking for certain beliefs or purposes</p> <p>6 that reviewers are supposed to check for if, you</p> <p>7 know, a leader or a member was required to embrace</p> <p>8 those, agree with those? So I'm just asking you if</p> <p>9 you are aware of that instruction.</p> <p>10 A. I do not recall.</p> <p>11 Q. But you don't have any recollection of</p> <p>12 awareness on that?</p> <p>13 A. I do not.</p> <p>14 Q. Okay. After the ruling came out, did you</p> <p>15 ask Bill Nelson to send you a list of registered</p> <p>16 religious organizations?</p> <p>17 A. Yes.</p> <p>18 Q. And why? Why did you ask for that?</p> <p>19 A. I think because it was directly related to</p> <p>20 BLinC and trying to understand if there were other</p> <p>21 religious organizations in a similar place.</p> <p>22 Q. Did – did you determine that there were</p> <p>23 any other religious organizations in a similar</p> <p>24 place?</p> <p>25 A. I just asked them to send me the list.</p>	<p style="text-align: right;">36</p> <p>1 Q. Was there a request to look at multiethnic</p> <p>2 groups or, you know, a list of all the multiethnic</p> <p>3 groups?</p> <p>4 A. All of the groups that may have various</p> <p>5 identities we were asked – I asked them to look at.</p> <p>6 Q. So did you ask for Bill Nelson to send you</p> <p>7 an email, you know, similar to the one, so you asked</p> <p>8 Bill Nelson – let me start that again.</p> <p>9 You asked Bill Nelson to send you an email</p> <p>10 regarding a list of all the religious student</p> <p>11 organizations. Did you ask him to send you a list</p> <p>12 of just all the multicultural organizations?</p> <p>13 A. The initial list was requested based on</p> <p>14 BLinC, which was around religion. So my information</p> <p>15 gathering initially was to understand who those</p> <p>16 groups were that were similar. At the same time,</p> <p>17 they sent an entire list of all of our student</p> <p>18 organizations based on those that had the statement</p> <p>19 of faith – sorry, the human rights clause or policy</p> <p>20 included. And all of the other groups that we also</p> <p>21 maybe need to make sure that we're paying attention</p> <p>22 to in terms of their categories or identities.</p> <p>23 Q. And so would you say it would be accurate</p> <p>24 – so you had requested two lists, one of all the</p> <p>25 groups, including the religious groups, and then one</p>
<p style="text-align: right;">35</p> <p>1 They had done the work on determining whether or not</p> <p>2 they were similar in nature.</p> <p>3 Q. Was the list a list of all registered</p> <p>4 religious student organizations at the university?</p> <p>5 A. The list was compiled of all of our</p> <p>6 student organizations. And then I asked them to, if</p> <p>7 I remember correctly, asked them to tell me which</p> <p>8 ones, how many of those groups are religious –</p> <p>9 identify – have identified themselves as registered</p> <p>10 – as religious student organizations.</p> <p>11 Q. Did you ever ask for a list of</p> <p>12 nonreligious student organizations?</p> <p>13 A. Yes. I had – yes.</p> <p>14 Q. Of a specific type of nonreligious student</p> <p>15 organizations?</p> <p>16 A. No. Just all of the student</p> <p>17 organizations, which would include religious and</p> <p>18 nonreligious.</p> <p>19 Q. Okay. So you had asked – so then you</p> <p>20 asked for all student organizations and then a list</p> <p>21 of religious student organizations?</p> <p>22 A. Yes. Because I wanted to understand,</p> <p>23 particularly because we were coming from the BLinC</p> <p>24 case, what are the similar – are there similar</p> <p>25 groups, and really wanting to know how many.</p>	<p style="text-align: right;">37</p> <p>1 of the religious groups specifically?</p> <p>2 A. I don't recall asking for those things at</p> <p>3 separate times. I recall asking for all the student</p> <p>4 groups and then breaking them down by the various</p> <p>5 identity groups that they are a part of.</p> <p>6 Q. And what would be some of those various</p> <p>7 identity groups?</p> <p>8 A. Some of them may be multicultural. Some</p> <p>9 of them may be – I mean, it varied. We have almost</p> <p>10 600 student orgs.</p> <p>11 Q. So did you receive an email from Bill</p> <p>12 Nelson that broke out any other type of student</p> <p>13 organization other than the religious ones?</p> <p>14 A. There was one document that I know</p> <p>15 highlighted based on various identities, whether it</p> <p>16 was – I mean, based on a number of different</p> <p>17 identities, but I don't know that those were asked</p> <p>18 for separately. I think they were asked for</p> <p>19 together and then broken down.</p> <p>20 Q. Okay.</p> <p>21 A. But I can't recall 100 percent.</p> <p>22 Q. I'm sorry. Go ahead.</p> <p>23 A. I can't recall 100 percent.</p> <p>24 Q. And so what you do recall then is a list</p> <p>25 that includes all the student groups and then there</p>

<p style="text-align: right;">38</p> <p>1 might have been some breakout within that document 2 but it was all one list? 3 A. Yes. 4 Q. And then a list of the religious groups? 5 A. That were a part of the larger group but 6 perhaps highlighted and one of those categories 7 where all the rest of them were what are religious 8 groups, what are the ones with multi or racial, 9 gender, sex, whatever the category may be. 10 Q. So then are you saying that there was only 11 one list that was requested, not two, and so kind of 12 the specific list regarding student groups was a 13 part of that huge group or -- 14 A. I can't recall. There were -- as you can 15 imagine, going through this process there were 16 multiple lists. I don't know what lists were 17 requested when and what exactly each one of those 18 lists included. 19 Q. Let me show you a document that may help 20 with that. Let's see. Can we look at Document 11? 21 MR. BLOMBERG: And can you mark this as 22 Exhibit 2, please? Cover that. That's probably 23 good. 24 THE REPORTER: Exh bit 2 is marked. 25 MR. BLOMBERG: Thank you.</p>	<p style="text-align: right;">40</p> <p>1 after the January 23rd District Court ruling? 2 A. Yes. I don't recall the date of the 3 ruling but -- 4 Q. Okay. And does this refresh your 5 recollection about what we were talking about a 6 second ago as it relates to, you know, Dr. Nelson 7 providing you a list of religious organizations, a 8 distinct list of religious organizations? 9 A. Yes, it does. 10 Q. Okay. And so then there's this list that 11 Dr. Nelson provided you. Was there another list 12 that had all of the student groups on it that we 13 were talking about earlier? 14 A. Yes. 15 Q. Okay. And were there any other emails 16 like this from Dr. Nelson that was like, you know, 17 here's a list of the multicultural groups and here's 18 a list of the political groups or anything like 19 that? 20 A. I don't recall. 21 Q. And do you know if the university has 22 produced the other list, the large list that we're 23 talking about of all the student groups that you 24 looked at? 25 A. Yes.</p>
<p style="text-align: right;">39</p> <p>1 (WHEREUPON, Exhibit 2 was marked for 2 identification.) 3 BY MR. BLOMBERG: 4 Q. Can you just take a look at that and see 5 if that looks familiar to you? 6 Feel free to take your time. 7 A. Certainly I remember this list. 8 Q. Can you please identify it for the record, 9 what that document is? 10 A. The subject line says it's the list of 11 spiritual religious orgs. 12 Q. And who is that -- is it an email? 13 A. It's an email from Dr. Nelson but I do not 14 see my communication to him included. 15 Q. Okay. And who is it sent to? 16 A. It's sent to Melissa Shivers. 17 Q. Okay. And is a one-page or two-page 18 document? 19 A. It's a one-page email and then the 20 document related to the spiritual and religious orgs 21 are included. 22 Q. Okay. And then what's the date on the 23 document? 24 A. February 7, 2018. 25 Q. So this would be about a couple weeks</p>	<p style="text-align: right;">41</p> <p>1 Q. And that was produced in the BLinC 2 discovery? 3 A. I don't remember when it was discussed. I 4 think when we were trying to make sure we understood 5 all of our student organizations is when that full 6 list was created. 7 Q. Okay. And then do you know if that list 8 was also shared with the plaintiffs in the BLinC 9 case in response to requests that it be produced? 10 A. I do not know. 11 Q. Okay. We'll follow up with George after 12 just to make sure we got it. 13 When you were speaking with Bill Nelson 14 about the review, do you have -- about how many of 15 the registered student organizations had the full 16 human rights clause in their constitution? 17 A. Oh, I can't recall the exact number. 18 Q. If Dr. Nelson had testified that it was 19 157 out of about 500, would that -- would you have 20 any reason to think that was incorrect? 21 A. I would not if that's what Dr. Nelson 22 suggested. He'd be more closely connected to those 23 numbers than I would be. 24 Q. Do you have any sense of why that was such 25 a low rate of compliance with, you know, having the</p>

<p style="text-align: right;">42</p> <p>1 full human rights clause?</p> <p>2 A. I do not.</p> <p>3 Q. Did the university -- let me say that</p> <p>4 again.</p> <p>5 The university reviews constitutions</p> <p>6 before approving them; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And so it had previously</p> <p>9 reviewed and approved a substantial percentage that</p> <p>10 did not have a full human rights clause in them; is</p> <p>11 that correct?</p> <p>12 A. I, again, I arrived in July of '17, so I'm</p> <p>13 not aware of anything that took place prior to, yet</p> <p>14 certainly understand that it's the responsibility of</p> <p>15 the department to review all of the constitutions.</p> <p>16 Q. And I guess part of my question there,</p> <p>17 too, kind of relates to, you know, your role in</p> <p>18 testifying on behalf of the university as it relates</p> <p>19 to, you know, the enforcement of the policy. So</p> <p>20 you're saying that you don't have any knowledge of</p> <p>21 why those prior approvals took place?</p> <p>22 A. In terms of the review of the</p> <p>23 constitutions?</p> <p>24 Q. Before the review of the constitution.</p> <p>25 When the 350 other groups had submitted</p>	<p style="text-align: right;">44</p> <p>1 deregistered if it didn't do that?</p> <p>2 A. Yes.</p> <p>3 Q. When did you become aware that email was</p> <p>4 going to go out?</p> <p>5 A. I can't speculate the exact date but</p> <p>6 certainly before June 1, 2018.</p> <p>7 Q. And what was the process in coming to that</p> <p>8 decision? What made you -- the university send that</p> <p>9 to InterVarsity Graduate?</p> <p>10 A. We believed it was important to pause</p> <p>11 because of the BLinC case in order to make sure that</p> <p>12 we better understood. So we wanted to get sort of a</p> <p>13 ruling on the BLinC case and decided to pause the</p> <p>14 deregistration of those groups.</p> <p>15 Q. So were you involved in the decision-</p> <p>16 making process to send out this email to</p> <p>17 InterVarsity Graduate and other organizations that</p> <p>18 needed to have the full human rights clause in their</p> <p>19 constitutions?</p> <p>20 A. Yes.</p> <p>21 Q. About how many organizations received an</p> <p>22 email like that one?</p> <p>23 A. I'm sorry, I don't recall the exact</p> <p>24 number.</p> <p>25 Q. Do you have a ballpark?</p>
<p style="text-align: right;">43</p> <p>1 constitutions without a human rights clause or</p> <p>2 without a full human rights clause, why they were</p> <p>3 approved, you don't have any knowledge of why that</p> <p>4 approval took place?</p> <p>5 A. I do not know what that process looked</p> <p>6 like in terms of what they looked at to determine</p> <p>7 whether or not that information was included because</p> <p>8 I'm not a part of the review of the constitutions.</p> <p>9 Q. Let me show you Document 7.</p> <p>10 MR. BLOMBERG: Can you please mark this as</p> <p>11 Exhibit 3? Oh, wait, sorry. I think that one is</p> <p>12 six. Can you please mark this as Exhibit 3?</p> <p>13 THE REPORTER: Exhibit 3 is marked.</p> <p>14 MR. BLOMBERG: Thank you.</p> <p>15 (WHEREUPON, Exhibit 3 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. BLOMBERG:</p> <p>18 Q. This is an email from Andy Kutcher on June</p> <p>19 1, 2018. Do you see that at the top of the page?</p> <p>20 A. Yes.</p> <p>21 Q. Were you aware that on or about June 1,</p> <p>22 2018, Mr. Kutcher was emailing InterVarsity Graduate</p> <p>23 Christian Fellowship and instructing it that it</p> <p>24 needed to update its constitution regarding having a</p> <p>25 full human rights clause or that it would be</p>	<p style="text-align: right;">45</p> <p>1 A. I do not.</p> <p>2 Q. If -- if there were about 150 that were</p> <p>3 compliant of 500, so would it be about 350 emails?</p> <p>4 A. Maybe around 300.</p> <p>5 Q. Okay. Did you direct Andy Kutcher</p> <p>6 specifically to send out this email or was it</p> <p>7 somebody else that told him to send it out?</p> <p>8 A. I would have been the one to work with Dr.</p> <p>9 Nelson, and I don't recall if Andy would have been</p> <p>10 in the room to communicate to them that we were</p> <p>11 going to deregister them if they were not in</p> <p>12 compliance or did not include the human rights</p> <p>13 policy within their constitutions.</p> <p>14 Q. And was this the first set of emails that</p> <p>15 went to InterVarsity Graduate Fellowship or were</p> <p>16 there another set that told them about this?</p> <p>17 A. I don't recall if there was one sent prior</p> <p>18 to this one notifying them of the -- that they would</p> <p>19 be deregistered if they did not comply. I don't</p> <p>20 remember if there was one sent prior to the June</p> <p>21 one.</p> <p>22 Q. Okay. And just as far as the way the</p> <p>23 guidance flowed, you spoke with Dr. Nelson. Dr.</p> <p>24 Nelson was responsible for communicating with Mr.</p> <p>25 Kutcher --</p>

<p style="text-align: right;">46</p> <p>1 A. As I recall. As I recall.</p> <p>2 Q. The email went out on June 1st, on Friday</p> <p>3 afternoon. Is it common for the university to send</p> <p>4 out instructional emails to student groups during</p> <p>5 the summer break?</p> <p>6 A. I don't know in terms of the University of</p> <p>7 Iowa. This was my first summer working here, in</p> <p>8 terms of how frequent communications had gone out</p> <p>9 during the summer to student organizations or to</p> <p>10 students. I imagine that throughout any summer</p> <p>11 period when you still have students who are enrolled</p> <p>12 on campus that there are emails sent to them at</p> <p>13 various times throughout the year and days of the</p> <p>14 week but I don't know if there's a dedicated</p> <p>15 commitment to we send emails on this day or not.</p> <p>16 Q. Did – what was the specific reason for</p> <p>17 choosing this date for sending out the email, or was</p> <p>18 there a specific reason?</p> <p>19 A. I can't recall that there was a specific</p> <p>20 reason.</p> <p>21 Q. In your experience, are students more</p> <p>22 likely to respond to emails during summer break than</p> <p>23 they are during the semester? Let me rephrase that.</p> <p>24 In your experience, are students more</p> <p>25 likely to respond promptly to emails during the</p>	<p style="text-align: right;">48</p> <p>1 based on the review it looks as though it's</p> <p>2 something that was trying to communicate to folks</p> <p>3 about the intent and the timeliness of a response</p> <p>4 regarding updating the constitutions.</p> <p>5 Q. Were you aware that on June 13th, the</p> <p>6 Center for Student – what is it, CSIL, Center for</p> <p>7 Student Involvement and Leadership, sent an email to</p> <p>8 InterVarsity Graduate telling them that they needed</p> <p>9 to submit an updated constitution by June 13th or</p> <p>10 they would be deregistered?</p> <p>11 A. I have not seen this document.</p> <p>12 Q. Apart from the document, were you aware</p> <p>13 that they were communicating – that the CSIL was</p> <p>14 communicating with InterVarsity Graduate to tell</p> <p>15 them they had until June 13th to submit a compliant</p> <p>16 constitution or they'd be deregistered?</p> <p>17 A. Not necessarily just to InterVarsity, no,</p> <p>18 or to any groups, quite frankly. I don't remember</p> <p>19 the timeline of when they were submitting and who</p> <p>20 they were submitting to on those dates.</p> <p>21 Q. Okay. Were you aware that Mr. Kutcher had</p> <p>22 a conversation via email with InterVarsity Graduate</p> <p>23 regarding their constitution and the specific things</p> <p>24 they needed to update in it?</p> <p>25 A. I do not recall.</p>
<p style="text-align: right;">47</p> <p>1 summer break than they are during the semester?</p> <p>2 A. I don't know that I can speak to that.</p> <p>3 Q. Have you – are you aware of any other</p> <p>4 similar emails that have gone out that have told</p> <p>5 student organizations they have two weeks to comply</p> <p>6 with a requirement or they'll be deregistered?</p> <p>7 A. I am not aware.</p> <p>8 Q. So you're not aware of any other times</p> <p>9 where an email like this was sent out with two weeks</p> <p>10 to comply?</p> <p>11 A. I am not aware.</p> <p>12 Q. Okay.</p> <p>13 A. When all of the emails are sent out.</p> <p>14 Q. Let me show you Document 8.</p> <p>15 MR. BLOMBERG: Will you mark this as</p> <p>16 Exhibit 4, please?</p> <p>17 THE REPORTER: Exhibit 4 is marked.</p> <p>18 MR. BLOMBERG: Thank you.</p> <p>19 (WHEREUPON, Exhibit 4 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. BLOMBERG:</p> <p>22 Q. Can you take a look at that and tell us</p> <p>23 what it is?</p> <p>24 A. I am not familiar with this document. It</p> <p>25 seems – I'm not familiar with this document but</p>	<p style="text-align: right;">49</p> <p>1 Q. Did Mr. Kutcher ever contact you on or</p> <p>2 about June 12th regarding InterVarsity Graduate's</p> <p>3 need to update their constitution?</p> <p>4 A. I do not recall.</p> <p>5 Q. So you don't have any recollection of</p> <p>6 having a conversation with Mr. Kutcher or anyone</p> <p>7 else about –</p> <p>8 A. Not on June 12th. I just don't recall</p> <p>9 that specific conversation.</p> <p>10 Q. Okay. And so as part of that</p> <p>11 conversation, Mr. Kutcher informed InterVarsity</p> <p>12 Graduate that they needed to remove their religious</p> <p>13 leadership standards to come in compliance with the</p> <p>14 human rights policy. What – what requirement was</p> <p>15 at issue there? Was it what we were talking about</p> <p>16 earlier regarding the inability of student groups to</p> <p>17 require their leaders to hold a specific religious</p> <p>18 belief?</p> <p>19 A. I don't know specifically what Andy was</p> <p>20 focused on other than if there was contradictory</p> <p>21 language or the human rights clause was not included</p> <p>22 in the constitution.</p> <p>23 Q. Okay.</p> <p>24 A. I'm not aware of the other details.</p> <p>25 Q. And do you know whether there was any</p>

<p style="text-align: right;">50</p> <p>1 contradictory language in InterVarsity Graduate's 2 constitution? 3 A. I do not. 4 Q. And you weren't -- no one spoke to you 5 about it on or around June 12th? 6 A. I do not recall. 7 Q. Okay. So if Mr. Kutcher had said that he 8 was going to check with the university to determine 9 whether or not InterVarsity Graduate could strongly 10 encourage leadership applicants to share its faith, 11 you wouldn't know anything about that? 12 A. I do not recall that conversation. 13 Q. And you weren't -- Mr. Kutcher did not ask 14 you about it? 15 A. I don't recall that conversation with Mr. 16 Kutcher. 17 Q. Okay. As of June 12th, would it be an 18 accurate statement of the university's human rights 19 policy that InterVarsity could not strongly 20 encourage its leaders to share its faith? 21 A. One more time, please? 22 Q. So looking at the policy at that timeframe 23 when these emails were going out and the groups were 24 being told to remove contradictory language, would 25 it be an accurate statement of university policy</p>	<p style="text-align: right;">52</p> <p>1 on any of the protected categories but it does not 2 specify for leaders or for members. So in this 3 particular instance there needs to be compliance 4 across the entire organization. 5 Q. Okay. And so would it be noncompliant for 6 InterVarsity Graduate to require, to strongly 7 encourage, sorry, not require, to strongly encourage 8 its leaders to share its faith? 9 A. Strongly encourage but it's not required 10 based on the policy. 11 Q. So would that be a violation of policy? 12 A. Yes. 13 Q. Okay. So, and so when Mr. Kutcher said 14 that he had checked with the university and that 15 neither requiring nor strongly encouraging was 16 permissible under the policy, that would be an 17 accurate statement of the policy's requirements? 18 A. I think so. 19 Q. Do you have any reason to think that would 20 be incorrect? 21 A. No. 22 Q. And Mr. Kutcher didn't consult you on June 23 12th regarding InterVarsity Graduate's leadership 24 standards? 25 A. I just don't recall June 12th.</p>
<p style="text-align: right;">51</p> <p>1 that a Christian student group could not strongly 2 encourage its leaders to share its faith? 3 A. We were encouraging student organizations 4 to comply with the human rights policy. 5 Q. And in complying with the human rights 6 policy, would student groups -- would a Christian 7 student group be able to ask their leaders -- sorry. 8 Would they be able to strongly encourage their 9 leaders to share their faith? 10 A. This was primarily focused on alignment 11 with the human rights policy. 12 Q. Okay. Would it be out of alignment with 13 the human rights policy to strongly encourage your 14 leaders to share your faith as a religious student 15 group? 16 A. But there's nothing in the policy that 17 suggests something different for leaders than for 18 members. 19 Q. So, but what I'm asking is setting that 20 piece aside, does it violate the policy to ask your 21 leaders, to strongly encourage your leaders to share 22 your faith as a religious student organization? 23 A. The policy, the human rights policy is not 24 focused on leaders or members. The human rights 25 policy says that there can't be discrimination based</p>	<p style="text-align: right;">53</p> <p>1 Q. Do you recall Mr. Kutcher ever consulting 2 you about InterVarsity Graduate's leadership 3 standards? 4 A. I can't recall. 5 Q. Let me show you Document 3. 6 Are you doing okay? Do you need water, a 7 break, anything like that? 8 A. I'm doing fine. 9 Q. We're getting on an hour. 10 A. No. 11 Q. All right. 12 MR. BLOMBERG: Can you mark this as 13 Exhibit 5, please? 14 THE REPORTER: Exhibit 5 is marked. 15 MR. BLOMBERG: Thank you. 16 (WHEREUPON, Exhibit 5 was marked for 17 identification.) 18 BY MR. BLOMBERG: 19 Q. This is a copy of the Federal District 20 Court's opinion on June 28, 2018, renewing its 21 preliminary injunction for the Business Leaders in 22 Christ group. 23 Do you see that? 24 A. Yes, I see that. 25 Q. Feel free to take a look at the last page.</p>

<p style="text-align: right;">54</p> <p>1 I think that's where the date is. Oh, yeah, you're 2 right. It is up there, too. 3 A. Yeah, that's what I saw. 4 Q. Okay. Great. All right. 5 Were you aware that that opinion came out 6 in late June? 7 A. Yes. 8 Q. And what was your awareness of it? How 9 did you become aware of it? 10 A. Honestly, I can't exactly remember how I 11 became aware. I was on vacation during this week so 12 I was not in town. So I can't recall how I received 13 notification. 14 Q. Okay. And did you read this opinion? 15 A. Yes. 16 Q. And what was your understanding of what it 17 meant? 18 A. That BLinC was able to continue to operate 19 as a student organization, registered student 20 organization. 21 Q. And what was the court's reasoning for 22 extending the injunction for BLinC? 23 A. The perceived lack of equal application of 24 the human rights policy -- 25 Q. Okay.</p>	<p style="text-align: right;">56</p> <p>1 university was not allowed to selectively enforce 2 its policy against a religious student group? 3 A. I don't know that that was my full 4 understanding. 5 Q. And so what was your -- what would -- how 6 would your understanding differ? 7 A. I don't know that it would differ. I 8 think I was more so focused on how do we apply it to 9 the other student orgs and the injunctions just that 10 we needed to do some work related to the equal 11 application of the policy to ensure that we were in 12 compliance. 13 Q. So your understanding was then that the 14 university had to equally enforce the policy against 15 all student groups? 16 A. Yes. 17 Q. Okay. Did you have any concerns about it 18 violating the First Amendment for your subordinates 19 to tell a religious student group that they could 20 not ask their leaders to share their faith? 21 A. Could you ask me that again? 22 Q. Did you have any concerns that it might 23 violate the First Amendment for your subordinates to 24 tell a religious student group that their leaders 25 could not share their faith?</p>
<p style="text-align: right;">55</p> <p>1 A. -- across the student orgs. 2 Q. Did you direct anyone else in your office 3 to review the opinion? 4 A. I can't recall. 5 Q. Do you recall if anyone else in your 6 office reviewed the opinion? 7 A. I can't recall who would have received the 8 opinion because these are sent to me, so I don't 9 recall who else may have also received them. And I 10 can't recall because I was on vacation during this 11 time if I shared them or not, quite frankly. 12 Q. Things get backed up on vacation. I 13 certainly understand. 14 A. Yeah, I was in Hawaii. 15 Q. Well, that's -- 16 A. It was all sunny skies. Yeah. Sorry. 17 Q. Did you ever speak to President Harreld 18 about the decision? 19 MR. CARROLL: Absent counsel being in the 20 room. 21 THE WITNESS: No. Not that I can recall 22 because I wouldn't have been there. Sorry. 23 BY MR. BLOMBERG: 24 Q. Was it your understanding, both in light 25 of this decision and the earlier one, that the</p>	<p style="text-align: right;">57</p> <p>1 A. I think what we recognized was that we had 2 two things sort of in conflict, the human rights 3 policy, the Iowa code, and the First Amendment. 4 Q. And how -- how did you perceive that 5 conflict? How did you understand it? 6 A. That there's, in the human rights policy 7 and in the code, there's no room for discrimination 8 between leaders or members and the First Amendment 9 in terms of understanding freedom of religion, that 10 there's not this pressure from the state to 11 intervene as it relates to religion. 12 Q. So, you know, students as a general matter 13 are free to express their views on campus, you know, 14 like on the sidewalks and things like that. 15 A. Yes. 16 Q. And that would be protected by the first 17 amendment? 18 A. Yes. 19 Q. And they're free to get together with 20 other friends to express those views together? 21 A. Yes. 22 Q. And that would also be protected by the 23 First Amendment? 24 A. Yes. 25 Q. And they would be free to turn those</p>

<p style="text-align: right;">58</p> <p>1 friendships into a group and that would be protected</p> <p>2 by the First Amendment?</p> <p>3 A. Yes.</p> <p>4 Q. And those groups could be registered by</p> <p>5 the university; correct?</p> <p>6 A. If they have complied with all of the</p> <p>7 requirements for being a student organization --</p> <p>8 registered student organization at the University of</p> <p>9 Iowa.</p> <p>10 Q. And does the university allow a political</p> <p>11 student group to form around ideas, shared ideas of</p> <p>12 what policies are good for people?</p> <p>13 A. They're -- yes.</p> <p>14 Q. And are they able to select leaders who</p> <p>15 can effectively advocate those policies?</p> <p>16 A. I think they can select members who</p> <p>17 support those or are in allyship or organizations or</p> <p>18 individuals that want to learn about a particular</p> <p>19 student organization's views.</p> <p>20 Q. Okay. Sometime between June 15th and July</p> <p>21 20th, the university deregistered InterVarsity</p> <p>22 Graduate Christian Fellowship; is that correct?</p> <p>23 A. If those are the dates that are listed.</p> <p>24 Q. So my client became aware of it on July</p> <p>25 20th and then the deadline that was set by Mr.</p>	<p style="text-align: right;">60</p> <p>1 deregister InterVarsity Graduate?</p> <p>2 A. Of the organizations that had not come</p> <p>3 into compliance, yes. Of all of the organizations</p> <p>4 that did not come into compliance the decision was</p> <p>5 made to deregister those groups.</p> <p>6 Q. And did you review a list of those</p> <p>7 organizations?</p> <p>8 A. I don't recall but I imagine that I did.</p> <p>9 Q. Do you -- did you approve the decision to</p> <p>10 deregister the noncompliant organizations?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Did you object to it at all?</p> <p>13 A. I did not.</p> <p>14 Q. Okay. Could you have overridden it?</p> <p>15 Could you have said we're not going to deregister</p> <p>16 InterVarsity Graduate? We're going to keep them on?</p> <p>17 A. Yes.</p> <p>18 Q. Who else was involved in the decision to</p> <p>19 deregister InterVarsity Graduate?</p> <p>20 MR. CARROLL: Other than attorneys?</p> <p>21 BY MR. BLOMBERG:</p> <p>22 Q. Other than attorneys?</p> <p>23 A. It was in conversation with Dr. Nelson,</p> <p>24 Andy Kutcher. Those are probably the primary folks</p> <p>25 who it would have been in consultation with.</p>
<p style="text-align: right;">59</p> <p>1 Kutcher was June 15th. So that's what we know.</p> <p>2 A. Sure.</p> <p>3 Q. Do you happen to know when the decision</p> <p>4 was made within the university to deregister</p> <p>5 InterVarsity Graduate Christian Fellowship?</p> <p>6 A. I don't remember the date.</p> <p>7 Q. Okay. Do you recall whether it was closer</p> <p>8 to June 15th or closer to July 20th?</p> <p>9 A. The initial deadline I think was -- I</p> <p>10 think was June 15th to comply. And then there was</p> <p>11 time given, I think, in between the June 15th and</p> <p>12 another date that I don't remember for when my</p> <p>13 questions as to going back and forth started. So</p> <p>14 when people started asking questions that extended</p> <p>15 the time for them to be able to come in to</p> <p>16 compliance. So I don't know the exact date.</p> <p>17 Q. Okay. Do you have any reason to think</p> <p>18 that InterVarsity Graduate was not deregistered by</p> <p>19 July 20th?</p> <p>20 A. I don't recall the exact date.</p> <p>21 Q. Okay. But you don't -- but do you agree</p> <p>22 that InterVarsity Graduate was deregistered by the</p> <p>23 university?</p> <p>24 A. Yes.</p> <p>25 Q. Were you aware of the decision to</p>	<p style="text-align: right;">61</p> <p>1 Q. And I think --</p> <p>2 A. Beyond counsel.</p> <p>3 Q. Beyond counsel.</p> <p>4 A. Sorry.</p> <p>5 Q. And I think you mentioned a Paul Mintner?</p> <p>6 A. Paul Mintner became the supervisor for</p> <p>7 Andy at some point during this time, so he wasn't</p> <p>8 necessarily part of the decision-making process but</p> <p>9 was brought in as Andy's supervisor --</p> <p>10 Q. Okay.</p> <p>11 A. -- during that time. Does that make</p> <p>12 sense?</p> <p>13 Q. Mm-hmm. And so Paul wouldn't have been</p> <p>14 involved? Dr. Nelson --</p> <p>15 A. No.</p> <p>16 Q. -- Andy, and yourself --</p> <p>17 A. Right.</p> <p>18 Q. -- would have been the primary decision</p> <p>19 makers?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Was President Harreld ever</p> <p>22 informed of the decision to deregister?</p> <p>23 A. He was made aware.</p> <p>24 Q. All right.</p> <p>25 A. Of all of the groups.</p>

<p style="text-align: right;">62</p> <p>1 Q. Was he made aware before or after the</p> <p>2 deregistration occurred?</p> <p>3 A. That we were going to deregister groups</p> <p>4 that were not in compliance?</p> <p>5 Q. Mm-hmm.</p> <p>6 A. That that was the plan initially? Yes.</p> <p>7 Q. Okay.</p> <p>8 A. That that was the plan.</p> <p>9 Q. All right. And then was he made aware of</p> <p>10 the specific groups that were deregistered?</p> <p>11 A. I don't recall sending him the names of</p> <p>12 all of the groups that were going to be</p> <p>13 deregistered.</p> <p>14 Q. About when did you inform President</p> <p>15 Harreld that deregistration was going to occur for</p> <p>16 noncompliant groups?</p> <p>17 A. Once we set the timeline of what that</p> <p>18 would look like in terms of reaching out on June 1st</p> <p>19 with the 15th as the deadline. So it would have</p> <p>20 been prior to that time.</p> <p>21 Q. Okay. So was it something like we're</p> <p>22 going to give these groups this roughly two-week</p> <p>23 period and then noncompliant groups will be</p> <p>24 deregistered sometime after that period?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">64</p> <p>1 Q. And the thing that kept them out of</p> <p>2 compliance, were those really just leadership</p> <p>3 standards?</p> <p>4 A. I imagine so.</p> <p>5 Q. Okay. Do you have any reason to think</p> <p>6 that's not the case, that it was something else?</p> <p>7 A. I can't recall all of the different areas</p> <p>8 because there could have been contradictory</p> <p>9 language. It could have been the human rights</p> <p>10 policy wasn't included and I just can't remember the</p> <p>11 exact details as we were looking at all of the</p> <p>12 groups.</p> <p>13 Q. Okay. InterVarsity Graduate had been at</p> <p>14 the university for about 25 years and it was its</p> <p>15 practice to select leaders based on its faith</p> <p>16 throughout that time. And it was deregistered in</p> <p>17 2018 because of that leadership selection. What</p> <p>18 harm would have been caused by allowing InterVarsity</p> <p>19 to continue to ask its leaders to agree with its</p> <p>20 faith?</p> <p>21 A. I think it was because we were also trying</p> <p>22 to make sure that we were in compliance based on the</p> <p>23 court's guidance in terms of what we needed to do to</p> <p>24 help equally – what's the word I'm looking for?</p> <p>25 Equally asking all groups to come into compliance.</p>
<p style="text-align: right;">63</p> <p>1 Q. And that was the extent of his knowledge?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Did you ever go back to him</p> <p>4 and say here are the groups that we ultimately,</p> <p>5 actually did deregister?</p> <p>6 A. I don't know that I did share those exact</p> <p>7 names with him.</p> <p>8 Q. Do you know if anyone ever did?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay.</p> <p>11 (Interruption; siren.)</p> <p>12 MR. CARROLL: It's just a test.</p> <p>13 MR. BLOMBERG: Okay.</p> <p>14 THE WITNESS: Oh.</p> <p>15 MR. CARROLL: It's tornado season in Iowa.</p> <p>16 MR. BLOMBERG: Is it really?</p> <p>17 MR. CARROLL: It will be.</p> <p>18 MR. BLOMBERG: We lived in Kansas City for</p> <p>19 a while. I'd hear these go off pretty often.</p> <p>20 BY MR. BLOMBERG:</p> <p>21 Q. And what was the reason to deregister</p> <p>22 InterVarsity Graduate? Was it just the religious</p> <p>23 leadership standards?</p> <p>24 A. The lack of compliance with the human</p> <p>25 rights policy.</p>	<p style="text-align: right;">65</p> <p>1 That due to the BLinC case, just recognizing that we</p> <p>2 wanted to make sure that we understood what was</p> <p>3 happening with BLinC, but we had also been given</p> <p>4 direction to sort of comply or to make sure that we</p> <p>5 were equally applying the policy.</p> <p>6 Q. And was there any – other than the desire</p> <p>7 for an equal application of the policy across the</p> <p>8 board, was there any specific concerns about harms</p> <p>9 that would be caused by allowing InterVarsity</p> <p>10 Graduate to ask its leadership applicants to agree</p> <p>11 with its faith?</p> <p>12 A. We did not discuss that.</p> <p>13 Q. Okay. So was there any evidence reviewed</p> <p>14 of, you know, if we allow InterVarsity Graduate to</p> <p>15 ask its leaders to agree with its faith that it will</p> <p>16 cause some harm to the student body or something</p> <p>17 like that?</p> <p>18 A. I do not recall a discussion.</p> <p>19 Q. All right. Was there ever any evidence</p> <p>20 that you reviewed regarding harm to the university</p> <p>21 of allowing religious student groups to ask their</p> <p>22 leaders to share their faith?</p> <p>23 A. The alignment or the contradictory</p> <p>24 language within the code and the human rights</p> <p>25 policy.</p>

<p style="text-align: right;">66</p> <p>1 Q. But as far as on the, kind of a practical 2 level, was there any harm to the university's 3 interests that would result from allowing 4 InterVarsity Graduate to ask its leaders to share 5 its faith? 6 A. I don't know. 7 Q. There wasn't like a document you reviewed 8 that said here's the damage to the university if we 9 allow InterVarsity to continue? 10 A. I don't recall. 11 Q. You don't have any document like that in 12 your possession? 13 A. I don't recall. No. 14 Q. Was there a process by which InterVarsity 15 Graduate was specifically reviewed to say that the 16 university needs to enforce its policy to this 17 specific religious group? 18 A. I do not recall. 19 Q. All right. Has there been any -- well, 20 InterVarsity was deregistered sometime before July 21 20th. Then they were reregistered or allowed to 22 continue operating on campus and continue to ask 23 their leaders to show their beliefs in early August. 24 Have there been any harms to the university's 25 interests since that time in the last eight months</p>	<p style="text-align: right;">68</p> <p>1 A. Can you ask me that again? 2 Q. Yeah, that was a long question. 3 A. Yeah. 4 Q. Yeah, okay. 5 So that email discussion on June 12th 6 where Mr. Kutcher was emailing with InterVarsity 7 Graduate -- 8 A. On June 13th. 9 Q. I think it was June 12th. I think -- 10 that's the last email. 11 A. Oh. 12 Q. Yeah. It was before that here. 13 A. Got it. I see it. 14 Q. Yeah. 15 MR. CARROLL: Let's let everybody finish 16 talking first. 17 MR. BLOMBERG: Sorry; I was just as guilty 18 there. Probably more so. 19 BY MR. BLOMBERG: 20 Q. So when they were asked, you know, having 21 that conversation about potential alternatives to 22 requiring leaders, you know, to share their faith 23 and they said, well, can we strongly encourage our 24 leaders to share our faith, your recollection 25 earlier was that you weren't consulted in that</p>
<p style="text-align: right;">67</p> <p>1 while InterVarsity has been operating? 2 A. I am not aware. 3 Q. You haven't received any reports or any 4 indication that allowing InterVarsity Graduate to 5 ask its leaders to share its faith is harming the 6 university? 7 A. I have not. 8 Q. Okay. Are you aware of anyone else who 9 has received reports of that nature? 10 A. I am not aware. 11 Q. Has there been any effort by the 12 university to try to gather that kind of 13 information? 14 A. I have not. 15 Q. And you haven't instructed anyone to 16 gather that kind of information? 17 A. I have not. 18 Q. Okay. And we talked about earlier about 19 when InterVarsity Graduate asked as an alternative 20 to requiring its leaders to share its faith, they 21 said, well, can we strongly encourage our leaders to 22 share our faith? And your understanding is that 23 both options would violate the policy but that you 24 weren't aware of that discussion about strongly 25 encourage?</p>	<p style="text-align: right;">69</p> <p>1 conversation on June 12th? 2 A. That's my recollection. 3 Q. And you don't know why the university 4 chose to reject that as an alternative, the strongly 5 encourage language? 6 A. I am not aware. 7 Q. Okay. And you're not aware of any like, 8 you know, process of decision making where the 9 university said, well, let's weigh strongly 10 encourage versus a requirement or something I like 11 that? 12 A. I am not. 13 Q. Okay. Was there a concern that, you know, 14 allowing InterVarsity Graduate to request its 15 leaders to share its faith would lead to other 16 groups asking for the same kind of accommodation and 17 so the university chose to draw kind of a bright 18 line? 19 A. I think it was strictly around complying 20 with the human rights policy and wanting to ensure 21 that we were following the guidelines that had been 22 issued to ensure that we were not trying to make 23 that differentiation, that we would learn more 24 through the court about what that could or should 25 look like.</p>

<p style="text-align: right;">70</p> <p>1 Q. So let me take a look at Documents 21 and 2 then 33.</p> <p>3 Thank you. Where are we now?</p> <p>4 THE REPORTER: Exh bit 6.</p> <p>5 MR. BLOMBERG: Exhibits 6 and 7, please.</p> <p>6 THE REPORTER: Exh bit 6. Exhibit 7.</p> <p>7 MR. BLOMBERG: All right.</p> <p>8 (WHEREUPON, Exhibit 6 and Exhibit 7 were 9 marked for identification.)</p> <p>10 BY MR. BLOMBERG:</p> <p>11 Q. Dr. Shivers, I'm showing you Exhibits 6 12 and 7. If you could just take a moment to review 13 those for me.</p> <p>14 Let me know when you're ready to discuss 15 them.</p> <p>16 A. Is there a specific question regarding?</p> <p>17 Q. Well, first, do you recognize either of 18 these documents?</p> <p>19 A. I have not received these documents. This 20 is the first time I think I'm actually seeing these.</p> <p>21 Q. Okay. Do you see on the document marked 22 Exhibit 6 at the top where it says it's from Erika 23 Christiansen to Paul Mintner? Am I pronouncing that 24 right?</p> <p>25 A. Mintner, yes.</p>	<p style="text-align: right;">72</p> <p>1 Christiansen. It's on June 18th and it's to Jeremy 2 Vogel. Do you know who Jeremy Vogel is?</p> <p>3 A. I don't know who Jeremy Vogel is.</p> <p>4 Q. Okay. Do you see further down the page 5 where Erika Christiansen asked Jeremy to change the 6 following 38 organizations to a defunct status on 7 the OrgSync page?</p> <p>8 A. I do see that.</p> <p>9 Q. So would, to your knowledge, would this be 10 a list of the organization that were deregistered 11 for being noncompliant?</p> <p>12 A. I don't know if defunct means the same 13 thing as deregistered.</p> <p>14 Q. Comparing the two lists, do you see a lot 15 of the same names?</p> <p>16 A. As I'm quickly glancing, I think there may 17 be some similarities here.</p> <p>18 Q. On either of those lists do you see the 19 organizations Love Works or Christian Legal Society?</p> <p>20 A. On either one of these?</p> <p>21 Q. Mm-hmm.</p> <p>22 A. Unless I'm missing it, I do not see either 23 of the groups that you've mentioned.</p> <p>24 Q. To your knowledge were either the 25 Christian Legal Society or Love Works deregistered</p>
<p style="text-align: right;">71</p> <p>1 Q. Yeah. And Andrew Kutcher. It's on June 2 18, 2018, and the subject line is "Noncomplaint 3 list"?</p> <p>4 A. Noncompliant? Oh, complaint, yes.</p> <p>5 Q. I interpret it noncompliant as well but, 6 yeah, I think it says complaint.</p> <p>7 Would this be an accurate list of the 8 organizations that were found by the university to 9 be noncompliant as of June 18th?</p> <p>10 A. I can't recall this particular date or to 11 know if this is the exact list.</p> <p>12 Q. Is there a list that provides all of the 13 noncompliant organizations as of June 18th or 14 thereabouts?</p> <p>15 A. I imagine that they were probably keeping 16 up with the list internally.</p> <p>17 Q. And so would the individuals on this email 18 be individuals who would have knowledge about 19 compliance?</p> <p>20 A. I imagine so. It looks as though they 21 were the ones who put it together.</p> <p>22 Q. Okay. Can you look at the exhibit marked 23 Exhibit 33? Or sorry, Exhibit 7. Exh bit 7. We 24 haven't gotten to Exh bit 33. Hopefully, we won't. 25 And that's also, at the top it's from Er ka</p>	<p style="text-align: right;">73</p> <p>1 as of early August 2018 under the human rights 2 policy?</p> <p>3 A. I do not think they were.</p> <p>4 Q. Okay.</p> <p>5 A. I don't know that as fact.</p> <p>6 Q. What would have been different about 7 InterVarsity Graduate's leadership policies and the 8 policies of say Love Works and its leadership 9 policies that would make InterVarsity Graduate be 10 deregistered and not Love Works?</p> <p>11 A. I do not know. I would imagine that Love 12 Works should have been included here. I don't know 13 anything about the org itself to know what its 14 function and purpose is quite frankly.</p> <p>15 Q. Are you familiar with the Love Works 16 student organization?</p> <p>17 A. I am not.</p> <p>18 Q. Are you --</p> <p>19 A. Familiar, what do you mean by familiar?</p> <p>20 Q. Have you heard of it?</p> <p>21 A. Yes.</p> <p>22 Q. And what did you understand about Love 23 Works?</p> <p>24 A. I've just heard. I don't know the details 25 of the org --</p>

<p style="text-align: right;">74</p> <p>1 Q. Do you know if it's --</p> <p>2 A. -- as to what they do.</p> <p>3 Q. Sorry to have interrupted. Okay.</p> <p>4 Do you know if they're a religious</p> <p>5 organization or not?</p> <p>6 A. I can't recall. I imagine that they -- I</p> <p>7 don't know.</p> <p>8 Q. So your knowledge of Love Works is just</p> <p>9 that they are a student organization but you don't</p> <p>10 have any specific knowledge beyond that?</p> <p>11 A. I just can't recall its category.</p> <p>12 Q. Okay. Do you know anything about its</p> <p>13 mission or what it does or anything like that?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. What about Christian Legal Society?</p> <p>16 Are you familiar with them at all?</p> <p>17 A. I'm not familiar with what they stand for</p> <p>18 or do.</p> <p>19 Q. Okay. And not familiar with their</p> <p>20 leadership policies either?</p> <p>21 A. I am not.</p> <p>22 Q. So if I represented to you that Love Works</p> <p>23 and Christian Legal Society both required their</p> <p>24 leaders to share their faith, would you have any</p> <p>25 reason to think that was incorrect?</p>	<p style="text-align: right;">76</p> <p>1 registered or put back into compliance status. And</p> <p>2 I just can't recall.</p> <p>3 Q. Yeah. I'm just asking about this specific</p> <p>4 shot in time. So when InterVarsity Graduate was no</p> <p>5 longer registered, other groups still were</p> <p>6 registered, you don't know if --</p> <p>7 A. I can't recall.</p> <p>8 Q. -- Love Works or Christian Legal Society</p> <p>9 were still registered?</p> <p>10 A. I can't recall.</p> <p>11 Q. Okay. Would it concern you in light of</p> <p>12 the January 23rd District Court order and then the</p> <p>13 June 28th court order that some religious groups</p> <p>14 were allowed to select their leaders and</p> <p>15 InterVarsity Graduate was not.</p> <p>16 A. Can you ask me that again?</p> <p>17 Q. Mm-hmm. Would it concern you if the</p> <p>18 university deregistered InterVarsity Graduate for</p> <p>19 asking its leaders to share its faith but did not</p> <p>20 enforce the policy in the same way against other</p> <p>21 religious groups that asked their leadership to</p> <p>22 share their faith?</p> <p>23 A. If there is -- if we know for certain</p> <p>24 rather than them not being on a list, if they were</p> <p>25 on the list and we actually did deregister them and</p>
<p style="text-align: right;">75</p> <p>1 A. I would -- I would not. If that is true,</p> <p>2 then I wonder if they should have been on the list</p> <p>3 or are on the current list.</p> <p>4 Q. But as far as the organizations that were</p> <p>5 actually deregistered by early August 2018, you</p> <p>6 don't have any reason for knowing why Love Works and</p> <p>7 CLS, Christian Legal Society were not deregistered</p> <p>8 and InterVarsity Graduate was?</p> <p>9 A. I don't know if they were actually not</p> <p>10 deregistered and just didn't make it on this list or</p> <p>11 if they -- if they were deregistered and just didn't</p> <p>12 make it on this list, then it feels like it would be</p> <p>13 in compliance with the other groups that have been</p> <p>14 deregistered.</p> <p>15 Q. And so --</p> <p>16 A. But I just don't know.</p> <p>17 Q. Okay. And you -- so as you sit here</p> <p>18 today, you don't know if Love Works or Christian</p> <p>19 Legal Society were deregistered as of August 2018?</p> <p>20 A. I cannot recall.</p> <p>21 Q. Okay. And you don't have any information</p> <p>22 or documents regarding that?</p> <p>23 A. In terms of Love Works? I know that</p> <p>24 there's an updated document that includes all of the</p> <p>25 organizations that were either deregistered or</p>	<p style="text-align: right;">77</p> <p>1 there was confusion around whether or not they were</p> <p>2 deregistered or not, if they were not actually</p> <p>3 deregistered and other groups were, that could prove</p> <p>4 to be challenging. But if they were actually</p> <p>5 deregistered and just simply missed a list, then</p> <p>6 that seems to be something that was a miss but in</p> <p>7 alignment with applying a policy equally.</p> <p>8 Q. So just to clarify, the university has</p> <p>9 admitted that Love Works and Christian Legal Society</p> <p>10 were not deregistered by August 2018 when</p> <p>11 InterVarsity Graduate was deregistered. So that</p> <p>12 being the case as a baseline, does it concern you</p> <p>13 that InterVarsity Graduate was deregistered for its</p> <p>14 religious leadership selection requirements and the</p> <p>15 other religious groups were not?</p> <p>16 A. If that is indeed the case, that could</p> <p>17 prove to be problematic.</p> <p>18 Q. And when you say "prove to be</p> <p>19 problematic," what do you mean by that?</p> <p>20 A. If we did not include them on the list and</p> <p>21 they were actually deregistered, that would be</p> <p>22 problematic. If we actually did deregister them and</p> <p>23 they simply did not make it onto the list, then we</p> <p>24 have applied it across the organizations</p> <p>25 appropriately.</p>

<p style="text-align: right;">78</p> <p>1 Q. Okay. So if InterVarsity Graduate was 2 treated differently from other religious groups with 3 similar religious requirements for their leaders, 4 then that would be a problem because of the 5 selective enforcement issue? 6 A. If those two were left off and had the 7 exact same challenges as InterVarsity, that would be 8 a problem. 9 Q. And when you say "exact same," what do you 10 mean? 11 A. The statement of faith and the alignment 12 with the human rights policy. Sorry, not statement 13 of faith, alignment with the human rights policy. 14 Q. And alignment with the human rights policy 15 inasmuch as requiring their leaders to agree with 16 their faith, that would be out of alignment? 17 A. That would be out of alignment. 18 MR. BLOMBERG: Let me show you – let's 19 have marked Document 10. Can you mark this as 20 Exhibit 8, please? 21 THE REPORTER: Exh bit 8 is marked. 22 (WHEREUPON, Exhibit 8 was marked for 23 identification.) 24 MR. BLOMBERG: Thank you. 25 MR. CARROLL: Just keep your pile neat.</p>	<p style="text-align: right;">80</p> <p>1 It starts off, "The university is not engaged in." 2 A. Oh, yes. 3 Q. Okay. And then if you go down to the 4 column where it says, "But." It says, "Has allowed 5 some exceptions for compelling reasons which support 6 the educational and social purposes of the forum. 7 A. Yes. 8 Q. Okay. And then if you could turn to the 9 next page, on page 18, the first full paragraph, two 10 sentences down where it says, "These groups have 11 been permitted to continue to exist as RSOs in spite 12 of their apparent violations of the policy for a 13 variety of reasons, including administrative 14 oversight by the university, but also for reasons 15 which support the university's educational mission. 16 For example, multiple groups provide safe spaces for 17 minorities which have historically been the victims 18 of discrimination." 19 Do you see that language? 20 A. I do. 21 Q. How did you decide the groups that the 22 university exempted? How did you decide which of 23 the groups' policies support the university's 24 educational mission and the social purposes of the 25 forum?</p>
<p style="text-align: right;">79</p> <p>1 MR. BLOMBERG: Do you have it there? 2 BY MR. BLOMBERG: 3 Q. I'm showing you the document that's been 4 marked as Exhibit 8. This is a filing by the 5 university of Iowa defendants in the Business 6 Leaders in Christ case. Do you see how on the first 7 page in that caption up there on the right it says, 8 "Defendants' Resistance"? And then if you look on 9 the last page you'll see how I says that it was 10 signed by Thomas J. Miller, Attorney General of 11 Iowa, and George A. Carroll, the Assistant Attorney 12 General? 13 A. Yes. 14 Q. Okay. Would you please turn to pages 17 15 and 18? 16 Do you see at the end of the first 17 paragraph on page 17 where it says that the 18 university has allowed some exceptions for 19 compelling reasons which support the educational and 20 social purposes of the forum? 21 A. I'm sorry, say it again. 22 Q. Mm-hmm. 23 A. Which – 24 Q. The top of page 17. It starts right here. 25 There's a comma. And you'll see that last sentence.</p>	<p style="text-align: right;">81</p> <p>1 A. I did not go through that process so I 2 don't think I can speak exactly to how that 3 determination was made. 4 Q. Are you aware of any groups that have 5 received an exemption from the policy? 6 A. Title IX exemption exceptions, 7 fraternities and sororities. 8 Q. Are there any other groups other than 9 fraternities and sororities under the Title IX 10 exemption? We'll get to that in a second, but any 11 other groups besides Title IX? 12 A. I think guidance from OCR with sport 13 clubs. 14 Q. Sport clubs? 15 A. Mm-hmm. 16 Q. Okay. Anything else besides sport clubs 17 and Greek groups? 18 MR. CARROLL: You're misidentifying or 19 defining fraternities and sororities on the 20 University of Iowa campus. Ask her what she means 21 by that. 22 THE WITNESS: Social fraternities. 23 BY MR. BLOMBERG: 24 Q. Social fraternities and sororities? 25 A. Yes.</p>

<p style="text-align: right;">82</p> <p>1 Q. Okay. Anything besides social 2 fraternities and sororities and sport clubs? Any 3 other exemptions for groups on the campus? 4 A. You could say AA sports but -- 5 Q. Just asking right now about registered 6 student organizations -- 7 A. Oh, gotcha. 8 Q. -- or organizations that fall under that 9 registered student organization policy. 10 A. No. Not that I'm aware of. 11 Q. Okay. So the ones that you're aware of 12 would be the social fraternities and sororities 13 under the Title IX exemption -- 14 A. Mm-hmm. 15 Q. -- and then the sport clubs? 16 A. Mm-hmm. 17 Q. And then no other groups? 18 THE REPORTER: Were those yeses? 19 THE WITNESS: Yeah. Sorry. Yes. So the 20 -- yes. 21 BY MR. BLOMBERG: 22 Q. So if the university had argued that Love 23 Works was exempt because it provided a safe space 24 for minorities, you wouldn't have any knowledge of 25 that?</p>	<p style="text-align: right;">84</p> <p>1 it? 2 A. I am not. 3 Q. And are you familiar that the president of 4 the Iowa Edge student organization is required to 5 have participated in the Iowa Edge program? 6 A. I am not. 7 Q. Okay. 8 A. I didn't know there was a student 9 organization associated with Iowa Edge. 10 Q. You did or you did not? 11 A. I did not. 12 Q. Okay. 13 A. I'm sorry. 14 Q. Okay. So when the university says here 15 that it provides exemptions for groups, it says 16 multiple groups that provide safe spaces for 17 minorities, what is that referring to? 18 A. I don't know exactly. 19 Q. Do you know who would know? 20 A. I don't know what the -- even what the 21 term "providing safe spaces" means. What -- is that 22 a physical space? I don't know in order to be able 23 to answer that question exactly what spaces means in 24 this case. 25 Q. So outside the RSO context, sorry,</p>
<p style="text-align: right;">83</p> <p>1 A. No, not that I can recall. 2 Q. And if the university had argued in 3 Federal Court that the House of Lord was exempt 4 because it provides a safe space for minorities, you 5 wouldn't have any awareness of that? 6 A. I don't recall. 7 Q. Would there be in your mind any exemption 8 for a group that is focused on minority groups to 9 ask their leaders or members to identify with their 10 -- that minority group? So, for instance, asking a 11 racial minority to ask their leaders to members of 12 that racial minority or something like that? 13 A. No. 14 Q. Okay. Are you familiar with the Iowa Edge 15 program? 16 A. I am familiar with Iowa Edge. 17 Q. And are you familiar with the Iowa Edge 18 program's preference for members of certain minority 19 backgrounds? 20 A. And first generation. 21 Q. That's right. But those two? 22 A. Underrepresented identities and first 23 generation if I recall. 24 Q. And are you familiar that the Iowa Edge 25 program has a student organization associated with</p>	<p style="text-align: right;">85</p> <p>1 registered student organization context, can you 2 think of any university programs that try to provide 3 spaces for minority groups to feel comfortable and 4 come together and kind of create a community? 5 A. I think that all of our student groups are 6 designed to provide spaces or opportunities for 7 students to interact with individuals that are 8 similar to them or those that want to be in allyship 9 or support or learn more about. So I think we could 10 look at any of our organizations from College 11 Republicans to College Democrats to a multicultural 12 fraternity or sorority that they're all based on 13 like interests but designed strictly for -- I just 14 don't know -- I guess I'm stuck on spaces and what 15 exactly that means. 16 Q. And you wouldn't -- you wouldn't know of 17 anybody who would know what safe spaces for minority 18 means as the university articulated it to this 19 Federal Court? 20 A. I imagine that they mean organizations 21 where students who have various identities that 22 would be part of underrepresented meaning in terms 23 of numbers represented at the university find 24 opportunities to connect and engage. But I don't -- 25 I don't know exactly. Again, space spaces, what</p>

<p style="text-align: right;">86</p> <p>1 exactly that means in this context.</p> <p>2 Q. Okay. Would the – would the Womxn of</p> <p>3 Colour Network be an example of one of those</p> <p>4 programs you were talking earlier where you're</p> <p>5 creating a space for minority communities to come</p> <p>6 together?</p> <p>7 A. It could be. It's a program through a</p> <p>8 department –</p> <p>9 Q. Okay.</p> <p>10 A. – not a student organization.</p> <p>11 Q. That's right. That's right.</p> <p>12 A. It is representative of more than just</p> <p>13 women of color.</p> <p>14 Q. Okay. And what is that – what is the</p> <p>15 Womxn of Colour Network? How does that operate?</p> <p>16 A. I think it's an organization or a group</p> <p>17 designed to – because there are fewer Womxn of</p> <p>18 Colour at the University of Iowa, opportunities for</p> <p>19 them to come together and have shared experiences.</p> <p>20 Or shared conversations or just to connect. I have</p> <p>21 attended a couple of those meetings as a presenter.</p> <p>22 Q. And what – what were you presenting on?</p> <p>23 What were you discussing?</p> <p>24 A. They just wanted to know about my journey</p> <p>25 as an administrator and what that has been like and</p>	<p style="text-align: right;">88</p> <p>1 get support and encouragement." Continue? "This</p> <p>2 program is an indication of what we need on our</p> <p>3 campus in order to build our community. What we're</p> <p>4 doing here I hope is just the beginning of the</p> <p>5 community building, sisterhood building that we want</p> <p>6 to have here at the University of Iowa."</p> <p>7 Q. So would this be an example of maybe kind</p> <p>8 of the space for community that you were ta king</p> <p>9 about earlier?</p> <p>10 A. Space meaning opportunities for groups to</p> <p>11 get together.</p> <p>12 Q. Okay.</p> <p>13 A. But not physical spaces but opportunities</p> <p>14 to come and ta k and connect.</p> <p>15 Q. Yeah. So safe space or space would mean a</p> <p>16 building. It would mean kind of a community of like</p> <p>17 interests?</p> <p>18 A. Yes. Of like interests.</p> <p>19 Q. Okay. And then let me show you – oh, do</p> <p>20 you know why the X in Womxn of Colour, why it's</p> <p>21 spelled W-o-m-x-n?</p> <p>22 A. I do not know.</p> <p>23 Q. And then let me show you Document 16.</p> <p>24 Can we mark this as Exhibit 10, please?</p> <p>25 THE REPORTER: Exhibit 10 is marked.</p>
<p style="text-align: right;">87</p> <p>1 how we build community – how they can build</p> <p>2 community and support one another on the campus.</p> <p>3 Q. Okay. Let me show you – I have this</p> <p>4 Document 14. Where are we at? Exhibit 9, please.</p> <p>5 THE REPORTER: Exh bit 9.</p> <p>6 MR. BLOMBERG: Thank you.</p> <p>7 (WHEREUPON, Exhibit 9 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. BLOMBERG:</p> <p>10 Q. Dr. Shivers, I'm showing you a document</p> <p>11 that's been marked as Exhibit 9. It is a print out</p> <p>12 of a university webpage entitled "Womxn of Colour</p> <p>13 Network creates space for dialogue, support, and</p> <p>14 environment."</p> <p>15 The third sentence on the second page</p> <p>16 talks about the co-creation of a supportive</p> <p>17 community of women. And then the end of the second</p> <p>18 paragraph talks about creating a much-needed space</p> <p>19 for Womxn of Colour in the campus and the community.</p> <p>20 And then I think the third paragraph there has a</p> <p>21 quote from you. Would you mind reading that for us?</p> <p>22 A. Sure. "It can sometimes be challenging to</p> <p>23 find a space to be exactly who we are but this</p> <p>24 program is a space where things happen. This is a</p> <p>25 space where you can come and be, you can come and</p>	<p style="text-align: right;">89</p> <p>1 (WHEREUPON, Exh bit 10 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. BLOMBERG:</p> <p>4 Q. Dr. Shivers, I'm showing you a document</p> <p>5 that is marked Exhibit 10. At the top it says "Meet</p> <p>6 the women behind WRAC's Womxn of Colour Network."</p> <p>7 And then it ta ks about Jessica Padilla on the</p> <p>8 second page.</p> <p>9 Are you familiar with Ms. Padilla?</p> <p>10 A. I am.</p> <p>11 Q. Can you tell me about her and her work</p> <p>12 with the Womxn of Colour Network?</p> <p>13 A. She is a staff member in the Women's</p> <p>14 Resource and Action Center who prior to my arrival</p> <p>15 had created this initiative, the Womxn of Colour</p> <p>16 Network as a part of her role or a part of a, I</p> <p>17 guess, more of her interest at the University of</p> <p>18 Iowa. She did her undergraduate, I think, at the</p> <p>19 University of Iowa and did her masters, I think, at</p> <p>20 Iowa State. Came back and was hired here, again,</p> <p>21 prior to my arrival. And this is one of the</p> <p>22 programs that I think that she oversees.</p> <p>23 Q. Okay. And then if you'd look at the last</p> <p>24 page, the second full paragraph where it says, "She</p> <p>25 has made sure that all of the facilitators are women</p>

<p style="text-align: right;">90</p> <p>1 of color that work in the campus community."</p> <p>2 Why do you think it was important for all</p> <p>3 the facilitators to be women of color for purposes</p> <p>4 of this space?</p> <p>5 A. Sorry, I'm just reading this.</p> <p>6 Q. Yeah, please, yeah, take your time.</p> <p>7 A. I don't know.</p> <p>8 Q. Do you think it would -- it would change</p> <p>9 the nature of the space if instead of having</p> <p>10 facilitators who are women of color you had -- it</p> <p>11 was exclusively staffed by white males?</p> <p>12 A. I think here it sounds like she's talking</p> <p>13 about a program that was at Iowa State and that it</p> <p>14 influenced this two-day retreat.</p> <p>15 Q. And then at that retreat it says that she</p> <p>16 made sure all the facilitators were women of color.</p> <p>17 So, and that work --</p> <p>18 A. That the program series hosted. Sorry.</p> <p>19 Q. So why do you think that was important?</p> <p>20 Why do you think that influences the space? Or do</p> <p>21 you think it is?</p> <p>22 A. I don't know what -- I don't know why she</p> <p>23 said that or what her decision was behind that.</p> <p>24 Q. Do you think that having the Womxn of</p> <p>25 Colour Network that was run by Caucasian males would</p>	<p style="text-align: right;">92</p> <p>1 impossible to do.</p> <p>2 Q. Do you think it would change the nature of</p> <p>3 the conversation, especially for women of color who</p> <p>4 are coming to the event, to hear Caucasian males</p> <p>5 telling them about their experiences and, you know,</p> <p>6 the work they had done as a part of the university</p> <p>7 community?</p> <p>8 A. I imagine it could be different.</p> <p>9 Q. Do you think it would have the same effect</p> <p>10 on the women coming to the event?</p> <p>11 A. I think depending on the messaging.</p> <p>12 Q. And would they be able to speak from their</p> <p>13 experience and kind of impart that experience in the</p> <p>14 same way that facilitators who are women of color</p> <p>15 could?</p> <p>16 A. I don't know that they would have the same</p> <p>17 shared experiences. They could share experiences</p> <p>18 that they've heard from individuals who identify as</p> <p>19 women of color, but I don't know that they could</p> <p>20 present the exact same experience --</p> <p>21 Q. Do you --</p> <p>22 A. -- or represent the experience, sorry.</p> <p>23 Q. Do you think that could be true for a</p> <p>24 religious student group as well that, you know, if</p> <p>25 they want a leader who can pray to the God that they</p>
<p style="text-align: right;">91</p> <p>1 change the nature of the network?</p> <p>2 A. I imagine it could.</p> <p>3 Q. Why? What would -- why would that change</p> <p>4 the network?</p> <p>5 A. Well, just even the name of it.</p> <p>6 Q. It seems like a truth in advertising</p> <p>7 problem?</p> <p>8 A. Just even the name of it I think would be</p> <p>9 challenging, perhaps, yet I also think within the</p> <p>10 Women's Resource and Action Center there are men who</p> <p>11 run domestic violence programs and they don't</p> <p>12 identify as women and do an effective job.</p> <p>13 Q. But as far as say leading a Womxn of</p> <p>14 Colour event?</p> <p>15 A. Sure.</p> <p>16 Q. If all the leadership were Caucasian</p> <p>17 males, do you think that would change the nature of</p> <p>18 the event?</p> <p>19 A. I imagine it could be based on what they</p> <p>20 shared and sort of why they believed they are</p> <p>21 positioned to still be able to engage in this</p> <p>22 conversation, I imagine it could make it different -</p> <p>23 -</p> <p>24 Q. Do you think -- I'm sorry, go ahead.</p> <p>25 A. -- but I don't know that it would be</p>	<p style="text-align: right;">93</p> <p>1 believe in or teach Bible studies from their</p> <p>2 religious perspective, that it would matter that the</p> <p>3 person who was praying or the person who was</p> <p>4 teaching the Bible study actually believed the thing</p> <p>5 that they were teaching or praying?</p> <p>6 MR. CARROLL: I'm sorry, I actually didn't</p> <p>7 understand the question. Are you assuming Women's</p> <p>8 Resource in Action Center is a student group?</p> <p>9 MR. BLOMBERG: No.</p> <p>10 MR. CARROLL: Okay.</p> <p>11 BY MR. BLOMBERG:</p> <p>12 Q. So for a religious student group talking</p> <p>13 about the importance of leadership reflecting the</p> <p>14 embodied experience of the group, do you think it</p> <p>15 would matter to the group, or it's reasonable it</p> <p>16 could matter to the group that the students leading</p> <p>17 them in prayer believed in the God that they were</p> <p>18 praying to?</p> <p>19 A. I could see how that could be important.</p> <p>20 Q. Do you think it would be important for a</p> <p>21 student who was leading them in a Bible study to</p> <p>22 believe that the study of scripture was, in fact,</p> <p>23 leading to truth?</p> <p>24 A. Yes.</p> <p>25 Q. Do you think it would change the message</p>

<p style="text-align: right;">94</p> <p>1 of a prayer if the individual praying didn't believe 2 in the God they were praying to and everyone knew 3 that? 4 A. What do you mean by "everyone knew that"? 5 Q. So an individual gets up and says, I am a 6 Christian. This is a Jewish group. 7 A. Oh. 8 Q. And I'm going to lead us in a prayer or 9 I'm going to lead us in a prayer – I'm going to 10 lead us in a prayer to the Jewish god but I don't 11 believe in the same things that you do. Right? Do 12 you think that would change the nature of the 13 group's ability to enter into the prayer with that 14 leader? 15 A. Maybe. 16 Q. Or say a -- say a Christian leader that 17 came to a study of the Koran and said, I think this 18 book is wrong. Let me tell you what it means. Do 19 you think that would change the way that Muslim 20 students would be able to receive that teaching? 21 A. Ask me that again. 22 Q. So, and what I'm trying to understand and 23 think about with you is does it -- does it influence 24 the nature of the message of what's imparted, right, 25 in a teaching environment if you don't believe what</p>	<p style="text-align: right;">96</p> <p>1 that are being sung. 2 Q. I think, you know, it seems like one of 3 the common criticisms of religious groups, perhaps 4 not unfounded, is that they say one thing and do 5 another. Right? They're not sincere. Hypocrisy is 6 a fairly consistent charge. Do you think that it 7 could harm the message of a religious student group 8 if their leaders didn't sincerely believe the things 9 that they were saying? They were saying one thing 10 but actually believed something different? 11 A. Again, could you ask me that question 12 again? 13 Q. Absolutely. 14 Do you think it would change the message 15 and the community of a religious student group if 16 their leaders were saying one thing they did not 17 actually believe? 18 A. I think it could be challenging. 19 Q. And why do you think it could be 20 challenging? What kind of challenges do you think 21 would come up? 22 A. I think if there's a challenge of what I 23 believe versus what you're saying, how am I -- how 24 do I wrestle with what I believe and know to be true 25 and what you are espousing or can trust that you can</p>
<p style="text-align: right;">95</p> <p>1 you're teaching. And so for a Christian student to 2 come and lead a Muslim group and say I'm not Muslim 3 and I don't think the Koran is true but I'm going to 4 lead this study on what the Koran says. Do you 5 think that would change the nature of what's being 6 taught? 7 A. Yes. 8 Q. For those Muslim students? 9 A. Maybe not what's being taught but do they 10 believe the person that is teaching. Do they 11 believe that they believe it? 12 Q. So it influences the message? 13 A. Influence. 14 Q. You think so? 15 A. Sure. 16 Q. What about in the context of say a worship 17 service? An individual gets up at the front of the 18 worship service and they say I don't believe any of 19 these songs that we are singing but I'm going to 20 lead you in them. Do you think that would change 21 the worship experience for the students that are 22 participating? 23 A. I think again they may have trouble 24 understanding or believing that this person is 25 leading this and not owning the beliefs of the songs</p>	<p style="text-align: right;">97</p> <p>1 guide me even to change my views or to coincide with 2 my views? 3 Q. The university -- switching gears 4 slightly. The university has said that it doesn't 5 apply the human rights clause to prevent political 6 groups or ideological groups from requiring their 7 leaders to share their political or ideological 8 beliefs. So the political and ideological groups 9 can exclude a candidate for leadership who would 10 disagree with their core beliefs. 11 You know, say the University Democrats 12 could exclude an individual that wore a red MAGA hat 13 and thinks that Hillary Clinton should be in jail, 14 for instance. Why are those groups allowed to make 15 those kinds of exclusions for their leadership 16 selection? 17 A. I don't know. I don't know. 18 Q. Are you aware of any evidence that the 19 university has reviewed to say that allowing those 20 kind of exclusions doesn't harm the university's 21 interest in diversity or inclusion? 22 A. I don't know. 23 Q. Is it your understanding that a political 24 group could require, for instance, its leaders to 25 share its political views about poverty alleviation?</p>

<p style="text-align: right;">98</p> <p>1 A. I'm not aware.</p> <p>2 Q. Stepping back, not like you have a poverty</p> <p>3 alleviation group, but could, consistent with the</p> <p>4 human rights clause, could a political group say we</p> <p>5 really believe that the state has a huge role in</p> <p>6 poverty alleviation and you as a candidate for</p> <p>7 leadership need to agree with that belief or you</p> <p>8 can't be a leader for this group. Would they be</p> <p>9 able to do that consistent with the human rights</p> <p>10 clause?</p> <p>11 A. To tell them that they can't lead it if</p> <p>12 they don't believe in poverty alleviation?</p> <p>13 Q. Mm-hmm.</p> <p>14 A. No.</p> <p>15 Q. Sorry. They can exclude them for that</p> <p>16 reason or they cannot exclude them for that reason?</p> <p>17 A. As the human rights policy is currently</p> <p>18 established they can have leaders who there's no</p> <p>19 differentiation between leaders and members.</p> <p>20 They're able to be a member of the organization</p> <p>21 because either they're interested, they have</p> <p>22 allyship to, or they want to learn more about. The</p> <p>23 human rights clause does not suggest that they can't</p> <p>24 do any of those things.</p> <p>25 Q. Okay. So the human rights clause wouldn't</p>	<p style="text-align: right;">100</p> <p>1 deregistered in August of 2018?</p> <p>2 A. It was the alignment with the human rights</p> <p>3 – if we're talking about – I think I'm just</p> <p>4 confusing InterVarsity and BLinC. So I'm trying to</p> <p>5 separate the two.</p> <p>6 Q. Absolutely. Please.</p> <p>7 A. And that's –</p> <p>8 Q. So just to clarify, so with InterVarsity</p> <p>9 Graduate, their religious belief that was at issue</p> <p>10 was are you a Christian? Do you agree with our</p> <p>11 Christian beliefs regarding Jesus as the Son of God;</p> <p>12 right? And what the university told them is that</p> <p>13 they couldn't have that requirement that Christians</p> <p>14 be their leaders and they could not strongly</p> <p>15 encourage their leaders to be Christians.</p> <p>16 So my question is, as it relates to a</p> <p>17 specific religious belief, the religious belief</p> <p>18 regarding the story of the Good Samaritan, would</p> <p>19 they be able to require that consistent with the</p> <p>20 human rights clause?</p> <p>21 A. I don't know. I'd need to think about</p> <p>22 that more.</p> <p>23 Q. Okay. All right. Well, maybe we can come</p> <p>24 back to it in a few minutes.</p> <p>25 For sport clubs, which I think you</p>
<p style="text-align: right;">99</p> <p>1 prevent a political group that was focused on</p> <p>2 poverty alleviation from saying our leaders have to</p> <p>3 agree that poverty alleviation is really important?</p> <p>4 A. Not from my understanding.</p> <p>5 Q. Okay. But the human rights clause would</p> <p>6 prevent a religious group from saying that our</p> <p>7 leaders absolutely have to believe that the Good</p> <p>8 Samaritan story is a true principle as a religious</p> <p>9 matter and we should follow it?</p> <p>10 A. I don't know.</p> <p>11 Q. So the first is a political belief, right,</p> <p>12 regarding poverty alleviation, and that's</p> <p>13 permissible under the human rights clause. The</p> <p>14 second is a religious belief and it's required by a</p> <p>15 religious group that its leaders share that</p> <p>16 religious belief as it regards the story of the Good</p> <p>17 Samaritan and the values that Jesus taught there</p> <p>18 regarding taking care of those who are in dire</p> <p>19 straits. Would they be – would InterVarsity</p> <p>20 Graduate be allowed to say you must share our</p> <p>21 religious beliefs that the Good Samaritan story is a</p> <p>22 binding religious principle for life?</p> <p>23 A. I don't know.</p> <p>24 Q. Why would they be able to do it? What</p> <p>25 would make that different from the reason they were</p>	<p style="text-align: right;">101</p> <p>1 mentioned – we were talking about earlier, the two</p> <p>2 types of groups that you were aware of that received</p> <p>3 exemptions, one was sport clubs and the other was</p> <p>4 social fraternities and sororities. What – can you</p> <p>5 describe to me the nature of the exemption for sport</p> <p>6 clubs? Is it all sport clubs are exempt from the</p> <p>7 human rights clause?</p> <p>8 A. There is an OCR guided exemption for sport</p> <p>9 clubs. For example, women playing a sport that</p> <p>10 requires something different than another – than a</p> <p>11 male playing a sport. That is part of the reason I</p> <p>12 think for the exception.</p> <p>13 Q. So the exception for sport clubs is that</p> <p>14 only from the human rights clause's provision on sex</p> <p>15 discrimination?</p> <p>16 A. I don't know.</p> <p>17 Q. So, but the university wouldn't let, for</p> <p>18 instance, a sports club to discriminate based on</p> <p>19 race?</p> <p>20 A. Correct.</p> <p>21 Q. All right. Are you aware of any other</p> <p>22 categories for which the exemption applies other</p> <p>23 than men's and women's groups?</p> <p>24 A. I am not.</p> <p>25 Q. Okay. But you are aware of the exemption</p>

<p style="text-align: right;">102</p> <p>1 as it relates to the sex discrimination?</p> <p>2 A. I just use that as an example of sort of</p> <p>3 some of the ways I think that they have made that –</p> <p>4 they've offered that guidance as it relates to sport</p> <p>5 clubs and the exception.</p> <p>6 Q. Mm-hmm.</p> <p>7 A. But I don't know that that's the only.</p> <p>8 Q. Okay. But you're aware of at least – at</p> <p>9 least that exemption as it relates to the sex</p> <p>10 discrimination clause?</p> <p>11 A. Sure.</p> <p>12 Q. The sport clubs are allowed to have men's</p> <p>13 groups and women's groups?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And is it your understanding that's</p> <p>16 true for all sport clubs, all different types of</p> <p>17 sports, or are there only certain sport clubs that</p> <p>18 it applies to.</p> <p>19 A. Oh, I don't know for sure.</p> <p>20 Q. Okay. But sitting here you're not aware</p> <p>21 of anything that says it only applies to football</p> <p>22 sports or something like that?</p> <p>23 A. I am not aware.</p> <p>24 Q. Okay. Do you know how long the exemption</p> <p>25 has been in place? How long the university has</p>	<p style="text-align: right;">104</p> <p>1 Nelson, they would be aware of the exemption as</p> <p>2 well?</p> <p>3 A. I don't remember having that exact</p> <p>4 conversation with them so I don't speak to whether</p> <p>5 or not that is fact.</p> <p>6 Q. Okay. Is – are – is there any effort</p> <p>7 right now by the university to require men's and</p> <p>8 women's sport clubs to integrate?</p> <p>9 A. I have not been a part of those</p> <p>10 discussions if they exist.</p> <p>11 Q. All right. And as you sit here today as</p> <p>12 the university's witness on enforcement of the human</p> <p>13 rights policy, you are not trying to enforce the</p> <p>14 human rights policy in a way that would require</p> <p>15 men's and women's clubs to integrate?</p> <p>16 A. That is not something that we have</p> <p>17 formally discussed, no.</p> <p>18 Q. Okay.</p> <p>19 A. Or discussed.</p> <p>20 Q. Do you know the basis for the sport clubs</p> <p>21 exemption? Why is it that sport clubs are allowed</p> <p>22 to discriminate based on sex?</p> <p>23 A. I don't know that, the history.</p> <p>24 Q. Okay. And you're not aware of any review</p> <p>25 of that basis as a part of the review of the human</p>
<p style="text-align: right;">103</p> <p>1 allowed men's and women's sport clubs?</p> <p>2 A. I don't.</p> <p>3 Q. Did it reconsider the exemption for sport</p> <p>4 clubs as part of its review last year?</p> <p>5 A. I don't recall.</p> <p>6 Q. Were you a part of any conversations</p> <p>7 asking, you know, we allow sport clubs to</p> <p>8 discriminate based on sex, you know, is that a</p> <p>9 problem under your human rights clause?</p> <p>10 A. I don't recall.</p> <p>11 Q. All right. So you don't recall sitting in</p> <p>12 any of those types of conversations?</p> <p>13 A. I don't recall.</p> <p>14 Q. Okay. And you're not aware of anyone else</p> <p>15 who was participating in a conversation looking at</p> <p>16 the sport clubs exemption?</p> <p>17 A. I don't recall.</p> <p>18 Q. All right. Do you know if President</p> <p>19 Harrelld was ever advised of the exemption for sport</p> <p>20 clubs?</p> <p>21 A. I don't recall.</p> <p>22 Q. But you're aware of the exemptions for</p> <p>23 sport clubs?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And then Mr. Kutcher and Dr.</p>	<p style="text-align: right;">105</p> <p>1 rights clause in this past spring 2018?</p> <p>2 A. I am not aware.</p> <p>3 Q. Okay. Do you know who would be aware of</p> <p>4 the basis for the exemption?</p> <p>5 A. I imagine there may be folks in General</p> <p>6 Counsel who have more knowledge about that than I</p> <p>7 would.</p> <p>8 Q. Okay. But outside of the attorneys,</p> <p>9 you're not aware?</p> <p>10 A. I don't know.</p> <p>11 Q. Okay. You mentioned an OCR guidance.</p> <p>12 A. Yeah.</p> <p>13 Q. What is that?</p> <p>14 A. Office of Civil Rights.</p> <p>15 Q. Mm-hmm.</p> <p>16 A. That -- oh, sorry, go ahead.</p> <p>17 Q. What is the guidance that you've seen?</p> <p>18 A. That I understand that there is an</p> <p>19 exemption for sport clubs as a part of that process.</p> <p>20 Q. And that exemption applies – is it a</p> <p>21 mandatory exemption that the university must exempt</p> <p>22 sport clubs from its human rights clause?</p> <p>23 A. I don't know that it's mandatory.</p> <p>24 Q. Okay.</p> <p>25 A. I don't.</p>

<p style="text-align: right;">106</p> <p>1 Q. And if I were to tell you that the</p> <p>2 exemption is not mandatory and the university chose</p> <p>3 to, you know, allow that exemption, you wouldn't</p> <p>4 know one way or the other?</p> <p>5 A. I would not.</p> <p>6 Q. Okay. All right.</p> <p>7 MR. BLOMBERG: You know what? Let's -- is</p> <p>8 now okay for a time to take a quick break?</p> <p>9 THE WITNESS: Yeah.</p> <p>10 MR. BLOMBERG: I've had a lot of water so</p> <p>11 a break would be nice for me.</p> <p>12 THE WITNESS: That would be great.</p> <p>13 MR. BLOMBERG: Okay, great.</p> <p>14 Are we okay to go off record?</p> <p>15 THE REPORTER: We're off the record.</p> <p>16 (WHEREUPON, a brief recess was taken.)</p> <p>17 THE REPORTER: We are on the record.</p> <p>18 BY MR. BLOMBERG:</p> <p>19 Q. Just to follow up from our earlier</p> <p>20 conversation, when you were -- when you were talking</p> <p>21 with President Harreld and kind of reporting as</p> <p>22 things were going along, did he ever respond back to</p> <p>23 you and say this is a problem, I want us to take a</p> <p>24 different course or anything like that?</p> <p>25 A. No. Not that I can recall.</p>	<p style="text-align: right;">108</p> <p>1 beliefs?</p> <p>2 A. In terms of thinking about, and this is</p> <p>3 where my mind goes with the human rights policy, and</p> <p>4 the focus on ensuring that the groups that are</p> <p>5 identified, that there cannot be discrimination for</p> <p>6 those groups based on those identities. And that</p> <p>7 individuals can be a part of any organization and</p> <p>8 that we don't make a differentiation between leaders</p> <p>9 and members. So in response to that question, what</p> <p>10 the organization stands for and how that's</p> <p>11 operationalized is dependent on the organization.</p> <p>12 When it comes to there's no real separate</p> <p>13 nature around what leaders have to believe or don't</p> <p>14 have to believe for the human rights policy, that's</p> <p>15 the part in terms of enforcement of the policy. It</p> <p>16 applies -- there's no distinction between members</p> <p>17 and leaders.</p> <p>18 Q. Okay. And so, and just to make sure I</p> <p>19 understand I'll repeat it back, and let me know if</p> <p>20 I'm wrong. What you're saying is the university's</p> <p>21 policy says you can't discriminate on certain</p> <p>22 criteria, and that's true whether or not the</p> <p>23 position in question is a membership position or a</p> <p>24 leadership position?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">107</p> <p>1 Q. Do you recall him having any response</p> <p>2 other than just being informed, just like</p> <p>3 acknowledging?</p> <p>4 A. I think we would -- in terms about talking</p> <p>5 about where we are, particularly when we -- the</p> <p>6 timeline for the deregistration, updating him on</p> <p>7 where we are with that and what the timeline is for</p> <p>8 groups to comply, that was really the extent of the</p> <p>9 in-depthness of our conversations.</p> <p>10 Q. So circling back on the political and</p> <p>11 religious question just to try to clarify in part</p> <p>12 because the university has designated you as their</p> <p>13 witness for enforcement. So we just need to</p> <p>14 understand what the policy is.</p> <p>15 So a political group could have political</p> <p>16 beliefs regarding poverty alleviation. If a</p> <p>17 religious group has religious beliefs regarding</p> <p>18 poverty alleviation, are they allowed to require</p> <p>19 their leaders to share those beliefs?</p> <p>20 A. I don't know.</p> <p>21 Q. All right. So the university doesn't know</p> <p>22 the answer to that question? Speaking as a witness</p> <p>23 for the university, the university doesn't know</p> <p>24 whether or not an individual or a religious student</p> <p>25 group can require its leaders to share religious</p>	<p style="text-align: right;">109</p> <p>1 Q. Okay. And then one of those criteria that</p> <p>2 groups aren't allowed to have, you know, require</p> <p>3 people to meet or not meet is religion; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So religion --</p> <p>7 A. Discriminate against. Yes.</p> <p>8 Q. Okay. And then, but, so while a group is</p> <p>9 able to say we want our members and leaders to share</p> <p>10 our political beliefs, a religious group isn't able</p> <p>11 to say we want our leaders or members, but leaders</p> <p>12 is what we're specifically talking about today with</p> <p>13 InterVarsity Graduate, we want our leaders to share</p> <p>14 our religious beliefs. They can't say that?</p> <p>15 A. They -- there's no distinction between</p> <p>16 leaders and members.</p> <p>17 Q. Mm-hmm. Mm-hmm.</p> <p>18 A. In terms of what -- we don't have</p> <p>19 currently individuals join an organization. I want</p> <p>20 to join the knitting club. I'm coming in because I</p> <p>21 really enjoy knitting, or I don't have a clue about</p> <p>22 knitting but I want to learn more about knitting.</p> <p>23 There's nothing in there that says that they have to</p> <p>24 have a skillset in knitting in order to be a leader.</p> <p>25 I'm making that one up.</p>

<p style="text-align: right;">110</p> <p>1 Q. Totally.</p> <p>2 A. I don't know that it exists. But, so I</p> <p>3 don't know that there's a difference between the</p> <p>4 political beliefs. Because individuals I imagine --</p> <p>5 I'm going to go back to the College Democrats and</p> <p>6 College Republicans. People join those</p> <p>7 organizations because we're assuming that they have</p> <p>8 those same beliefs and believe in what the</p> <p>9 democratic views or the republican views are.</p> <p>10 I don't know that there's a difference</p> <p>11 made about when they become a leader in that, or I</p> <p>12 think the assumption is that they continue to be</p> <p>13 supportive of that organization and the beliefs of,</p> <p>14 if you will, of what it means to be a Democrat. Or</p> <p>15 I'm coming in to learn about being a Democrat. And</p> <p>16 now that I've learned more I want to be in a</p> <p>17 leadership position.</p> <p>18 Q. So setting aside the leadership and</p> <p>19 membership question for just a moment.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. Set that one aside.</p> <p>22 A political group, say the University</p> <p>23 Republicans, you know, could say to be a member in</p> <p>24 our organization, right, you need to agree with the</p> <p>25 Republican National Committee's platform. Is that</p>	<p style="text-align: right;">112</p> <p>1 political group able to require its leaders to share</p> <p>2 a political belief, or members? Is a political</p> <p>3 group allowed to require its members to share a</p> <p>4 political belief?</p> <p>5 A. Yes, I think so.</p> <p>6 Q. Okay. And that wouldn't be -- that</p> <p>7 wouldn't violate the human rights clause?</p> <p>8 A. I'm not 100 percent sure.</p> <p>9 Q. All right. If it would -- let me show you</p> <p>10 Document 5. This might help with clarifying a</p> <p>11 couple things.</p> <p>12 Where are we now? Exhibit 11, please.</p> <p>13 THE REPORTER: Exhibit 11 is marked.</p> <p>14 (WHEREUPON, Exh bit 11 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BLOMBERG:</p> <p>17 Q. So this document I'm showing you, Dr.</p> <p>18 Shivers, is Exhibit 11. And if you look at the</p> <p>19 caption over here on the top right you'll see it</p> <p>20 says Defendants' Responses. And then if you look</p> <p>21 down where it has the bold text it says, "Come now</p> <p>22 the defendants, the University of Iowa, Bruce</p> <p>23 Harreld, Melissa Shivers, William Nelson, Andrew</p> <p>24 Kutcher, and Thomas Baker and State." And then if</p> <p>25 you look at the last page you'll see like that other</p>
<p style="text-align: right;">111</p> <p>1 correct under the human rights policy?</p> <p>2 A. Yes.</p> <p>3 Q. Let's make it even simpler because that's</p> <p>4 kind of broad.</p> <p>5 A. Yeah.</p> <p>6 Q. Okay. That's kind of broad.</p> <p>7 You have to -- the University Republicans</p> <p>8 are saying you have to agree with our policy as it</p> <p>9 regards republican policy as it regards military</p> <p>10 intervention in Syria. Okay? And if you don't,</p> <p>11 you're welcome to go to another group but you can't</p> <p>12 be a part of our group. They're allowed to do that</p> <p>13 consistent with the human rights clause?</p> <p>14 A. I don't know that they are allowed to do</p> <p>15 that.</p> <p>16 Q. Okay. What would prevent them from doing</p> <p>17 that?</p> <p>18 A. I think the expectations that individuals</p> <p>19 can be a part of the group and have a shared</p> <p>20 interest but they can also become a part of a group</p> <p>21 to learn more about the organization. And they can</p> <p>22 adopt those same views but there's nothing that</p> <p>23 requires them to believe in the example that you</p> <p>24 offered.</p> <p>25 Q. Is a -- from your understanding, is a</p>	<p style="text-align: right;">113</p> <p>1 document we had before, it's signed by the</p> <p>2 university's attorneys.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Let's look at paragraph 33</p> <p>6 together, which is on page 14.</p> <p>7 And do you see where it says at the top,</p> <p>8 "The university has approved the constitutions of</p> <p>9 many organizations that limit their leadership or</p> <p>10 membership based on nonreligious creeds or missions</p> <p>11 as well."</p> <p>12 Do you see that language?</p> <p>13 A. Yes.</p> <p>14 Q. And then if you turn to the next page, do</p> <p>15 you see where it says -- it says response and it</p> <p>16 says admit. And then it has some additional</p> <p>17 language about the extent to which each</p> <p>18 organization's mission qualifies as a creed granting</p> <p>19 protection of the human rights policy has not been</p> <p>20 explored. But do you see that the university</p> <p>21 admitted that it has approved constitutions of</p> <p>22 organizations that limit leadership and membership</p> <p>23 based on nonreligious creeds and missions?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And then if we look at paragraphs</p>

<p style="text-align: right;">114</p> <p>1 210, 11, 12, that's on page 65. And it says, 2 paragraph 210, it says, "For instance, feminists and 3 pro-life groups are permitted to require their 4 leaders and members to sign statements affirming the 5 group's ideological beliefs." And then the response 6 there was admit. 7 Do you see that? 8 A. Yes, I do. 9 Q. All right. And then paragraph 211 where 10 it says, "The group Iowa National Lawyers Guild is 11 still a registered student group and can exclude 12 people who don't agree with its political beliefs." 13 And then if you turn to the next page 14 you'll see where the university's response was 15 admit? 16 A. Yes. 17 Q. Okay. So does that -- does that clarify 18 the university's position regarding political 19 beliefs and being able to require members and 20 leaders to share political beliefs? 21 A. It does. I think the term of the use 22 (sic) creed, if you use that in terms of their 23 belief that would have helped me to think because I 24 was thinking about all the -- not blaming you but 25 just thinking about the term "creed" and what it</p>	<p style="text-align: right;">116</p> <p>1 discrimination clause? Do you recall that? 2 A. Updated the human rights policy? 3 Q. Mm-hmm. 4 A. I can't recall if it was the human rights. 5 Q. Let's just look at the language. Yeah, 6 you're right. I might be using the wrong term. 7 Let's see, I've got it here. 8 Okay. So if you look at page 11 of that 9 document. 10 MR. CARROLL: Exh bit 11. 11 MR. BLOMBERG: Of Exhibit 11. Yes, 12 please. 13 BY MR. BLOMBERG: 14 Q. Okay. And so, yeah, and this might -- so 15 if you look at paragraph 26 it says, "Until 16 recently, the policy language adopted by the 17 registered student organization policy read as 18 follows." And then it has that language that's 19 pretty familiar to us. 20 Do you see where it says that in paragraph 21 26? 22 A. Yes. Yes. 23 Q. And then look in paragraph 27 where it 24 says, "In July or August 2018, the university 25 amended the language to insert a parenthetical after</p>
<p style="text-align: right;">115</p> <p>1 was articulated that it means. 2 Q. Absolutely. Absolutely. I'm happy to 3 clarify -- 4 A. Yes. 5 Q. -- at any time. So -- 6 A. Thank you. 7 Q. Yeah. So then just to go back to kind of 8 our original example, a political group could 9 require its leaders and members to agree on poverty 10 alleviation as a political matter; correct? 11 A. Yes. 12 Q. And then a religious group could not 13 require its leaders or members to agree with poverty 14 alleviation as a religious belief; is that correct? 15 A. Yes. 16 Q. Okay. Let's see. Going back to summer 17 2018 -- 18 A. Are we done with this? 19 Q. Yes, ma'am. Yes, ma'am. We might look at 20 it again so you can set it aside but I think we're 21 done for right now. 22 Do you recall that sometime in July or 23 August of 2018, the university updated the human 24 rights policy to add that language that explicitly 25 exempted Title IX organizations from the sex</p>	<p style="text-align: right;">117</p> <p>1 the word 'sex' to state an explicit exemption for 2 fraternities and sororities, social fraternities and 3 sororities." 4 Do you see that? And then if you look 5 you'll see an italics there in the body of that 6 paragraph where the parenthetical is. 7 A. Yes. 8 Q. Okay. 9 A. This is in reference to the registered 10 student organization policy, not the human rights 11 policy. 12 Q. An important clarification. 13 A. Which is what I think you had -- 14 Q. Yes. 15 A. Yes. 16 Q. An important clarification. All right. 17 A. Yes. 18 Q. So as it relates to the RSO policy and 19 what the religious -- or what registered student 20 organizations were required to abide by, sometime in 21 July or August this parenthetical was inserted? 22 A. Yes. 23 Q. Okay. All right. 24 A. To the registered student organization 25 policy.</p>

<p style="text-align: right;">118</p> <p>1 Q. Okay. And why wasn't that exemption 2 language included in that June 1st email from Mr. 3 Kutcher? 4 A. I'm not sure. 5 Q. And what was the process for adopting the 6 new language in July or August, you know, with this 7 parenthetical? 8 A. I think it specifically was relative to -- 9 in looking at the social fraternities and sororities 10 and the exemption that is there related to title 11 that. 12 Q. Okay. And was there -- so that exception 13 wasn't written into the policy before July or August 14 2018; correct? 15 A. Not that I'm aware of. 16 Q. Okay. And so, but an unwritten exemption 17 existed before then because the fraternities and 18 sororities were -- social fraternities and 19 sororities were allowed to continue organizing based 20 on sex distinctions? 21 A. Yes. 22 Q. Okay. And -- 23 A. I think that's also part of their national 24 organizations, international organizations. 25 Q. Okay. And then do you know when that</p>	<p style="text-align: right;">120</p> <p>1 make sure that that was represented going forward as 2 we were sort of looking at everything else at the 3 same time. 4 Q. All right. And -- is it your 5 understanding that the exemption is required under 6 the human rights clause? Or is it one that the 7 university adopted to match Title IX? 8 A. Under the human rights clause or under the 9 registered student org clause? 10 Q. I'm sorry. Yeah, under the human rights 11 clause, which is this language, right, because this 12 is what -- it's not the human rights policy. 13 A. Oh, okay. 14 Q. Yeah, but the human rights clause. 15 A. Sorry. Yes. 16 Q. So the human rights clause in the RSO 17 policy -- 18 A. Yes. 19 Q. -- was it adopted here because it was 20 required by Title IX or because the university 21 wanted to follow Title IX? 22 A. I don't know that we received guidance 23 specifically from Title IX but we recognized that 24 Title IX does require and we needed to ensure that 25 that was recognized here -- is included here, sorry.</p>
<p style="text-align: right;">119</p> <p>1 exemption, the unwritten exemption was originally 2 created? Or has it just kind of always been the 3 case? 4 A. I can speak to always of July of 2017 to 5 present day. I don't -- 6 Q. Are you aware of any time before July of 7 2017 where the unwritten exemption was adopted? 8 A. I am not aware. 9 Q. Okay. And you don't know who was involved 10 in the creation of that unwritten exemption or 11 anything like that? 12 A. I do not. 13 Q. Okay. What was the reason that the 14 university chose to write it in now? You know, if 15 it had the unwritten exemption for a long time, why 16 write in a written exemption? 17 A. I think it was more around the 18 clarification when looking at fraternities and 19 sororities and going through that process of looking 20 at all of our student orgs where maybe something 21 that was not as clear or as documented as it should 22 have been and recognition that from the 23 national/international fraternities and sororities, 24 recognizing that that exemption does exist. 25 And then I think it was just important to</p>	<p style="text-align: right;">121</p> <p>1 Q. Does Title IX require you to make the 2 exemption? I mean, could you choose to apply the 3 human rights clause to fraternities and sororities 4 without violating Title IX? 5 A. I don't know. 6 Q. If I told you that Title IX doesn't 7 require you, it allows you -- you can, but it 8 doesn't require you to give an exemption to social 9 fraternities and sororities, would that change your 10 thinking on whether the exemption should exist? 11 A. I think I'd want to learn more about it 12 before making a determination. 13 Q. Were there any other reasons for having 14 the exemption other than Title IX? 15 A. Not that I'm aware of. 16 Q. So the only reason why the university 17 provided this exemption from the RSO policy for 18 social fraternities and sororities is because Title 19 IX does as well? 20 A. In alignment with, yes. 21 Q. Okay. Even though Title IX doesn't 22 require you to provide that exemption? 23 A. If that is indeed the case. You have 24 shared that. I don't know that. 25 Q. Can we look at Document 24?</p>

<p style="text-align: right;">122</p> <p>1 I'm sorry, you don't have it yet. I'll</p> <p>2 get it to you in a second.</p> <p>3 MR. BLOMBERG: If you could mark this as</p> <p>4 Exhibit 12, please.</p> <p>5 THE REPORTER: Exhibit 12 is marked.</p> <p>6 (WHEREUPON, Exhibit 12 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. BLOMBERG:</p> <p>9 Q. Dr. Shivers, I'm showing you a document</p> <p>10 that's been marked Exhibit 12. It is a print out</p> <p>11 from the Fraternity and Sorority Life page at the</p> <p>12 University of Iowa.</p> <p>13 Are you familiar with this page?</p> <p>14 A. I don't recall seeing this page.</p> <p>15 Q. All right. It has a statement on the page</p> <p>16 about midway down by that kind of Greek column where</p> <p>17 it says, "Students from our community are connected</p> <p>18 to the largest and most successful support network</p> <p>19 available to Hawkeye students and members for life."</p> <p>20 Do you see that? It's a little bit tough</p> <p>21 to read because it's in yellow font. But can you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 Q. Does that -- does that information sound</p> <p>25 accurate to you being on the university's website?</p>	<p style="text-align: right;">124</p> <p>1 days.</p> <p>2 MR. BLOMBERG: Oh, yeah. Right. So it</p> <p>3 was filed on -- that's right. It was filed in</p> <p>4 December 2018 and then it was printed up, it looks</p> <p>5 like the web page itself has October 2018.</p> <p>6 BY MR. BLOMBERG:</p> <p>7 Q. Do you have any reason to think it was</p> <p>8 inaccurate in October 2018?</p> <p>9 A. I do not.</p> <p>10 Q. And then you mentioned that you think it's</p> <p>11 probably a little bit different now. Do you think</p> <p>12 it's significantly different now?</p> <p>13 A. I think through the suspension of several</p> <p>14 organizations that the numbers could be different.</p> <p>15 Q. I read a little bit about that.</p> <p>16 A. Did you?</p> <p>17 Q. Yeah. Do you know -- but you don't have --</p> <p>18 -- you don't have an estimate of what the difference</p> <p>19 would be?</p> <p>20 A. No. I would probably say maybe 16</p> <p>21 percent.</p> <p>22 Q. Okay.</p> <p>23 A. Or 16-1/2. It's not significantly</p> <p>24 different.</p> <p>25 Q. Okay. Okay. And do you have any</p>
<p style="text-align: right;">123</p> <p>1 A. I think based on the staff and their</p> <p>2 knowledge of the connections I would imagine that</p> <p>3 it's accurate but I don't know that for certain.</p> <p>4 Q. You don't have any reason to think that</p> <p>5 it's inaccurate though?</p> <p>6 A. I don't. I don't know what numbers we're</p> <p>7 using to make the statement of the largest and most</p> <p>8 successful. I just don't know.</p> <p>9 Q. And then when you look -- look down</p> <p>10 slightly from that Greek column, do you see where it</p> <p>11 says, "Seventeen percent -- Greeks make up 17</p> <p>12 percent of the undergraduate population"?</p> <p>13 Are you aware if that's a roughly accurate</p> <p>14 number about how many students pledge at the</p> <p>15 University of Iowa?</p> <p>16 A. I think that number, depending on when</p> <p>17 this was done, probably has changed now but it's</p> <p>18 probably around the number.</p> <p>19 Q. So it was -- you don't have any reason to</p> <p>20 think it was inaccurate at the time that this was</p> <p>21 printed up? It looks like it was in December of</p> <p>22 2018. And you think it might be slightly different</p> <p>23 now but you're not sure.</p> <p>24 A. It looks like October 22nd.</p> <p>25 MR. CARROLL: Yeah. You're mixing two</p>	<p style="text-align: right;">125</p> <p>1 knowledge of what kind of success measurements that</p> <p>2 the Fraternity and Sorority Life was using to</p> <p>3 determine how much Greek groups improve student</p> <p>4 success?</p> <p>5 A. I imagine they're probably thinking about</p> <p>6 their retention and graduation rates of --</p> <p>7 Q. Oh, yeah.</p> <p>8 A. -- individuals who dare part of the</p> <p>9 fraternity and sorority community. That's my guess.</p> <p>10 Q. Do they have higher retention and</p> <p>11 graduation rates on average?</p> <p>12 A. They do.</p> <p>13 Q. About how -- do you know about how much</p> <p>14 higher?</p> <p>15 A. Oh, I don't know exact numbers.</p> <p>16 Q. Okay. Do you know -- who would know that</p> <p>17 information?</p> <p>18 A. Probably Dr. Nelson. He's probably closer</p> <p>19 to than group than I am.</p> <p>20 Q. Are there other ways that Greek groups</p> <p>21 kind of improve the University of Iowa experience to</p> <p>22 your knowledge?</p> <p>23 A. I think they would argue that they provide</p> <p>24 students an opportunity to be involved and to</p> <p>25 connect and to make connections on campus when they</p>

<p style="text-align: right;">126</p> <p>1 arrive, and probably some of their philanthropic</p> <p>2 efforts perhaps speak to the service orientation of</p> <p>3 some of those groups even as social organizations.</p> <p>4 Q. And that would be consistent with your</p> <p>5 experience as a sorority sister with that service</p> <p>6 organization that you were a part of?</p> <p>7 A. Yes. Service is a natural part of our</p> <p>8 sorority. That's one of the drivers, service and</p> <p>9 sisterhood.</p> <p>10 Q. Gotcha.</p> <p>11 Do you think it would change the nature of</p> <p>12 that kind of service and sisterhood if men were</p> <p>13 required to be admitted into a sorority?</p> <p>14 A. Do I think it would change the focus?</p> <p>15 Q. The nature of that kind of, you know, that</p> <p>16 sisterhood you were talking about. Does it change</p> <p>17 the nature of that relationship, that community if</p> <p>18 it's not just a community for women?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you think it would change the nature of</p> <p>21 a fraternity for it to no longer be a men's group</p> <p>22 but to be a co-ed group?</p> <p>23 A. I think that both were probably</p> <p>24 established with the intent of focusing on various</p> <p>25 aspects but I don't know how they would be different</p>	<p style="text-align: right;">128</p> <p>1 else that was?</p> <p>2 A. I am not.</p> <p>3 Q. There wasn't like a task force that was</p> <p>4 created to look at this particular issue?</p> <p>5 A. To look at whether or not we should bring</p> <p>6 these groups together?</p> <p>7 Q. Mm-hmm.</p> <p>8 A. Not a task force, no.</p> <p>9 Q. Okay. Or any other type of group that was</p> <p>10 like, should we give this exemption to the</p> <p>11 fraternities and sororities or should we take it</p> <p>12 away?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. Not that I was a part of.</p> <p>16 Q. Right. And not that you're aware of?</p> <p>17 A. And not that I'm aware of. Thank you.</p> <p>18 Q. Okay. Did the university consider any</p> <p>19 alternatives to an exemption? Like, we're going to</p> <p>20 allow you to have some groups that are exempt at</p> <p>21 least in some context but not in other contexts?</p> <p>22 Was there any sort of gradation between full</p> <p>23 exemption and no exemption?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Okay. Was there any discussion about that</p>
<p style="text-align: right;">127</p> <p>1 if men were integrated or if women were integrated.</p> <p>2 Q. Was there any evidence that the university</p> <p>3 looked at and said, well, if we require integration</p> <p>4 it's going to significantly harm, you know, those</p> <p>5 groups?</p> <p>6 A. We did not have that conversation that I</p> <p>7 recall.</p> <p>8 Q. Was there any evidence that the university</p> <p>9 specifically looked at regarding Greek groups or</p> <p>10 social fraternities and sororities before it created</p> <p>11 the exemption to say, you know, we should provide</p> <p>12 this exemption for fraternities and sororities?</p> <p>13 A. Can you ask me that again?</p> <p>14 Q. Mm-hmm. So when the university formalized</p> <p>15 the exemption and allowed the fraternities and</p> <p>16 sororities to continue to distinguish themselves</p> <p>17 based on sex, was there any specific evidence that</p> <p>18 the university looked at and said we should continue</p> <p>19 allowing this exemption because it's going to create</p> <p>20 these harms or negative outcomes if we don't?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. All right. You weren't a part of any</p> <p>23 conversations like that?</p> <p>24 A. No.</p> <p>25 Q. All right. And are you aware of anybody</p>	<p style="text-align: right;">129</p> <p>1 that you can remember?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. All right. And not one that you were a</p> <p>4 part of?</p> <p>5 A. Sorry, and not one that I was a part of.</p> <p>6 Q. Okay. Does the university exempt</p> <p>7 fraternities and sororities from any other</p> <p>8 nondiscrimination criteria other than sex?</p> <p>9 A. No.</p> <p>10 Q. How does the -- does the university govern</p> <p>11 Greek residences, social fraternities residences and</p> <p>12 sororities?</p> <p>13 A. The university does not.</p> <p>14 Q. It does not?</p> <p>15 A. They're owned by private corporations.</p> <p>16 Q. Okay. So the residences are outside the</p> <p>17 policy? Or I'm sorry, outside the university's</p> <p>18 governance?</p> <p>19 A. Their housing?</p> <p>20 Q. Mm-hmm.</p> <p>21 A. Yeah. The university does not own the</p> <p>22 houses.</p> <p>23 Q. Does the --</p> <p>24 A. Or have --</p> <p>25 Q. I'm sorry; go ahead. I apologize.</p>

<p style="text-align: right;">130</p> <p>1 A. Or have responsibility for the houses.</p> <p>2 Q. Okay.</p> <p>3 A. Some of the fraternities and sororities</p> <p>4 have house corporations, house corporations that</p> <p>5 oversee sort of the process for filling the beds and</p> <p>6 that sort of thing. That's not the university.</p> <p>7 Q. And does the university's human rights</p> <p>8 clause under the RSO policy, does that govern the</p> <p>9 fraternities and sororities discretion as they make</p> <p>10 decisions about the residences?</p> <p>11 A. No. Because they're -- I think there is -</p> <p>12 - I think there is an exception as well related to</p> <p>13 both residence halls and having -- can have single</p> <p>14 sex residence halls. I think the same applies to</p> <p>15 fraternity and sorority housing.</p> <p>16 Q. Okay.</p> <p>17 A. I think.</p> <p>18 Q. So you think there are two exemptions that</p> <p>19 are implied then, both relating just to sex though.</p> <p>20 One is relating to the groups and their membership</p> <p>21 policies and the other is relating to the groups and</p> <p>22 their --</p> <p>23 A. Yes.</p> <p>24 Q. -- residence hall policies?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">132</p> <p>1 A. Can you ask me that again?</p> <p>2 Q. Mm-hmm. Would, looking at just the human</p> <p>3 rights clause policy --</p> <p>4 A. Right.</p> <p>5 Q. -- right, would that requirement of</p> <p>6 nondiscrimination on the basis of gender identity --</p> <p>7 A. Yes.</p> <p>8 Q. -- require a sorority hall to permit a</p> <p>9 transgender woman to live on the hall?</p> <p>10 A. If the woman wanted to live in a residence</p> <p>11 hall and identified as a woman --</p> <p>12 Q. That's right.</p> <p>13 A. -- then the human rights policy would</p> <p>14 apply, and I also think that that would -- I don't -</p> <p>15 - the human rights policy would apply.</p> <p>16 Q. Okay. And so it would require the</p> <p>17 sorority to accommodate that request and allow the</p> <p>18 transgender woman to live on the hall?</p> <p>19 MR. CARROLL: We call it residence halls,</p> <p>20 the dorms that Iowa owns. We don't call the</p> <p>21 fraternities and sororities halls. So she may be</p> <p>22 talking about dorms.</p> <p>23 THE WITNESS: I am.</p> <p>24 MR. BLOMBERG: Let's focus --</p> <p>25 THE WITNESS: Sorry. We're talking about</p>
<p style="text-align: right;">131</p> <p>1 Q. Do you know how that would -- so say you</p> <p>2 had a sorority house and a woman -- a biological</p> <p>3 male who identified as a female asked to have a</p> <p>4 residence, you know, live in the sorority residence.</p> <p>5 Would the sorority have to permit that transgender</p> <p>6 woman to live in that residence to comply with the</p> <p>7 human rights clause?</p> <p>8 A. I don't know.</p> <p>9 Q. Has that question ever come up at the</p> <p>10 university?</p> <p>11 A. It has not come up with me.</p> <p>12 Q. Are you aware of it coming up to anyone</p> <p>13 else?</p> <p>14 A. No.</p> <p>15 Q. Both questions -- both answers are</p> <p>16 helpful, so it was helpful.</p> <p>17 So to your knowledge then the issue of how</p> <p>18 a fraternity or sorority residence would accommodate</p> <p>19 a request by a transgender man or woman hasn't been</p> <p>20 raised for the university to consider?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. Right. Would the university's policy</p> <p>23 require -- human rights clause require that a</p> <p>24 sorority allow a transgender woman to reside in a</p> <p>25 sorority hall?</p>	<p style="text-align: right;">133</p> <p>1 houses and structures --</p> <p>2 MR. BLOMBERG: -- let me focus only --</p> <p>3 THE WITNESS: -- for fraternities and</p> <p>4 sororities. Houses and structures.</p> <p>5 MR. BLOMBERG: That's right.</p> <p>6 THE WITNESS: And residence halls are for</p> <p>7 students who choose to live in university-owned</p> <p>8 managed properties.</p> <p>9 MR. BLOMBERG: Thank you, George. Yes.</p> <p>10 BY MR. BLOMBERG:</p> <p>11 Q. So I'm only asking about --</p> <p>12 A. Okay.</p> <p>13 Q. -- these facilities --</p> <p>14 A. Okay.</p> <p>15 Q. -- that the sororities or fraternities run</p> <p>16 themselves. Does the human rights clause apply to</p> <p>17 their residence selection decisions?</p> <p>18 A. I'm not sure that it applies to the</p> <p>19 residence selection but it certainly applies to them</p> <p>20 being a registered student organization in terms of</p> <p>21 discrimination.</p> <p>22 Q. So would -- I guess to step back then,</p> <p>23 let's look at just the membership policy. So a</p> <p>24 transgender woman who said I want to be part of a</p> <p>25 sorority as a member, setting aside the residence</p>

<p style="text-align: right;">134</p> <p>1 question, but as a member, to be a registered 2 student organization, the sorority would have to 3 permit her; is that correct? 4 A. I think so. 5 Q. Okay. And then stepping outside that into 6 the residence – what's the correct term, George? 7 MR. CARROLL: Residence halls. 8 BY MR. BLOMBERG: 9 Q. The term for the sororities? 10 A. Structures or houses. 11 Q. Okay. How about sorority house, does that 12 work? 13 A. Yes. 14 Q. Okay. Sorority house. The sorority 15 house, if a transgender woman says I want to live in 16 your sorority house with the other sorority sisters, 17 would the human rights clause require the sorority 18 to say yes to that? 19 A. Because the houses are managed through the 20 fraternity or the sorority, I'm not sure how the 21 policy would apply. I can't answer that question 22 100 percent. 23 Q. And that's – and to go back, that's not a 24 question that you've had come across your desk? 25 A. No, it's not.</p>	<p style="text-align: right;">136</p> <p>1 copies of those constitutions. 2 Q. Okay. So, the university chose to follow 3 Title IX's exemption as it relates to social 4 fraternities and sororities. Why did the university 5 not choose to follow Title IX's exemption for 6 religious organizations and adopt that for its 7 religious student organization policy? 8 A. I don't know. 9 Q. Do you know if there was any consideration 10 of whether to do that? 11 A. I don't recall. 12 Q. Do you know if there was any consideration 13 of whether to carve out an exception for religious 14 groups to allow them to select religious leaders? 15 A. At what point? 16 Q. In this last review, since the January 23, 17 2018 decision, did the university sit down and say, 18 let's think about whether or not to let religious 19 groups select religious leaders? 20 A. I think there have been conversations to 21 explore and understand what other institutions have 22 done as it relates to the distinction between 23 members and leaders. 24 Q. What other institutions did the university 25 look to?</p>
<p style="text-align: right;">135</p> <p>1 Q. And you're not aware of anybody else 2 that's had to face that question? 3 A. No, I am not. 4 Q. Okay. So as it relates to membership, a 5 sorority would have to permit this transgender woman 6 to be a member, but you don't know the answer as it 7 relates to – 8 A. Right. Right. 9 Q. – sorority houses? 10 A. Correct. 11 Q. Okay, great. Thank you. 12 Do all Greek groups have their 13 constitutions online yet? 14 A. I don't know. 15 Q. Do they all have written constitutions 16 yet? 17 A. Yes, they should. They should. 18 Q. Okay. But you're not sure if the 19 constitutions have yet made it online? 20 A. I am not – I have not looked to see if 21 all of them are online. 22 Q. Do you know if the university has copies 23 of those constitutions, whether or not they're 24 online? 25 A. I'm pretty sure that the university has</p>	<p style="text-align: right;">137</p> <p>1 A. I have made reference to Iowa State, 2 Vanderbilt, and a couple of others just to learn 3 what they've done. Ohio State as well. 4 Q. Okay. And what is – what did they do at 5 Iowa State? 6 A. I don't know for sure but I think I heard 7 that there was some sort of leadership carve out. I 8 have not read it but have been told that there is 9 perhaps a leadership carve out there but I have not 10 – 11 Q. When you say leadership carve out, does 12 that mean that at Iowa State a religious group would 13 be allowed to select leaders that agree with their 14 faith? 15 A. I think it's just a leadership carve out, 16 not solely just for religious groups. I think. 17 Q. Okay. So, sorry if I interrupted you 18 again. 19 So you think that there's a carve out for 20 leadership selection – 21 A. For – 22 Q. – generally, right? 23 A. Yes. 24 Q. Okay. And then that would include 25 religious groups but not just be limited to them?</p>

<p style="text-align: right;">138</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. That's what I think.</p> <p>4 Q. Okay. And then were there other examples</p> <p>5 of Iowa institutions that permit a leadership carve</p> <p>6 out?</p> <p>7 A. I have not looked at other Iowa</p> <p>8 institutions.</p> <p>9 Q. And so you mentioned Iowa State,</p> <p>10 Vanderbilt. What is Vanderbilt's policy?</p> <p>11 A. It's just interesting, Vanderbilt has --</p> <p>12 just has an all-comers policy. But just looking at</p> <p>13 different institutions, how they evaluate their</p> <p>14 policies and how they have sort of looked at student</p> <p>15 organizations, I was curious just about what does</p> <p>16 that look like there. And then I know that Iowa</p> <p>17 State, that there was legislation that was put</p> <p>18 forward, I think, at least according to the vice</p> <p>19 president there about a leadership carve out. But I</p> <p>20 think, again, it's just leadership carve outs</p> <p>21 generally speaking, not necessarily for a particular</p> <p>22 group.</p> <p>23 Q. So then your understanding from the groups</p> <p>24 you surveyed, for Iowa State and Ohio State there</p> <p>25 was a leadership carve out, and for Vanderbilt there</p>	<p style="text-align: right;">140</p> <p>1 the code, and to understand how does that bump up</p> <p>2 against the First Amendment to make sure that we</p> <p>3 were in alignment with Iowa as a state, and then</p> <p>4 also just wanting to make sure we got clear</p> <p>5 direction.</p> <p>6 Q. Okay. And then why -- why do -- take a</p> <p>7 different course than Iowa? Why not have a</p> <p>8 religious -- or not have a leadership carve out like</p> <p>9 Iowa did, Iowa State did?</p> <p>10 MR. CARROLL: Yeah.</p> <p>11 MR. BLOMBERG: Sorry.</p> <p>12 THE WITNESS: Ask me that again. I got</p> <p>13 lost in the institutions.</p> <p>14 BY MR. BLOMBERG:</p> <p>15 Q. So why not have a leadership carve out</p> <p>16 like Iowa State?</p> <p>17 A. I don't know that we've discussed that it</p> <p>18 shouldn't exist. We certainly, going through this</p> <p>19 process, wanted to make sure that we were getting</p> <p>20 the correct and accurate direction about what might</p> <p>21 make the most sense.</p> <p>22 Q. And then, but when the -- when the</p> <p>23 decision time came for InterVarsity Graduate, it</p> <p>24 wasn't able to access any sort of leadership carve</p> <p>25 out, right? So there wasn't a leadership carve out</p>
<p style="text-align: right;">139</p> <p>1 was an all-comers policy?</p> <p>2 A. Yes.</p> <p>3 Q. So, okay. Did you look at any other</p> <p>4 institutions?</p> <p>5 A. I did not.</p> <p>6 Q. Did you compare how those different</p> <p>7 policies seemed to be functioning or not functioning</p> <p>8 at those universities?</p> <p>9 A. I just wanted to understand what they</p> <p>10 looked like.</p> <p>11 Q. Is there any reason why the university</p> <p>12 chose not to follow Iowa State's model?</p> <p>13 A. I don't know. I think -- I don't know if,</p> <p>14 one, when it was adopted, how it was adopted, and if</p> <p>15 there were ever conversations prior to my arrival</p> <p>16 and prior to this situation, whether or not that had</p> <p>17 ever been discussed.</p> <p>18 Q. But when the university was looking at,</p> <p>19 you know, its policy last spring, you know, after</p> <p>20 the January 2018 decision, you know, you're aware of</p> <p>21 the Iowa State policy. What was -- was there any</p> <p>22 conversation about why we don't want to follow Iowa</p> <p>23 State and we want to do this course instead?</p> <p>24 A. I think we wanted to understand and get</p> <p>25 some clarity around sort of the human rights policy,</p>	<p style="text-align: right;">141</p> <p>1 at the time the decision was made to deregister</p> <p>2 InterVarsity Graduate?</p> <p>3 A. Right.</p> <p>4 Q. Okay.</p> <p>5 A. And there's not one now.</p> <p>6 Q. Okay.</p> <p>7 A. Either.</p> <p>8 Q. So at some point a decision was made that</p> <p>9 Iowa State does it that way but that's not how we do</p> <p>10 it?</p> <p>11 A. So it wasn't necessarily a decision made</p> <p>12 that we're going to do it different than Iowa State.</p> <p>13 It was just learning, for me, learning more about</p> <p>14 what has occurred, what's currently in place, but</p> <p>15 not ever suggesting we're not going to do what Iowa</p> <p>16 State does because they're Iowa State. And that was</p> <p>17 never the conversation. It was really the goal of</p> <p>18 trying to learn and to get more clear direction</p> <p>19 about what that should look like based on the fact</p> <p>20 that we're in litigation to making sure that we were</p> <p>21 clear about where we should go as a state, as an</p> <p>22 institution.</p> <p>23 Q. And there wasn't a process that said Iowa</p> <p>24 State has a leadership carve out but, you know, Iowa</p> <p>25 State is a mess. That leadership carve out is</p>

<p style="text-align: right;">142</p> <p>1 causing all sorts of trouble and so we're not going</p> <p>2 to do that?</p> <p>3 A. No, there was not that level of</p> <p>4 investigation at all.</p> <p>5 Q. Looking, on February 6, 2019, so this is</p> <p>6 about a month and a half ago now.</p> <p>7 A. Okay.</p> <p>8 Q. The same Federal District Court entered a</p> <p>9 permanent injunction in the Business Leaders in</p> <p>10 Christ case.</p> <p>11 A. Yes.</p> <p>12 Q. Are you familiar with that ruling?</p> <p>13 A. I am familiar.</p> <p>14 Q. Okay. Has your office taken any steps to</p> <p>15 implement that decision since that time?</p> <p>16 A. No, we have not.</p> <p>17 Q. Have you personally read the February 6th</p> <p>18 decision?</p> <p>19 A. I have gone through the decision and</p> <p>20 trying -- I think it's like 36 or 37 pages, and</p> <p>21 trying to digest it.</p> <p>22 Q. I think it's 37 pages on the nose. That</p> <p>23 was good.</p> <p>24 Do you know if anyone else in your office</p> <p>25 has read it?</p>	<p style="text-align: right;">144</p> <p>1 A. We are continuing again because we</p> <p>2 continue to be in litigation wanting to understand</p> <p>3 where we are going. We have not made substantive</p> <p>4 changes as of yet.</p> <p>5 Q. Are there any policy changes that you made</p> <p>6 to the registered student organization policy since</p> <p>7 InterVarsity Graduate was deregistered last summer?</p> <p>8 A. I cannot recall.</p> <p>9 Q. Are there any policy changes as it regards</p> <p>10 leadership selection for student groups?</p> <p>11 A. No.</p> <p>12 Q. All right. And no policy changes since</p> <p>13 the February 6th decision?</p> <p>14 A. No.</p> <p>15 Q. All right. So as it stands today,</p> <p>16 InterVarsity Graduate would not be permitted under</p> <p>17 the human rights clause of the RSO policy to ask its</p> <p>18 leaders to agree with its faith?</p> <p>19 A. As of today, yes.</p> <p>20 Q. Do you know if there is a plan to change</p> <p>21 that policy in the next six months?</p> <p>22 A. I am aware of legislation within the state</p> <p>23 that could offer guidance to the policy.</p> <p>24 Q. Beyond that legislation, are you aware of</p> <p>25 any plans by the university to change its policy?</p>
<p style="text-align: right;">143</p> <p>1 A. In my physical office or people that</p> <p>2 report --</p> <p>3 Q. Anyone, any of your subordinates. Have</p> <p>4 any of your subordinates read the February 6th</p> <p>5 decision?</p> <p>6 A. Yes.</p> <p>7 Q. Who has?</p> <p>8 A. It was shared with Andy Kutcher and Bill</p> <p>9 Nelson to review. And also Angie Reams.</p> <p>10 Q. Are you aware of anyone else, of your</p> <p>11 subordinates, who has reviewed the February 6th</p> <p>12 decision?</p> <p>13 A. I am not.</p> <p>14 Q. Do you know if President Harreld is aware</p> <p>15 of the February 6th decision?</p> <p>16 A. I think that he is; yes.</p> <p>17 Q. Did you make him aware?</p> <p>18 A. I'm not sure how he received it. I did</p> <p>19 not send it to him.</p> <p>20 Q. And just to clarify, has your office taken</p> <p>21 any steps pursuant to that decision since it came</p> <p>22 down?</p> <p>23 A. Steps? Can you --</p> <p>24 Q. Has your office changed its policies in</p> <p>25 any way since that decision came down?</p>	<p style="text-align: right;">145</p> <p>1 A. We will certainly continue to evaluate our</p> <p>2 policies and determine if there are necessary</p> <p>3 changes.</p> <p>4 Q. But you're not, as you sit here today,</p> <p>5 you're not planning in one month you're going to</p> <p>6 change the policy to create that Iowa State</p> <p>7 leadership carve out?</p> <p>8 A. We will absolutely evaluate our policies</p> <p>9 and will continue to do so but I don't know about</p> <p>10 what that timeframe would look like.</p> <p>11 Q. Okay. But there's not -- there's not a</p> <p>12 specific date in mind for a policy change?</p> <p>13 A. No.</p> <p>14 Q. Just a continuous evaluation process?</p> <p>15 A. Absolutely.</p> <p>16 MR. BLOMBERG: Okay. I think -- if we can</p> <p>17 just take a five minute break. I think we're just</p> <p>18 about ready.</p> <p>19 MR. CARROLL: Okay.</p> <p>20 THE REPORTER: Off the record.</p> <p>21 (WHEREUPON, a brief recess was taken.)</p> <p>22 THE REPORTER: We're on the record.</p> <p>23 MR. BLOMBERG: Dr. Shivers, I have nothing</p> <p>24 further.</p> <p>25 George?</p>

<p style="text-align: right;">146</p> <p>1 MR. CARROLL: No, we're fine.</p> <p>2 MR. BLOMBERG: All right. Will the</p> <p>3 witness want to sign or how do you want to approach</p> <p>4 it?</p> <p>5 MR. CARROLL: No, you're certified, aren't</p> <p>6 you?</p> <p>7 THE REPORTER: Yes.</p> <p>8 MR. CARROLL: Yeah, great.</p> <p>9 MR. BLOMBERG: Then we're all done. Thank</p> <p>10 you very much.</p> <p>11 MR. CARROLL: I assumed you were.</p> <p>12 THE WITNESS: Oh, we're done?</p> <p>13 MR. BLOMBERG: Yeah.</p> <p>14 (WHEREUPON, at 11:48 a.m., the deposition</p> <p>15 of MELISSA SHIVERS, PH.D., concluded.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">148</p> <p>1 CORRECTION SHEET</p> <p>2 Deposition of: Melissa S. Shivers, PhD Date: 03/27/19</p> <p>3 Regarding: Intervarsity Christian vs. Iowa Uni</p> <p>4 Reporter: Batterson/Morrison</p> <p>5 _____</p> <p>6 Please make all corrections, changes or clarifications</p> <p>7 to your testimony on this sheet, showing page and line</p> <p>8 number. If there are no changes, write "none" across</p> <p>9 the page. Sign this sheet on the line provided.</p> <p>10 Page Line Reason for Change</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Signature _____</p> <p>25 Melissa S. Shivers, PhD</p>
<p style="text-align: right;">147</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Ryan Batterson, do hereby certify that I reported</p> <p>4 all proceedings adduced in the foregoing matter and that</p> <p>5 the foregoing transcript pages constitutes a full, true,</p> <p>6 and accurate record of said proceedings to the best of</p> <p>7 my ability.</p> <p>8</p> <p>9 I further certify that I am neither related to</p> <p>10 counsel or any part to the proceedings nor have any</p> <p>11 interest in the outcome of the proceedings.</p> <p>12</p> <p>13 IN WITNESS HEREOF, I have hereunto set my hand this</p> <p>14 15th day of April, 2019.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 /S/ Ryan Batterson</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">149</p> <p>1 DECLARATION</p> <p>2 Deposition of: Melissa S. Shivers, PhD Date: 03/27/19</p> <p>3 Regarding: Intervarsity Christian vs. Iowa Uni</p> <p>4 Reporter: Batterson/Morrison</p> <p>5 _____</p> <p>6</p> <p>7 I declare under penalty of perjury the following to</p> <p>8 be true:</p> <p>9</p> <p>10 I have read my deposition and the same is true and</p> <p>11 accurate save and except for any corrections as made</p> <p>12 by me on the Correction Page herein.</p> <p>13</p> <p>14 Signed at _____,</p> <p>15 on the _____ day of _____, 2019.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Signature _____</p> <p>25 Melissa S. Shivers, PhD</p>

<u>1</u> 1 10:18 10:20 10:22 10:23 43:19 43:21 44:6 10 14:4 28:12 28:15 78:19 88:24 88:25 89:1 89:5 100 37:21 37:23 112:8 134:22 11 38:20 112:12 112:13 112:14 112:18 114:1 116:8 116:10 116:11 11:48 146:14 12 114:1 122:4 122:5 122:6 122:10 12th 49:2 49:8 50:5 50:17 52:23 52:25 68:5 68:9 69:1 13th 48:5 48:9 48:15 68:8 14 13:5 87:4 113:6 150 45:2 157 41:19 15th 58:20	59:1 59:8 59:10 59:11 62:19 16 12:2 88:23 124:20 16-1/2 124:23 17 42:12 79:14 79:17 79:24 123:11 18 71:2 79:15 80:9 18th 71:9 71:13 72:1 19-20 8:22 1st 46:2 62:18 118:2 <u>2</u> 2 38:22 38:24 39:1 20 8:15 2017 9:3 20:6 20:6 20:6 20:9 20:11 21:12 24:19 119:4 119:7 2018 9:4 19:14 25:7 25:23 28:23 39:24 43:19 43:22 44:6 53:20 64:17 71:2 73:1 75:5 75:19 77:10	100:1 105:1 115:17 115:23 116:24 118:14 123:22 124:4 124:5 124:8 136:17 139:20 2019 7:4 13:5 142:5 20th 58:21 58:25 59:8 59:19 66:21 21 70:1 210 114:1 114:2 211 114:9 22nd 123:24 23 25:7 136:16 23rd 28:18 40:1 76:12 24 121:25 25 64:14 26 9:4 116:15 116:21 27 7:4 116:23 28 53:20 28th 76:13 <u>3</u> 3 43:11 43:12 43:13 43:15 53:5	300 45:4 33 70:2 71:23 71:24 113:5 350 42:25 45:3 36 142:20 37 142:20 142:22 38 72:6 <u>4</u> 4 47:16 47:17 47:19 <u>5</u> 5 53:13 53:14 53:16 112:10 500 41:19 45:3 <u>6</u> 6 70:4 70:5 70:6 70:8 70:11 70:22 142:5 600 37:10 65 114:1 6th 142:17 143:4 143:11 143:15 144:13 <u>7</u> 7 39:24 43:9 70:5 70:6 70:8 70:12 71:23
--	---	---	---

71:23 <hr/> 8 8 47:14 78:20 78:21 78:22 79:4 8:55 7:5 <hr/> 9 9 87:4 87:5 87:7 87:11 90 25:11 <hr/> A a.m 7:5 146:14 AA 82:4 abide 117:20 ability 16:3 94:13 able 16:3 16:5 16:9 16:12 16:23 17:10 17:13 18:18 19:7 51:7 51:8 54:18 58:14 59:15 84:22 91:21 92:12 94:20 98:9 98:20 99:24 100:19 109:9 109:10 112:1 114:19 140:24	Absent 55:19 absolutely 96:13 99:7 100:6 115:2 115:2 145:8 145:15 access 140:24 acclimated 17:18 accommodate 131:18 132:17 accommodation 69:16 according 138:18 accurate 36:23 50:18 50:25 52:17 71:7 122:25 123:3 123:13 140:20 acknowledge 11:4 acknowledging 107:3 across 30:2 52:4 55:1 65:7 77:24 134:24 Action 89:14 91:10 93:8 active 15:20 17:1	actually 63:5 70:20 75:5 75:9 76:25 77:2 77:4 77:21 77:22 93:4 93:6 96:10 96:17 add 115:24 addition 30:18 additional 113:16 addressed 30:2 administrativ e 80:13 administrator 86:25 admit 113:16 114:6 114:15 admitted 77:9 113:21 126:13 adopt 111:22 136:6 adopted 116:16 119:7 120:7 120:19 139:14 139:14 adopting 118:5 advertising	91:6 advise 31:24 advised 103:19 advisor 15:4 15:17 15:20 advocate 58:15 Affairs 9:13 9:15 affirming 114:4 afternoon 46:3 against 25:10 56:2 56:14 76:20 109:7 140:2 ago 40:6 142:6 ahead 25:5 32:1 37:22 91:24 105:16 129:25 alignment 29:24 51:10 51:12 65:23 77:7 78:11 78:13 78:14 78:16 78:17 100:2 121:20 140:3 all-comers 138:12 139:1
---	---	---	--

alleviation 97:25 98:3 98:6 98:12 99:2 99:3 99:12 107:16 107:18 115:10 115:14	69:14 97:19 127:19 allows 121:7 allyship 58:17 85:8 98:22 Alpha 15:2 15:3 15:9 15:9 15:15 15:16 already 20:12 alternative 67:19 69:4 alternatives 68:21 128:19 am 26:11 47:7 47:11 47:24 67:2 67:10 69:6 69:12 70:23 73:17 74:21 83:16 84:2 84:6 89:10 94:5 96:23 101:24 102:23 105:2 119:8 125:19 128:2 132:23 135:3 135:20 142:13 143:13 144:22 amended	116:25 amendment 29:5 29:7 29:10 29:15 56:18 56:23 57:3 57:8 57:17 57:23 58:2 140:2 Andrew 71:1 112:23 Andy 14:13 26:24 31:1 32:8 32:15 43:18 45:5 45:9 49:19 60:24 61:7 61:16 143:8 Andy's 61:9 Angie 12:16 13:17 143:9 answer 7:23 84:23 107:22 134:21 135:6 answers 8:2 131:15 anybody 85:17 127:25 135:1 anyone 11:20 22:24 25:25 26:22 28:25 29:6 49:6 55:2 55:5 63:8 67:8 67:15 103:14	131:12 142:24 143:3 143:10 anything 11:3 16:20 19:19 28:1 40:18 42:13 50:11 53:7 73:13 74:12 74:13 81:16 82:1 102:21 106:24 119:11 Apart 48:12 apologize 129:25 apparent 80:12 appeal 20:13 20:15 20:16 20:18 appealed 20:20 appeared 25:8 applicants 50:10 65:10 application 21:15 29:1 29:8 29:24 30:22 54:23 56:11 65:7 applied 21:12 30:7 30:10 30:11 31:9 77:24 applies
---	--	--	---

17:8 101:22	argued	86:21	48:5
102:18	82:22 83:2	attention	48:12 48:21
102:21	arrival 89:14	36:21	49:24
105:20	89:21	attorney 28:2	54:5 54:9
108:16	139:15	79:10 79:11	54:11 58:24
130:14	arrive 126:1	attorneys	59:25 61:23
133:18	arrived 18:24	60:20 60:22	62:1 62:9
133:19	20:11 42:12	105:8 113:2	67:2 67:8
apply 17:25	articulated	August	67:10 67:24
22:3 56:8	85:18 115:1	66:23	69:6 69:7
97:5	aside 51:20	73:1 75:5	81:4
121:2	110:18	75:19 77:10	82:10 82:11
132:14	110:21	100:1	97:18
132:15	115:20	115:23	98:1
133:16	133:25	116:24	101:2
134:21	aspects	117:21	101:21
applying 65:5	126:25	118:6	101:25
77:7	assessment	118:13	102:8
approach	30:4 30:6	available	102:20
146:3	assistant	122:19	102:23
appropriately	9:10	avenue	103:14
77:25	12:21 12:22	16:17 18:15	103:22
approval 43:4	79:11	18:18	104:1
approvals	associate	average	104:24
42:21	8:19 9:8	125:11	105:2 105:3
approve 60:9	12:14 12:18	aware 19:21	105:9
approved 42:9	13:16 19:5	20:9	118:15
43:3	associated	20:13	119:6 119:8
113:8	26:3	21:6	121:15
113:21	83:25 84:9	23:23	123:13
approving	assumed 9:3	24:4 24:9	127:25
42:6	21:2 146:11	24:11 24:23	128:16
April 19:14	assuming 93:7	26:8	128:17
28:19	110:7	26:11 26:22	131:12
areas 64:7	assumption	33:2 33:7	131:21
aren't	110:12	34:9	135:1
109:2 146:5	attended	42:13 43:21	139:20
argue 125:23		44:3 47:3	143:10
		47:7 47:8	143:14
		47:11	143:17
			144:22
			144:24

awareness 34:12 54:8 83:5 away 128:12 <hr/> B <hr/> backed 55:12 backgrounds 83:19 Baker 112:24 ballpark 44:25 based 17:11 30:3 36:13 36:18 37:15 37:16 48:1 51:25 52:10 64:15 64:22 85:12 91:19 101:18 103:8 104:22 108:6 113:10 113:23 118:19 123:1 127:17 141:19 baseline 77:12 basis 13:8 13:13 104:20 104:25 105:4 132:6 beautiful 9:17	became 20:13 54:11 58:24 61:6 become 17:18 44:3 54:9 110:11 111:20 beds 130:5 beginning 88:4 behalf 10:14 10:14 42:18 behind 89:6 90:23 belief 29:25 33:6 49:18 98:7 99:11 99:14 99:16 100:9 100:17 100:17 112:2 112:4 114:23 115:14 beliefs 22:5 22:16 22:21 32:19 32:25 33:3 33:11 34:5 66:23 95:25 97:8 97:10 99:21 100:11 107:16	107:17 107:19 108:1 109:10 109:14 110:4 110:8 110:13 114:5 114:12 114:19 114:20 believe 21:21 93:1 93:22 94:1 94:11 94:25 95:10 95:11 95:11 95:18 96:8 96:17 96:23 96:24 98:5 98:12 99:7 108:13 108:14 110:8 111:23 believed 22:17 44:10 91:20 93:4 93:17 96:10 believing 95:24 Berger 12:19 besides 81:11 81:16 82:1 better 44:12 beyond 61:2 61:3	74:10 144:24 Bible 93:1 93:4 93:21 Bill 14:14 18:21 18:24 20:2 23:4 23:6 32:8 34:15 36:6 36:8 36:9 37:11 41:13 143:8 binding 99:22 biological 131:2 bit 9:19 122:20 124:11 124:15 blaming 114:24 BLinC 20:8 20:14 20:20 20:20 21:4 21:12 22:7 22:14 22:20 23:18 24:5 25:10 25:11 30:11 34:20 35:23 36:14 41:1 41:8 44:11 44:13 54:18 54:22 65:1 65:3 100:4 Blomberg 7:10
--	---	---	---

7:12 10:3	145:23	Business	140:10
10:5 10:7	146:2 146:9	19:17	145:19
10:18 10:21	146:13	20:3 20:8	146:1 146:5
10:25 15:14	board 65:8	53:21	146:8
22:12	body 65:16	79:5 142:9	146:11
23:1	117:5		carve
27:17 27:23	bold 112:21	<hr/> C <hr/>	136:13
27:25 38:21	book 94:18	campus	137:7 137:9
38:25	break 26:16	18:16 18:24	137:11
39:3	46:5	20:11 46:12	137:15
43:10 43:14	46:22	57:13 66:22	137:19
43:17 47:15	47:1 53:7	81:20	138:5
47:18 47:21	106:8	82:3 87:2	138:19
53:12 53:15	106:11	87:19	138:20
53:18 55:23	145:17	88:3 90:1	138:25
60:21 63:13	breaking 37:4	125:25	140:8
63:16 63:18	breakout 38:1	candidate	140:15
63:20 68:17	Bret 12:20	97:9 98:6	140:24
68:19	brief	caption	140:25
70:5 70:7	106:16	79:7 112:19	141:24
70:10 78:18	145:21	care 9:24	141:25
78:24	bright 69:17	99:18	145:7
79:1 79:2	bring 128:5	career 10:9	case 7:13
81:23 82:21	broad 111:4	15:18	7:14 21:2
87:6 87:9	111:6	Carroll	23:8 26:3
89:3 93:9	broke 37:12	9:18 9:21	35:24
93:11 106:7	broken 37:19	9:23 10:2	41:9
106:10	brought 61:9	10:4	44:11 44:13
106:13	Bruce 112:22	15:12 22:10	64:6 65:1
106:18	Budget 12:24	22:25 27:14	77:12 77:16
112:16	build 87:1	27:19 55:19	79:6
116:11	87:1 88:3	60:20 63:12	84:24 119:3
116:13	building 88:5	63:15 63:17	121:23
122:3 122:8	88:5 88:16	68:15 78:25	142:10
124:2 124:6	bump 140:1	79:11 81:18	catch 8:3
132:24		93:6	categories
133:2 133:5		93:10	36:22
133:9		116:10	38:6 52:1
133:10		123:25	101:22
134:8		132:19	category 38:9
140:11		134:7	74:11
140:14			
145:16			

Caucasian 90:25 91:16 92:4 cause 65:16 caused 64:18 65:9 causing 142:1 Center 12:6 13:20 19:9 32:16 48:6 48:6 89:14 91:10 93:8 certain 17:17 32:24 33:11 34:5 76:23 83:18 102:17 108:21 123:3 certainly 11:5 12:9 15:2 18:9 19:25 26:12 28:15 29:10 33:20 39:7 42:14 44:6 55:13 133:19 140:18 145:1 certified 146:5 challenge 23:19 96:22 challenges	78:7 96:20 challenging 77:4 87:22 91:9 96:18 96:20 chancellor 9:8 9:10 change 72:5 90:8 91:1 91:3 91:17 92:2 93:25 94:12 94:19 95:5 95:20 96:14 97:1 121:9 126:11 126:14 126:16 126:20 144:20 144:25 145:6 145:12 changed 123:17 143:24 changes 144:4 144:5 144:9 144:12 145:3 charge 96:6 check 32:23 34:6 50:8 checked 52:14 chime 21:8	choose 121:2 133:7 136:5 choosing 46:17 chose 69:4 69:17 106:2 119:14 136:2 139:12 Christ 19:17 20:4 20:8 53:22 79:6 142:10 Christian 43:23 51:1 51:6 58:22 59:5 72:19 72:25 74:15 74:23 75:7 75:18 76:8 77:9 94:6 94:16 95:1 100:10 100:11 Christians 100:13 100:15 Christiansen 70:23 72:1 72:5 circling 107:10 City 63:18 Civil 105:14	claims 21:3 clarification 117:12 117:16 119:18 clarify 77:8 100:8 107:11 114:17 115:3 143:20 clarifying 112:10 clarity 139:25 clause 33:25 36:19 41:16 42:1 42:10 43:1 43:2 43:25 44:18 49:21 97:5 98:4 98:10 98:23 98:25 99:5 99:13 100:20 101:7 102:10 103:9 105:1 105:22 111:13 112:7 116:1 120:6 120:8 120:9 120:11 120:14 120:16
--	--	---	---

121:3 130:8	102:17	comfortable	96:15
131:7	103:1 103:4	85:3	122:17
131:23	103:7	coming 9:5	125:9
132:3	103:16	23:23 23:25	126:17
133:16	103:20	26:6 31:7	126:18
134:17	103:23	35:23	compare 139:6
144:17	104:8	44:7 92:4	Comparing
clause's	104:15	92:10	72:14
101:14	104:20	109:20	compelling
clear 27:20	104:21	110:15	79:19 80:5
119:21	105:19	131:12	compiled 35:5
140:4	105:22	comma 79:25	complaint
141:18	clue 109:21	commitment	71:4 71:6
141:21	co-creation	46:15	complaint-
clearly 8:8	87:16	Committee's	based 30:1
Clemson	code 57:3	110:25	complete 7:25
9:14 9:16	57:7	common 46:3	compliance
10:10	65:24 140:1	96:3	41:25 45:12
client 28:3	co-ed 126:22	communicate	49:13
58:24	coincide 97:1	24:15 45:10	52:3
Clinton 97:13	College 85:10	48:2	56:12 59:16
closely 41:22	85:11 110:5	communicating	60:3 60:4
closer 59:7	110:6	8:8 24:14	62:4
59:8 125:18	color 86:13	45:24 48:13	63:24
CLS 75:7	90:1 90:3	48:14	64:2
club 101:18	90:10 90:16	communication	64:22 64:25
109:20	92:3	39:14	71:19 75:13
clubs 14:21	92:14 92:19	communication	76:1
81:13 81:14	Colour 86:3	s 46:8	compliant
81:16	86:15 86:18	communities	45:3 48:15
82:2	87:12 87:19	86:5	complied 58:6
82:15	88:20	community	comply
100:25	89:6	16:6 85:4	45:19
101:3 101:6	89:12 89:15	87:1 87:2	47:5
101:6 101:9	90:25 91:14	87:17 87:19	47:10
101:13	column 80:4	88:3 88:5	51:4
102:5	122:16	88:8	59:10 65:4
102:12	123:10	88:16	
102:16	comes 108:12	90:1 92:7	

107:8 131:6 complying 51:5 69:19 component 12:12 concern 23:14 69:13 76:11 76:17 77:12 concerns 29:18 56:17 56:22 65:8 concluded 146:15 conflict 57:2 57:5 confusing 8:7 100:4 confusion 77:1 connect 85:24 86:20 88:14 125:25 connected 41:22 122:17 connections 123:2 125:25 consider 128:18 131:20 consideration 136:9 136:12 consistent 96:6 98:3 98:9 100:19 111:13	126:4 constitution 31:18 41:16 42:24 43:24 48:9 48:16 48:23 49:3 49:22 50:2 constitutiona 1 33:9 constitutions 31:13 31:25 42:5 42:15 42:23 43:1 43:8 44:19 45:13 48:4 113:8 113:21 135:13 135:15 135:19 135:23 136:1 consult 52:22 consultation 60:25 consulted 68:25 consulting 53:1 contact 49:1 context 84:25 85:1 86:1 95:16 128:21 contexts 128:21 continue	54:18 64:19 66:9 66:22 66:22 80:11 88:1 110:12 118:19 127:16 127:18 144:2 145:1 145:9 continuing 144:1 continuous 145:14 contradictory 31:19 31:21 31:22 34:1 49:20 50:1 50:24 64:8 65:23 conversation 7:19 28:5 28:8 28:9 48:22 49:6 49:9 49:11 50:12 50:15 60:23 68:21 69:1 91:22 92:3 103:15 104:4 106:20 127:6 139:22 141:17 conversations 28:2 28:17 86:20	103:6 103:12 107:9 127:23 136:20 139:15 copies 135:22 136:1 copy 53:19 core 97:10 corporations 129:15 130:4 130:4 correct 42:6 42:11 58:5 58:22 101:20 109:4 111:1 115:10 115:14 118:14 134:3 134:6 135:10 140:20 correctly 35:7 counsel 7:12 11:22 22:25 23:2 27:18 27:21 28:6 30:21 55:19 61:2 61:3 105:6 Counseling 12:3 counsels
---	--	--	--

27:15	creeds 113:10	119:5	139:20
couple 7:17	113:23	days 25:11	140:23
39:25 86:21	criteria	46:13 124:1	141:1 141:8
112:11	108:22	day-to-day	141:11
137:2	109:1 129:8	19:8	142:15
course	critically	deadline	142:18
16:24	16:6	58:25	142:19
106:24	criticisms	59:9 62:19	143:5
139:23	96:3	dean 9:8	143:12
140:7	CSIL 48:6	12:15	143:15
court 25:8	48:13	13:3	143:21
25:23	cup 26:14	18:25 19:5	143:25
29:3 40:1	curious	December	144:13
69:24 76:12	138:15	123:21	decision-
76:13	current 11:25	124:4	making 61:8
83:3	29:19 75:3	decide	decisions
85:19 142:8	currently	17:16 80:21	19:16
court's 26:23	8:16	80:22	130:10
29:21 53:20	98:17	decided 44:13	133:17
54:21 64:23	109:19	decision 20:7	dedicated
Cover 38:22	141:14	25:2 25:4	46:14
create 85:4		25:6	defendants
127:19		25:12 25:15	79:5 79:8
145:6		25:22	112:20
created	damage 66:8	27:3	112:22
41:6	Dan 9:24	27:10	defined 17:15
89:15 119:2	Daniel 7:12	29:1	defining
127:10	dare 125:8	30:16 30:18	81:19
128:4	date 19:13	30:19 30:23	defunct
creates 87:13	39:22	31:9 44:8	72:6 72:12
creating 86:5	40:2 44:5	44:15 55:18	Democrat
87:18	46:17	55:25	110:14
creation	54:1 59:6	59:3	110:15
119:10	59:12 59:16	59:25	democratic
creed	59:20 71:10	60:4 60:9	110:9
113:18	145:12	60:18 61:18	Democrats
114:22	dates 48:20	61:22	85:11 97:11
114:25	58:23	69:8	110:5
	day 46:15	90:23	department
		136:17	

20:19 42:15 86:8 departments 12:2 dependent 108:11 depending 17:16 92:11 123:16 deposed 7:15 deposition 7:1 11:18 11:21 146:14 deregister 20:7 45:11 59:4 60:1 60:5 60:10 60:15 60:19 61:22 62:3 63:5 63:21 76:25 77:22 141:1 deregistered 20:19 24:3 24:5 24:8 24:12 44:1 45:19 47:6 48:10 48:16 58:21 59:18 59:22 62:10 62:13 62:24 64:16 66:20 72:10 72:13 72:25 73:10 75:5 75:7	75:10 75:11 75:14 75:19 75:25 76:18 77:2 77:3 77:5 77:10 77:11 77:13 77:21 100:1 144:7 deregistratio n 20:21 44:14 62:2 62:15 107:6 describe 11:24 18:21 18:22 101:5 designated 107:12 designed 85:6 85:13 86:17 desire 65:6 desk 134:24 details 18:2 23:11 49:24 64:11 73:24 determination 81:3 121:12 determine 17:20 34:22 43:6 50:8 125:3 145:2 determining 35:1 dialogue 87:13 differ 25:20	56:6 56:7 difference 110:3 110:10 124:18 different 15:6 15:8 18:15 19:3 21:9 26:6 32:9 37:16 51:17 64:7 73:6 91:22 92:8 96:10 99:25 101:10 102:16 106:24 123:22 124:11 124:12 124:14 124:24 126:25 138:13 139:6 140:7 141:12 differentiati on 21:18 21:22 21:24 69:23 98:19 108:8 differently 19:23 30:7 30:10 78:2 digest 142:21 Dining 12:3 12:23 dire 99:18	direct 12:12 12:16 13:1 18:25 28:25 45:5 55:2 direction 65:4 140:5 140:20 141:18 directly 13:8 13:22 13:25 19:11 34:19 director 9:13 9:14 12:20 12:23 12:24 disagree 97:10 discovery 41:2 discretion 130:9 discriminate 101:18 103:8 104:22 108:21 109:7 discriminatio n 51:25 57:7 80:18 101:15 102:1 102:10 108:5 116:1 133:21 discuss 22:23
---	---	---	---

23:4 23:5 30:22 65:12 70:14 discussed 31:8 41:3 104:17 104:19 139:17 140:17 discussing 86:23 discussion 23:10 23:12 65:18 67:24 68:5 128:25 discussions 27:9 27:13 104:10 distinct 40:8 distinction 108:16 109:15 136:22 distinctions 118:20 distinguish 127:16 District 25:7 25:23 40:1 53:19 76:12 142:8 diversity 8:20 97:21 division 12:25 24:24 doctorate	12:18 document 10:17 10:18 11:1 11:3 11:7 37:14 38:1 38:19 38:20 39:9 39:18 39:20 39:23 43:9 47:14 47:24 47:25 48:11 48:12 53:5 66:7 66:11 70:21 75:24 78:19 79:3 87:4 87:10 88:23 89:4 112:10 112:17 113:1 116:9 121:25 122:9 documented 119:21 documents 11:17 70:1 70:18 70:19 75:22 domestic 91:11 done 35:1 92:6 115:18 115:21 123:17 136:22 137:3 146:9 146:12	dorms 132:20 132:22 Dr 7:11 12:16 12:16 13:4 13:16 13:22 19:1 19:2 19:2 19:4 19:5 19:7 19:10 19:11 20:19 26:3 26:21 31:1 32:14 33:20 39:13 40:6 40:11 40:16 41:18 41:21 45:8 45:23 45:23 60:23 61:14 70:11 87:10 89:4 103:25 112:17 122:9 125:18 145:23 draw 69:17 drivers 126:8 due 65:1 duly 7:7 during 8:22 46:4 46:9 46:22 46:23 46:25 47:1 54:11 55:10 61:7 61:11	duties 11:25 12:8 12:13 24:22 <hr/> E <hr/> earlier 18:22 26:19 30:16 32:8 33:24 40:13 49:16 55:25 67:18 68:25 86:4 88:9 101:1 106:19 early 24:19 66:23 73:1 75:5 easier 7:23 Edge 83:14 83:16 83:17 83:24 84:4 84:5 84:9 educated 10:8 educational 79:19 80:6 80:15 80:24 effect 92:9 effective 13:5 91:12 effectively 58:15 effort 67:11 104:6 efforts 126:2 eight 14:8
---	---	--	--

66:25 either 32:25 70:17 72:18 72:20 72:22 72:24 74:20 75:25 98:21 141:7 else 16:20 22:24 25:25 26:22 45:7 49:7 55:2 55:5 55:9 60:18 64:6 67:8 81:16 103:14 120:2 128:1 131:13 135:1 142:24 143:10 email 36:7 36:9 37:11 39:12 39:13 39:19 43:18 44:3 44:16 44:22 45:6 46:2 46:17 47:9 48:7 48:22 68:5 68:10 71:17 118:2 emailing 43:22 68:6 emails 40:15 45:3	45:14 46:4 46:12 46:15 46:22 46:25 47:4 47:13 50:23 embodied 93:14 embrace 22:4 22:15 32:24 33:11 34:7 employed 8:13 encourage 50:10 50:20 51:2 51:8 51:13 51:21 52:7 52:7 52:9 67:21 67:25 68:23 69:5 69:10 100:15 encouragement 88:1 encouraging 51:3 52:15 enforce 56:1 56:14 66:16 76:20 104:13 enforcement 29:5 29:18 29:22 42:19 78:5 104:12 107:13 108:15	enforcing 25:9 engage 16:9 19:7 85:24 91:21 engaged 80:1 enjoy 109:21 enrolled 46:11 ensure 31:16 56:11 69:20 69:22 120:24 ensuring 108:4 enter 94:13 entered 142:8 entire 36:17 52:4 entirety 26:9 26:12 26:13 entitled 17:4 87:12 environment 87:14 94:25 equal 54:23 56:10 65:7 equally 56:14 64:24 64:25 65:5 77:7 Equity 8:20 Erika 70:22 71:25 72:5 Erin 14:12 especially 92:3	espousing 96:25 established 98:18 126:24 estimate 14:3 14:7 28:18 124:18 evaluate 138:13 145:1 145:8 evaluation 145:14 event 91:14 91:18 92:4 92:10 everybody 68:15 everyone 94:2 94:4 everything 7:24 120:2 evidence 65:13 65:19 97:18 127:2 127:8 127:17 exact 19:13 23:11 24:13 41:17 44:5 44:23 59:16 59:20 63:6 64:11 71:11 78:7 78:9 92:20 104:3 125:15
--	---	--	--

exactly 29:11	105:21	127:15	122:6
38:17 54:10	128:20	127:19	122:10
81:2	129:6	128:10	Exhibits 70:5
84:18 84:23	exempted	128:19	70:11
85:15 85:25	80:22	128:23	exist 80:11
86:1 87:23	115:25	128:23	104:10
EXAMINATION	exemption	136:3 136:5	119:24
7:9	81:5 81:6	exemptions	121:10
examined 7:8	81:10 82:13	82:3	140:18
example 80:16	83:7	84:15 101:3	existed
86:3 88:7	101:5 101:8	103:22	118:17
101:9 102:2	101:22	130:18	exists 110:2
111:23	101:25	exhibit 10:20	expectations
115:8	102:9	10:22 10:23	111:18
examples	102:24	11:11 11:14	experience
138:4	103:3	38:22 38:24	12:8
exception	103:16	39:1	12:10 15:23
101:12	103:19	43:11 43:12	15:24 15:25
101:13	104:1	43:13 43:15	16:21 46:21
102:5	104:21	47:16 47:17	46:24 92:13
118:12	105:4	47:19 53:13	92:13 92:20
130:12	105:19	53:14 53:16	92:22 93:14
136:13	105:20	70:4 70:6	95:21
exceptions	105:21	70:6 70:8	125:21
79:18	106:2 106:3	70:8	126:5
80:5 81:6	117:1 118:1	70:22 71:22	experiences
exclude	118:10	71:23 71:23	86:19
97:9	118:16	71:23 71:24	92:5
97:12 98:15	119:1 119:1	78:20 78:21	92:17 92:17
98:16	119:7	78:22	explaining
114:11	119:10	79:4 87:4	33:6
exclusions	119:15	87:5 87:7	explicit
97:15 97:20	119:16	87:11 88:24	117:1
exclusively	119:24	88:25	explicitly
90:11	120:5 121:2	89:1 89:5	115:24
exempt	121:8	112:12	explore
82:23	121:10	112:13	136:21
83:3 101:6	121:14	112:14	explored
	121:17	112:18	
	121:22	116:10	
	127:11	116:11	
	127:12	122:4 122:5	

113:20	65:11 65:15	85:19 142:8	79:6
express 57:13	65:22	feedback 25:1	79:16
57:20	66:5 67:5	25:3	80:9
extended	67:20 67:22	feel 39:6	83:20 83:22
59:14	68:22 68:24	53:25 85:3	99:11 140:2
extending	69:15 74:24	feels 75:12	five 14:4
54:22	76:19 76:22	Fellowship	145:17
extent 15:3	78:11 78:13	43:23 45:15	flowed 45:23
63:1	78:16	58:22 59:5	focus 16:17
107:8	137:14	female 131:3	108:4
113:17	144:18	feminists	126:14
	fall 20:6	114:2	132:24
	20:6 20:9	fewer 86:17	133:2
<hr/> F <hr/>	21:12 24:19	filed 124:3	focused 13:25
face 13:17	24:19 82:8	124:3	49:20 51:10
13:18 135:2	familiar 17:3	filing 79:4	51:24
facilitators	25:11	filled 13:3	56:8 83:8
89:25	39:5	filling 130:5	99:1
90:3	47:24 47:25	Finance 12:24	focusing
90:10 90:16	73:15 73:19	findings	126:24
92:14	73:19 74:16	29:17	folks 14:17
facilities	74:17 74:19	fine 53:8	14:19
133:13	83:14 83:16	146:1	26:4 48:2
fact 73:5	83:17 83:24	finish 7:21	60:24 105:5
93:22 104:5	84:3 89:9	7:22 68:15	font 122:21
141:19	116:19	first 7:7	football
facts 7:14	122:13	7:21 29:5	102:21
fair 18:5	142:12	29:7	force 128:3
fairly 96:6	142:13	29:10 29:15	128:8
fairs 17:19	February	33:17 45:14	forgetting
17:20 18:10	28:19 39:24	46:7	14:16
faith 23:16	142:5	56:18 56:23	form 58:11
36:19 50:10	142:17	57:3 57:8	formalized
50:20	143:4	57:16 57:23	127:14
51:2 51:9	143:11	58:2	formally
51:14 51:22	143:15	68:16 70:17	104:17
52:8	144:13	70:20	former 18:25
56:20 56:25	Federal		
64:15 64:20	25:7		
	53:19 83:3		

forth 59:13	130:15	105:5	governance
forum 79:20	131:18	generally	129:18
80:6 80:25	134:20	23:13	Government
forward 20:13	free 39:6	24:7 137:22	13:10 13:11
23:24 23:25	53:25 57:13	138:21	gradation
120:1	57:19 57:25	generation	128:22
138:18	freedom 57:9	83:20 83:23	graduate
Fowler 14:13	frequent 46:8	George	13:10 15:20
frankly 48:18	Friday 46:2	41:11 79:11	43:22
55:11 73:14	friends 16:23	133:9 134:6	44:9
fraternities	57:20	145:25	44:17 45:15
14:12	friendships	Georgia	48:8
81:7 81:9	58:1	9:12 10:9	48:14 48:22
81:19 81:22	front 95:17	10:12	49:12
81:24	full 41:5	gets 94:5	50:9 52:6
82:2	41:15	95:17	58:22
82:12 101:4	42:1	getting	59:5
117:2 117:2	42:10	53:9 140:19	59:18 59:22
118:9	43:2	given 59:11	60:1
118:17	43:25 44:18	65:3	60:16 60:19
118:18	56:3 80:9	glancing	63:22 64:13
119:18	89:24	72:16	65:10 65:14
119:23	128:22	goal 141:17	66:4
121:3 121:9	function	god 92:25	66:15
121:18	73:14	93:17	67:4
127:10	functioning	94:2	67:19
127:12	139:7 139:7	94:10	68:7
127:15		100:11	69:14
128:11		gone 46:8	73:9 75:8
129:7		47:4 142:19	76:4
129:11	gather	Gosh 14:7	76:15 76:18
130:3 130:9	67:12 67:16	gotcha 82:7	77:11 77:13
132:21	gathering	126:10	78:1
133:3	36:15	Goth 12:20	99:20 100:9
133:15	gears 97:3	gotten 71:24	109:13
136:4	gender 38:9	govern 129:10	140:23
fraternity	132:6	130:8	141:2 144:7
85:12	general 57:12		144:16
122:11	79:10 79:12		Graduate's
125:2 125:9			49:2 50:1
126:21			52:23

53:2 73:7	94:6 95:2	36:16 36:20	101:23
graduating	96:7	36:25 36:25	102:13
15:17	96:15 97:24	37:1 37:4	102:13
graduation	98:3 98:4	37:5 37:7	107:8 108:4
125:6	98:8 99:1	37:25	108:6 109:2
125:11	99:6	38:4 38:8	114:3 125:3
granting	99:15	38:12 40:12	125:20
113:18	107:15	40:17 40:18	126:3 127:5
great 18:9	107:17	40:23 42:25	127:9 128:6
54:4 106:12	107:25	44:14	128:20
106:13	109:8	46:4	130:20
135:11	109:10	48:18 49:16	130:21
146:8	110:22	50:23	135:12
Greek 81:17	111:11	51:6	136:14
122:16	111:12	56:15	136:19
123:10	111:19	58:4 60:5	137:16
125:3	111:20	61:25	137:25
125:20	112:1 112:3	62:3	138:23
127:9	114:10	62:10 62:12	144:10
129:11	114:11	62:16 62:22	group's 18:13
135:12	115:8	62:23	94:13 114:5
Greeks 123:11	115:12	63:4	growing 16:14
ground 7:18	125:19	64:12 64:25	guess 34:3
group 19:17	126:21	65:21 69:16	42:16 85:14
22:4 22:8	126:22	72:23 75:13	89:17 125:9
24:12	128:9	76:5	133:22
31:5 38:5	137:12	76:13 76:21	guidance
38:13	138:22	77:3	45:23 64:23
51:1 51:7	groups 13:7	77:15	81:12 102:4
51:15 53:22	13:8 15:1	78:2	105:11
56:2	16:25	80:10 80:16	105:17
56:19 56:24	17:9	80:21 80:23	120:22
58:1	18:11 18:18	81:4 81:8	144:23
58:11 66:17	21:15	81:11 81:17	guide 97:1
83:8	29:9 30:6	82:3	guided 101:8
83:10 86:16	30:7	82:17	guidelines
92:24	30:10 33:17	83:8	69:21
93:8	33:21	84:15 84:16	Guild 114:10
93:12 93:14	35:8	85:3 85:5	guilty 68:17
93:15 93:16	35:25	88:10	
	36:2 36:3	96:3 97:6	
	36:4	97:6 97:8	
		97:14 101:2	

<hr/> <hr/> H <hr/>	112:23 143:14	20:1 131:16 131:16	134:19 135:9
half 142:6	hat 97:12	here's	housing
hall 130:24	haven't	40:17 40:17	12:3
131:25	67:3	66:8	12:23
132:8 132:9	67:15 71:24	He's 125:18	129:19
132:11			130:15
132:18	having 7:7	higher 125:10	huge 38:13
halls	30:6	125:14	98:5
130:13	30:10 41:25	highlighted	human 10:4
130:14	43:24	37:15 38:6	12:20 21:17
132:19	49:6	Hillary 97:13	23:19 29:23
132:21	68:20	hired 89:20	31:9
133:6 134:7	90:9	historically	31:17 31:19
Hansen	90:24 104:3	80:17	32:2
12:17 12:17	107:1	history	33:24 36:19
12:18	121:13	104:23	41:16
happen 59:3	130:13	hold 8:16	42:1
87:24	Hawaii 55:14	49:17	42:10
happy 115:2	Hawkeye	Honestly	43:1 43:2
hard 20:25	122:19	54:10	43:25 44:18
21:5	Health 12:4	hope 26:12	45:12 49:14
harm 64:18	hear 63:19	88:4	49:21 50:18
65:16 65:20	92:4	Hopefully	51:4 51:5
66:2 96:7	heard 73:20	71:24	51:11 51:13
97:20 127:4	73:24 92:18	hosted 90:18	51:23 51:24
harming 67:5	137:6	hour 53:9	54:24
harms 65:8	heart 16:11	house 83:3	57:2 57:6
66:24	He'd 41:22	130:4 130:4	63:24
127:20	held 8:22 9:6	131:2	64:9
Harreld 23:21	help 7:18	134:11	65:24 69:20
24:4 27:4	19:19 38:19	134:14	73:1
27:7	64:24	134:15	78:12 78:13
27:10	112:10	134:16	78:14
28:6	helped 16:2	houses 129:22	97:5 98:4
30:22 55:17	16:8 114:23	130:1 133:1	98:9
61:21 62:15	helpful	133:4	98:17 98:23
103:19	11:2 16:21	134:10	98:25
106:21			99:5
			99:13 100:2
			100:20
			101:7

101:14	n 10:24	43:8	28:15 38:15
103:9	39:2	44:23 47:25	46:10
104:12	43:16 47:20	49:24 51:19	60:8 64:4
104:14	53:17	53:8	71:15 71:20
104:25	70:9	64:24 70:11	73:11
105:22	78:23	70:20 72:16	74:6
108:3	87:8 89:2	72:22 74:17	85:20
108:14	112:15	76:3 79:3	91:2
111:1	122:7	79:21 82:10	91:19 91:22
111:13	identified	84:13 85:14	92:8
112:7	11:10	87:10	105:5 110:4
113:19	35:9	89:4 90:5	123:2 125:5
115:23	108:5 131:3	91:24	impart 92:13
116:2 116:4	132:11	93:6 94:8	imparted
117:10	identify 14:9	94:9 94:9	94:24
120:6 120:8	35:9 39:8	94:22	implement
120:10	83:9	95:2 95:3	142:15
120:12	91:12 92:18	95:19	implications
120:14	identifying	98:1	31:5
120:16	17:25 18:5	100:3 100:4	implied
121:3 130:7	identities	108:20	130:19
131:7	36:5	109:20	importance
131:23	36:22 37:15	109:25	93:13
132:2	37:17 83:22	110:5	important
132:13	85:21 108:6	110:15	16:5 16:7
132:15	identity 37:5	112:8	18:6
133:16	37:7 132:6	112:17	18:12 18:14
134:17	ideological	115:2 118:4	18:17 44:10
139:25	97:6 97:7	118:15	90:2
144:17	97:8 114:5	120:10	90:19 93:19
Hypocrisy	I'll 9:21	121:15	93:20
96:5	20:8 108:19	122:1 122:9	99:3 117:12
	122:1	128:17	117:16
I	I'm 7:12 7:13	129:17	119:25
I'd 14:7	8:18 10:2	129:25	impossible
63:19	14:16	131:21	92:1
100:21	18:8 25:4	133:11	improve 125:3
121:11	29:11	133:18	125:21
ideas 58:11	34:3 34:8	134:20	inability
58:11	37:22 42:12	135:25	
identificatio		143:18	
		imagine 26:24	

49:16 inaccurate 123:5 123:20 124:8 inasmuch 78:15 Inc 15:3 include 31:25 32:2 32:15 35:17 45:12 77:20 137:24 included 12:5 23:17 36:20 38:18 39:14 39:21 43:7 49:21 64:10 73:12 118:2 120:25 includes 37:25 75:24 including 36:25 80:13 inclusion 8:20 97:21 incorrect 41:20 52:20 74:25 indeed 77:16 121:23 in- depthness 107:9 indication 67:4 88:2	individual 94:1 94:5 95:17 97:12 107:24 individuals 14:10 17:25 32:24 58:18 71:17 71:18 85:7 92:18 108:7 109:19 110:4 111:18 125:8 influence 94:23 95:13 influenced 90:14 influences 90:20 95:12 inform 62:14 information 19:21 36:14 43:7 67:13 67:16 75:21 122:24 125:17 informed 49:11 61:22 107:2 initial 36:13 59:9 initially 36:15 62:6 initiative 89:15 injunction 53:21 54:22	142:9 injunctions 56:9 input 25:4 25:6 insert 116:25 inserted 117:21 instance 52:3 83:10 97:14 97:24 101:18 114:2 instead 90:9 139:23 instituted 31:11 institution 15:8 19:4 141:22 institutions 136:21 136:24 138:5 138:8 138:13 139:4 140:13 instructed 32:19 33:8 33:16 67:15 instructing 43:23 instruction 26:9 33:14 34:9 instructional 46:4	instructions 33:19 integrate 104:8 104:15 integrated 127:1 127:1 integration 127:3 intent 48:3 126:24 interact 13:7 13:12 85:7 interaction 19:2 19:15 19:20 Intercultural 9:13 9:15 interest 89:17 97:21 111:20 interested 17:22 98:21 interesting 138:11 interests 17:11 66:3 66:25 85:13 88:17 88:18 interim 8:19 9:4 12:14 13:5 13:16 internally 71:16 international
--	---	---	--

interpret

intervene

isn't 109:10

italics 117:5

Jewish 94:6 94:10 job 91:12 join 17:10 109:19 109:20 110:6 journey 86:24 judge's 30:3 30:5 July 9:3 20:11 42:12 58:20 58:24 59:8 59:19 66:20 115:22 116:24 117:21 118:6 118:13 119:4 119:6 June 43:18 43:21 44:6 45:20 46:2 48:5 48:9 48:15 49:2 49:8 50:5 50:17 52:22 52:25 53:20 54:6 58:20 59:1 59:8 59:10 59:11 62:18 68:5 68:8 68:9 69:1 71:1 71:9 71:13	72:1 76:13 118:2 <hr/> K Kansas 63:18 Kappa 15:2 15:9 15:15 kidding 10:2 kinds 33:3 97:15 knew 94:2 94:4 knitting 109:20 109:21 109:22 109:22 109:24 knowledge 33:13 42:20 43:3 63:1 71:18 72:9 72:24 74:8 74:10 82:24 105:6 123:2 125:1 125:22 131:17 Knoxville 9:10 9:12 9:16 Koran 94:17 95:3 95:4 Kutcher 14:14 26:24 31:1 32:15 43:18	43:22 45:5 45:25 48:21 49:1 49:6 49:11 50:7 50:13 50:16 52:13 52:22 53:1 59:1 60:24 68:6 71:1 103:25 112:24 118:3 143:8 Kyle 14:13 <hr/> L lack 54:23 63:24 landed 19:3 language 24:13 31:19 31:21 31:22 34:1 49:21 50:1 50:24 64:9 65:24 69:5 80:19 113:12 113:17 115:24 116:5 116:16 116:18 116:25 118:2 118:6 120:11 large 40:22	larger 38:5 largest 122:18 123:7 last 53:25 66:25 68:10 79:9 79:25 89:23 103:4 112:25 136:16 139:19 144:7 late 20:9 24:19 54:6 Lawyers 114:10 lead 69:15 94:8 94:9 94:10 95:2 95:4 95:20 98:11 leader 32:25 34:7 92:25 94:14 94:16 98:8 109:24 110:11 leaders 19:17 20:4 20:8 22:4 22:15 22:20 33:10 49:17 50:20 51:2 51:7 51:9 51:14 51:17 51:21 51:21 51:24
--	---	---	--

52:2 52:8	136:23	140:25	let's 38:20
53:21 56:20	137:13	141:24	68:15
56:24	142:9	141:25	69:9
57:8	144:18	144:10	78:18 106:7
58:14 64:15	leadership	145:7	111:3 113:5
64:19 65:15	12:6	leading 32:12	115:16
65:22	13:21	91:13 93:16	116:5 116:7
66:4	17:8 18:1	93:21 93:23	132:24
66:23	19:9	95:25	133:23
67:5	21:16 21:18	learn 17:12	136:18
67:20 67:21	21:22	17:18 18:15	Letting 24:7
68:22 68:24	22:1 24:6	18:19 58:18	level 66:2
69:15 74:24	32:17	69:23	142:3
76:14 76:19	48:7	85:9	levied 21:3
78:3	49:13 50:10	98:22	life 8:18 9:3
78:15	52:23	109:22	9:11 12:1
79:6 83:9	53:2	110:15	12:15 12:19
83:11	63:23	111:21	12:21 99:22
96:8	64:2	121:11	122:11
96:16	64:17 65:10	137:2	122:19
97:7	73:7 73:8	141:18	125:2
97:24 98:18	74:20 76:21	learned	light 55:24
98:19	77:14 91:16	110:16	76:11
99:2 99:7	93:13	learning 19:8	likely
99:15	97:9	23:8 141:13	46:22 46:25
100:14	97:15	141:13	limit 113:9
100:15	98:7 108:24	least 30:3	113:22
107:19	110:17	102:8 102:9	limited
107:25	110:18	128:21	137:25
108:8	113:9	138:18	line 39:10
108:13	113:22	legal 11:21	69:18 71:2
108:17	137:7 137:9	72:19 72:25	Link 14:17
109:9	137:11	74:15 74:23	list 34:15
109:11	137:15	75:7	34:25
109:11	137:20	75:19	35:3 35:3
109:13	138:5	76:8 77:9	35:5
109:16	138:19	legislation	35:11 35:20
112:1 114:4	138:20	138:17	36:2
114:20	138:25	144:22	36:10 36:11
115:9	140:8	144:24	
115:13	140:15		
136:14	140:24		
136:19			

36:13 36:17 37:24 38:2 38:4 38:11 38:12 39:7 39:10 40:7 40:8 40:10 40:11 40:17 40:18 40:22 40:22 41:6 41:7 60:6 71:3 71:7 71:11 71:12 71:16 72:10 75:2 75:3 75:10 75:12 76:24 76:25 77:5 77:20 77:23 listed 58:23 lists 36:24 38:16 38:16 38:18 72:14 72:18 litigation 141:20 144:2 little 9:19 19:2 122:20 124:11 124:15 live 131:4 131:6 132:9 132:10 132:18 133:7 134:15 lived 63:18 location 26:6	long 8:13 68:2 102:24 102:25 119:15 longer 76:5 126:21 loose 14:15 Lord 83:3 Lori 12:19 lost 140:13 lot 15:18 72:14 106:10 Love 72:19 72:25 73:8 73:10 73:11 73:15 73:22 74:8 74:22 75:6 75:18 75:23 76:8 77:9 82:22 low 41:25 Lyn 19:1 <hr/> M <hr/> ma'am 14:6 115:19 115:19 MAGA 97:12 makers 61:19 male 101:11 131:3 males 90:11 90:25 91:17 92:4	man 131:19 managed 133:8 134:19 managing 13:14 13:25 20:3 mandatory 105:21 105:23 106:2 March 7:4 28:19 mark 10:19 38:21 43:10 43:12 47:15 53:12 78:19 88:24 122:3 marked 10:22 10:23 38:24 39:1 43:13 43:15 47:17 47:19 53:14 53:16 70:9 70:21 71:22 78:19 78:21 78:22 79:4 87:7 87:11 88:25 89:1 89:5 112:13 112:14 122:5 122:6 122:10 masters 10:10 89:19 match 120:7 matter	57:12 93:2 93:15 93:16 99:9 115:10 may 9:4 14:18 19:14 20:1 23:18 32:10 33:3 36:4 37:8 37:9 38:9 38:19 55:9 72:16 95:23 105:5 132:21 maybe 13:9 36:21 45:4 88:7 94:15 95:9 100:23 119:20 124:20 McHale 14:12 mean 24:1 29:12 29:13 37:9 37:16 73:19 77:19 78:10 85:20 88:15 88:16 94:4 121:2 137:12 meaning 31:1 85:22 88:10 means 72:12 81:20 84:21 84:23 85:15 85:18
---	---	---	--

86:1	109:16	92:11	113:23
94:18	112:2 112:3	met 28:21	mixing 123:25
110:14	114:4	30:24	Mm-hmm 14:6
115:1	114:19	midway 122:16	22:7 22:9
meant 54:17	115:9	military	29:3 33:5
measurements	115:13	111:9	61:13
125:1	122:19	Miller 79:10	62:5
meet 89:5	136:23	mind 25:21	72:21 76:17
109:3 109:3	membership	83:7	79:22 81:15
meeting	18:7	87:21 108:3	82:14 82:16
31:3 31:7	21:19 21:22	145:12	98:13 102:6
32:5 32:7	22:1 108:23	minorities	105:15
32:9 32:11	110:19	80:17 82:24	109:17
meetings	113:10	83:4 84:17	109:17
13:17 30:20	113:22	minority 83:8	116:3
86:21	130:20	83:10 83:11	127:14
Meghan 14:13	133:23	83:12 83:18	128:7
Melissa 7:2	135:4	85:3	129:20
7:7 8:12	men 91:10	85:17 86:5	132:2
39:16	126:12	Mintner 14:14	model 139:12
112:23	127:1	31:2 61:5	moment
146:15	men's	61:6	70:12
member	101:23	70:23 70:25	110:19
32:25	102:12	minute 11:5	month 13:17
34:7	103:1 104:7	145:17	142:6 145:5
89:13 98:20	104:15	minutes	months 8:15
110:23	126:21	100:24	8:22
133:25	mentioned	misidentifyin	66:25
134:1 135:6	14:16 18:21	g 81:18	144:21
members 17:13	26:21	miss 77:6	morning 7:11
32:15 33:11	61:5	missed 77:5	moving 20:12
51:18 51:24	72:23 101:1	missing 72:22	much-needed
52:2 57:8	105:11	mission 74:13	87:18
58:16	124:10	80:15 80:24	multi 38:8
83:9	138:9	113:18	multicultural
83:11 83:18	mess 141:25	missions	36:12
98:19 108:9	message 93:25	113:10	37:8
108:16	94:24 95:12		40:17 85:11
109:9	96:7 96:14		
109:11	messaging		

multiethnic 36:1 36:2	61:8 138:21 141:11	122:18	21:9
multiple 38:16 80:16 84:16	necessary 145:2	nice 106:11	occur 62:15
Muslim 94:19 95:2 95:2 95:8	negative 127:20	nine 11:11 11:14	occurred 62:2 141:14
<hr/>	neither 52:15	Nineteen 8:15	OCR 81:12 101:8 105:11
N	Nellie 14:17	nod 8:3	October 123:24 124:5 124:8
national 110:25 114:10 118:23	Nelson 14:14 18:22 19:2 19:4 19:7 19:11 20:2 20:19 23:4 26:3 26:21 31:1 32:14 33:20 34:15 36:6 36:8 36:9 37:12 39:13 40:6 40:11 40:16 41:13 41:18 41:21 45:9 45:23 45:24 60:23 61:14 104:1 112:23 125:18 143:9	Noncomplaint 71:2	offer 144:23
national/ international 119:23		noncompliant 52:5 60:10 62:16 62:23 71:4 71:5 71:9 71:13 72:11	offered 102:4 111:24
natural 126:7		nondiscrimina tion 129:8 132:6	office 25:25 26:2 28:25 29:6 55:2 55:6 105:14 142:14 142:24 143:1 143:20 143:24
nature 10:4 20:22 23:9 27:12 31:3 31:15 33:14 35:2 67:9 90:9 91:1 91:17 92:2 94:12 94:24 95:5 101:5 108:13 126:11 126:15 126:17 126:20	network 86:3 86:15 87:13 89:6 89:12 89:16 90:25 91:1 91:4	nonreligious 35:12 35:14 35:18 113:10 113:23	oh 23:5 41:17 43:11 54:1 63:14 68:11 71:4 80:2 82:7 88:19 94:7 102:19 105:16 120:13 124:2 125:7 125:15 146:12
neat 78:25		nor 52:15	
necessarily 14:20 48:17		nose 142:22	
		nothing 51:16 109:23 111:22 145:23	
		notification 54:13	
		notifying 45:18	
		<hr/>	
		object 60:12	Ohio 137:3 138:24
		objective	

okay 7:17	60:14 61:10	105:24	133:14
7:20 8:1	62:7	106:6 106:8	134:5
8:21 8:25	62:21 63:10	106:13	134:11
9:5 9:22	63:13	106:14	134:14
10:13 11:24	64:5	108:18	135:4
12:7	64:13 65:13	109:1 109:6	135:11
12:11 12:14	67:8	109:8	135:18
13:2 13:6	67:18	110:20	136:2 137:4
13:12 13:19	68:4 69:7	110:21	137:17
13:24 14:22	69:13 70:21	111:6	137:24
15:6 15:9	71:22	111:10	138:2 138:4
16:16 16:20	72:4 73:4	111:16	139:3 140:6
20:22 21:10	74:3	112:6 113:5	141:4 141:6
21:25	74:12 74:15	113:25	142:7
22:2 23:7	74:19 75:17	114:17	142:14
24:4	75:21 76:11	115:16	145:11
25:22 25:22	78:1	116:8	145:16
26:18 26:20	79:14	116:14	145:19
27:23 28:14	80:3 80:8	117:8	one-page
28:16 30:20	81:16	117:23	39:17 39:19
30:25	82:1	118:1	ones 30:21
31:6	82:11 83:14	118:12	35:8
32:12 34:14	84:7	118:16	37:13
35:19 37:20	84:12 84:14	118:22	38:8
39:15 39:17	86:2 86:9	118:25	71:21 82:11
39:22	86:14	119:9	online 135:13
40:4	87:3	119:13	135:19
40:10 40:15	88:12 88:19	120:13	135:21
41:7	89:23 93:10	121:21	135:24
41:11	98:25	124:22	
45:5	99:5 100:23	124:25	onto 77:23
45:22 47:12	101:25	124:25	Ooh 24:18
48:21 49:10	102:8	125:16	operate 54:18
49:23	102:15	128:9	86:15
50:7	102:20	128:14	operating
50:17 51:12	102:24	128:18	66:22 67:1
52:5	103:14	128:25	operationaliz
52:13	103:25	129:6	ed 108:11
53:6 54:4	104:6	129:16	opinion 26:23
54:14 54:25	104:18	130:2	28:17 53:20
56:17 58:20	104:24	130:16	
59:7	105:3 105:8	132:16	
59:17 59:21	105:11	133:12	

54:5	110:24	71:13	outcomes
54:14	111:21	72:6	127:20
55:3 55:6	116:17	72:19	out-of-
55:8	117:10	75:4	class 12:9
opportunities	117:24	75:25 77:24	outs 138:20
85:6	126:6	82:6 82:8	outside 84:25
85:24 86:18	133:20	85:10 85:20	105:8
88:10 88:13	134:2 136:7	110:7 113:9	129:16
opportunity	144:6	113:22	129:17
125:24	organizations	115:25	134:5
options 67:23	13:15 13:20	117:20	overridden
order 44:11	14:1 14:5	118:24	60:14
76:12 76:13	14:11 14:23	118:24	oversee
84:22	14:24 15:21	124:14	12:2 130:5
88:3 109:24	16:5	126:3 136:6	oversees
org 73:13	16:12	138:15	89:22
73:25 120:9	17:5	organization'	oversight
organization	17:11 17:14	s 58:19	80:14
17:12 17:16	17:24 18:16	113:18	owned 129:15
17:17 17:20	21:11	Organizations	owning 95:25
17:21	30:2	12:5	owns 132:20
18:5	31:12 31:17	organizing	
23:18	31:24 33:10	118:19	<hr/>
24:2 24:8	33:22 34:16	orgs 14:8	P
32:24 37:13	34:21 34:23	14:18 14:21	Padilla
51:22	35:4 35:6	17:19 30:12	89:7 89:9
52:4	35:10 35:12	37:10 39:11	page 8:9 11:9
54:19 54:20	35:15 35:17	39:20	43:19 53:25
58:7 58:8	35:20 35:21	55:1 56:9	72:4 72:7
72:10 73:16	36:11 36:12	119:20	79:7 79:9
74:5 74:9	36:18	OrgSync 72:7	79:17 79:24
82:9	40:7 40:8	orientation	80:9 80:9
83:25	41:5	126:2	87:15
84:4 84:9	41:15 44:17	oriented 16:4	89:8
85:1	44:21	original	89:24
86:10 86:16	46:9 47:5	115:8	112:25
98:20 108:7	51:3	originally	113:6
108:10	58:17	119:1	113:14
108:11	60:2 60:3	others 137:2	114:1
109:19	60:7		114:13
110:13	60:10 71:8		

116:8	35:23 107:5	22:20 131:5	please 8:7
122:11	past 105:1	132:8 134:3	8:10
122:13	Paul 14:14	135:5 138:5	10:19 10:19
122:14	31:1 32:8	permitted	11:24 26:16
122:15	61:5 61:6	80:11 114:3	38:22
124:5	61:13 70:23	144:16	39:8
pages 79:14	pause 44:10	person 93:3	43:10 43:12
142:20	44:13	93:3	47:16 50:21
142:22	paying 36:21	95:10 95:24	53:13
paragraph	people	personally	70:5
79:17	30:17 30:17	142:17	78:20 79:14
80:9	58:12 59:14	perspective	87:4
87:18 87:20	109:3 110:6	93:2	88:24
89:24 113:5	114:12	Ph.D 7:2	90:6
114:2 114:9	143:1	10:11	100:6
116:15	perceive 57:4	146:15	112:12
116:20	perceived	philanthropic	116:12
116:23	54:23	126:1	122:4
117:6	percent 37:21	phone 24:16	pledge 123:14
paragraphs	37:23 112:8	physical	point 12:25
113:25	123:11	84:22 88:13	19:4
parenthetical	123:12	143:1	20:12 20:24
116:25	124:21	piece 51:20	21:7
117:6	134:22	pile 78:25	26:15
117:21	percentage	places 9:17	61:7 136:15
118:7	42:9	plaintiffs	141:8
participated	perhaps 23:15	7:13 41:8	policies
84:5	38:6 91:9	plan 62:6	29:11 29:19
participating	96:3	62:8 144:20	58:12 58:15
95:22	126:2 137:9	planning	73:7 73:8
103:15	period	145:5	73:9
particular	24:20 46:11	plans 144:25	74:20 80:23
11:3	62:23 62:24	platform	130:21
12:12 14:15	permanent	110:25	130:24
16:15 17:11	142:9	playing 101:9	138:14
52:3	permissible	101:11	139:7
58:18 71:10	52:16 99:13		143:24
128:4	permit		145:2 145:8
138:21			policy 17:4
particularly			17:8
			21:12 21:17

21:17 21:21	108:21	political	98:2 98:6
22:3	111:1 111:8	40:18 58:10	98:12
22:14 22:18	111:9	97:5 97:7	99:2 99:3
22:19 23:14	113:19	97:8	99:12
23:20	115:24	97:23 97:25	107:16
25:9 29:8	116:2	98:4 99:1	107:18
29:23	116:16	99:11	115:9
30:6	116:17	107:10	115:13
30:10 30:23	117:10	107:15	practical
31:9	117:11	107:15	66:1
31:17 31:19	117:18	109:10	practice
32:2	117:25	110:4	64:15
36:19 42:19	118:13	110:22	pray 92:25
45:13 49:14	120:12	112:1 112:2	prayer
50:19 50:22	120:17	112:2 112:4	93:17
50:25	121:17	114:12	94:1 94:8
51:4 51:6	129:17	114:18	94:9
51:11 51:13	130:8	114:20	94:10 94:13
51:16 51:20	131:22	115:8	praying
51:23 51:23	132:3	115:10	93:3 93:5
51:25 52:10	132:13	population	93:18
52:11 52:16	132:15	123:12	94:1 94:2
54:24	133:23	position 8:16	preference
56:2	134:21	8:21	83:18
56:11 56:14	136:7	11:25	preliminary
57:3 57:6	138:10	13:3 19:3	53:21
63:25 64:10	138:12	108:23	preparation
65:5 65:7	139:1	108:23	11:18
65:25 66:16	139:19	108:24	prepare 11:21
67:23 69:20	139:21	110:17	prepared
73:2	139:25	114:18	11:13
76:20	144:5 144:6	positioned	present
77:7	144:9	91:21	28:6
78:12 78:13	144:12	positions	92:20 119:5
78:14 80:12	144:17	18:1	presented
81:5 82:9	144:21	possession	22:18
98:17	144:23	66:12	presenter
104:13	144:25	potential	86:21
104:14	145:6	68:21	
107:14	145:12	poverty 97:25	
108:3	policy's		
108:14	21:15 52:17		
108:15			

presenting 86:22	123:21 124:4	30:1 32:4 32:6 32:13 38:15 43:5 44:7 44:16 61:8 66:14 69:8 81:1 105:19 118:5 119:19 130:5 140:19 141:23 145:14	properties 133:8
president 8:18 8:19 9:2 12:1 12:15 12:19 12:21 12:22 13:16 23:21 24:4 24:23 24:23 27:4 27:6 27:10 28:5 30:22 55:17 61:21 62:14 84:3 103:18 106:21 138:19 143:14	prior 9:13 42:13 42:21 45:17 45:20 62:20 89:14 89:21 139:15 139:16 private 129:15 privileged 28:3 probably 14:7 24:16 38:22 60:24 68:18 71:15 123:17 123:18 124:11 124:20 125:5 125:18 125:18 126:1 126:23	produced 40:22 41:1 41:9 Professional 13:11 program 83:15 83:25 84:5 86:7 87:24 88:2 90:13 90:18 Programming 14:18 programs 85:2 86:4 89:22 91:11 program's 83:18 pro-life 114:3 promptly 46:25 pronouncing 70:23	protected 52:1 57:16 57:22 58:1 protection 113:19 prove 77:3 77:17 77:18 provide 8:2 80:16 84:16 85:2 85:6 121:22 125:23 127:11 provided 40:11 82:23 121:17 provides 71:12 83:4 84:15 providing 40:7 84:21 provision 101:14 purpose 17:15 73:14 purposes 34:5 79:20 80:6 80:24 90:3 pursuant 143:21 pursue 16:18 <hr/> Q <hr/> qualifies
pressure 57:10			
pretty 63:19 116:19 135:25			
prevent 97:5 99:1 99:6 111:16	problem 29:5 78:4 78:8 91:7 103:9 106:23		
previously 9:1 42:8	problematic 77:17 77:19 77:22		
primarily 51:10	process 17:14 17:24 18:4 18:6 18:10 19:6 20:10		
primary 60:24 61:18			
principle 99:8 99:22			
print 87:11 122:10			
printed			

113:18	rates 125:6	123:4	55:4 55:5
question 7:22	125:11	123:19	55:7 55:9
8:6 18:8	rather 76:24	124:7	55:10 55:21
19:23 42:16	reach 31:23	139:11	59:7
68:2	reaching	reasonable	59:20
70:16 84:23	62:18	93:15	60:8
93:7	reading 87:21	reasoning	62:11
96:11	90:5	54:21	64:7
100:16	ready 70:14	reasons 79:19	65:18 66:10
107:11	145:18	80:5	66:13 66:18
107:22	real 10:17	80:13 80:14	71:10
108:9	108:12	121:13	74:6
108:23	really 15:3	recall 14:2	74:11 75:20
110:19	16:5	14:10 19:13	76:2 76:7
131:9 134:1	16:13 20:25	19:18 21:13	76:10
134:21	21:5	23:11 23:13	83:1 83:6
134:24	35:25 63:16	24:13 24:21	83:23 103:5
135:2	64:2 98:5	26:7 27:1	103:10
questions	99:3	28:10 28:10	103:11
7:14 8:5	107:8	28:20 30:12	103:13
59:13 59:14	109:21	30:14 32:10	103:17
131:15	141:17	32:21 32:22	103:21
quick 10:17	Reams 12:16	33:1	106:25
106:8	13:4	33:12 33:15	107:1
quickly 72:16	13:17 13:22	33:18 34:10	115:22
quite 14:17	19:5 143:9	37:2 37:3	116:1 116:4
48:18 55:11	reason	37:21 37:23	122:14
73:14	24:11 41:20	37:24 38:14	127:7
quote 87:21	46:16 46:18	40:2	127:21
	46:20 52:19	40:20 41:17	128:24
	59:17 63:21	44:23	129:2
	64:5	45:9	136:11
	74:25	45:17	144:8
	75:6	46:1 46:1	receive 37:11
	98:16 98:16	46:19 48:25	94:20
	99:25	49:4 49:8	received 26:4
	101:11	50:6	44:21 54:12
	119:13	50:12 50:15	55:7 55:9
	121:16	52:25	67:3 67:9
		53:1 53:4	70:19
		54:12	81:5 101:2

120:22	reference	117:9	57:9
143:18	117:9 137:1	117:19	57:11 109:3
recently	referring	117:24	109:6
116:16	20:17 84:17	120:9	religious
recess 106:16	reflecting	133:20	22:3 22:5
145:21	93:13	134:1 144:6	22:7
recognition	refresh 19:19	registration	22:15
119:22	40:4	17:4	24:6
recognize	regarded	17:19 21:11	33:17 34:16
11:1 70:17	19:16	reject 69:4	34:21 34:23
recognized	regarding	related	35:4 35:8
57:1 120:23	21:4 31:8	16:4 21:2	35:10 35:17
120:25	36:10 38:12	21:16	35:21 36:10
recognizing	43:24	26:2	36:25
65:1 119:24	48:4	29:18 29:21	37:1
recollection	48:23	34:19 39:20	37:13
19:20 21:14	49:2	56:10	38:4 38:7
30:9	49:16 52:23	118:10	39:11 39:20
34:11	65:20 70:16	130:12	40:7 40:8
40:5 49:5	75:22 99:12	relates 23:16	49:12 49:17
68:24 69:2	99:18	40:6	51:14 51:22
reconsider	100:11	42:17 42:18	56:2
103:3	100:18	57:11	56:19 56:24
record 7:25	107:16	100:16	63:22 65:21
8:11 39:8	107:17	102:1 102:4	66:17
106:14	114:18	102:9	74:4
106:15	127:9	117:18	76:13 76:21
106:17	regards 99:16	135:4 135:7	77:14 77:15
145:20	111:9 111:9	136:3	78:2 78:3
145:22	144:9	136:22	92:24
Recreational	registered	relating	93:2
14:19	31:12 34:15	130:19	93:12
recruitment	35:3 35:9	130:20	96:3 96:7
18:6 18:13	41:15 54:19	130:21	96:15
red 97:12	58:4 58:8	relationship	99:6 99:8
Redington	76:1 76:5	126:17	99:14 99:15
19:1 19:3	76:6 76:9	relative	99:16 99:21
19:10	82:5 82:9	118:8	99:22 100:9
	85:1 114:11	religion	100:17
	116:17	36:14	100:17
			107:11
			107:17

107:17	18:25	36:1	120:5
107:24	REPORTER	69:14	120:20
107:25	10:20 10:22	131:19	126:13
109:10	27:18 38:24	132:17	requirement
109:14	43:13 47:17	requested	24:6
115:12	53:14	36:13 36:24	32:23
115:14	70:4 70:6	38:11 38:17	47:6
117:19	78:21 82:18	requests 41:9	49:14 69:10
136:6 136:7	87:5	require 22:20	100:13
136:13	88:25	49:17	132:5
136:14	106:15	52:6 52:7	requirements
136:18	106:17	97:24	33:9
136:19	112:13	100:19	52:17
137:12	122:5	104:7	58:7
137:16	145:20	104:14	77:14 78:3
137:25	145:22	107:18	requires
140:8	146:7	107:25	101:10
remember 35:7	reporting	109:2 112:1	111:23
39:7 41:3	19:12	112:3 114:3	requiring
45:20 48:18	106:21	114:19	52:15 67:20
54:10	reports 12:12	115:9	68:22 78:15
59:6	67:3 67:9	115:13	97:6
59:12 64:10	repots 13:1	120:24	reregister
104:3 129:1	represent	121:1 121:7	25:11
remembered	92:22	121:8	reregistered
26:14	representativ	121:22	66:21
remove	e 86:12	127:3	reside 131:24
49:12 50:24	represented	131:23	residence
renewing	74:22 85:23	132:8	130:13
53:20	120:1	132:16	130:14
repeat 8:7	republican	134:17	130:24
108:19	110:9	required	131:4 131:4
rephrase	110:25	25:10	131:6
46:23	111:9	29:7	131:18
report	Republicans	32:24 33:10	132:10
12:16 13:21	85:11 110:6	34:7 52:9	132:19
18:25	110:23	74:23	133:6
19:6 27:6	111:7	84:4	133:17
143:2	request 22:15	99:14	133:19
reported		117:20	133:25

134:6 134:7	26:10 29:13	45:12 49:14	131:7
residences	29:14 30:13	49:21 50:18	131:23
129:11	30:17 31:11	51:4 51:5	132:3
129:11	31:15	51:11 51:13	132:13
129:16	32:4 32:6	51:23 51:24	132:15
130:10	32:13 32:20	54:24	133:16
Resistance	33:8	57:2 57:6	134:17
79:8	33:17 41:14	63:25	139:25
Resource	42:15 42:22	64:9	144:17
89:14 91:10	42:24	65:24 69:20	role 9:4 13:5
93:8	43:8 48:1	73:1	13:7
Resources	55:3 60:6	78:12 78:13	15:20 42:17
12:20	70:12 103:4	78:14	89:16 98:5
respond 46:22	104:24	97:5 98:4	roles 9:5 9:6
46:25	104:25	98:9	room 21:18
106:22	136:16	98:17 98:23	23:15 27:15
response 20:3	143:9	98:25	27:22 45:10
41:9 48:3	reviewed	99:5	55:20 57:7
107:1 108:9	25:18 25:19	99:13 100:2	roughly 62:22
113:15	25:20 29:10	100:20	123:13
114:5	42:9 55:6	101:7	RSO 84:25
114:14	65:13 65:20	101:14	117:18
Responses	66:7	103:9	120:16
112:20	66:15 97:19	104:13	121:17
responsibilit	143:11	104:14	130:8
y 42:14	reviewers	105:1	144:17
130:1	33:16	105:14	RSOs 80:11
responsible	34:4 34:6	105:22	rules 7:18
13:14 45:24	reviews 42:5	108:3	ruling 29:4
rest 38:7	rights	108:14	29:21 34:14
result 66:3	21:17 23:19	111:1	40:1 40:3
retention	29:23	111:13	44:13
125:6	31:9	112:7	142:12
125:10	31:17 31:19	113:19	run 90:25
retreat 90:14	32:2	115:24	91:11
90:15	33:25 36:19	116:2 116:4	133:15
review	41:16	117:10	Ryan 7:23
11:17 19:16	42:1	120:6 120:8	10:19
	42:10	120:10	
	43:1 43:2	120:12	
	43:25 44:18	120:14	
		120:16	
		121:3 130:7	

<hr/> <hr/> S <hr/>	48:11	41:24 61:12	32:3
safe 80:16	105:17	140:21	51:19
82:23	select	sent 27:3	110:18
83:4	58:14 58:16	36:17 39:15	133:25
84:16 84:21	64:15 76:14	39:16 45:17	seven 14:8
85:17 88:15	136:14	45:20 46:12	Seventeen
Samaritan	136:19	47:9	123:11
99:8	137:13	47:13	several
99:17 99:21	selection	48:7 55:8	124:13
100:18	17:8 18:7	sentence	sex 38:9
sanction	21:16 64:17	79:25 87:15	101:14
20:18	77:14 97:16	sentences	102:1 102:9
Sarah 12:16	133:17	80:10	103:8
12:17 12:18	133:19	separate 37:3	104:22
saw 54:3	137:20	100:5	115:25
school's	144:10	108:12	117:1
19:16	selective	separately	118:20
Scott 12:24	29:4	37:18	127:17
scripture	29:18 29:21	series 90:18	129:8
93:22	78:5	servant 16:11	130:14
Seagren 12:24	selectively	serve 14:5	130:19
season 63:15	25:9 56:1	16:6	share 22:21
second 40:6	semester	served 9:2	50:10 50:20
81:10 87:15	46:23 47:1	service 15:21	51:2 51:9
87:17	send 34:15	16:4 16:4	51:14 51:21
89:8	34:25	16:12 16:13	52:8
89:24 99:14	36:6 36:9	16:21 95:17	56:20 56:25
122:2	36:11	95:18 126:2	63:6
seeing	44:8	126:5 126:7	65:22
70:20	44:16	126:8	66:4 67:5
122:14	45:6 45:7	126:12	67:20 67:22
seek 25:1	46:3	Services	68:22 68:24
seemed 139:7	46:15	14:19	69:15 74:24
seems 47:25	143:19	serving	76:19 76:22
77:6 91:6	sending 46:17	13:4	92:17
96:2	62:11	13:14	97:7
seen 11:7	senior 12:23	14:1 15:21	97:25 99:15
	sense 8:6	setting	99:20
	29:25 30:5		107:19
			107:25
			109:9

109:13 112:1 112:3 114:20 shared 26:12 41:8 55:11 58:11 86:19 86:20 91:20 92:17 111:19 121:24 143:8 she's 90:12 Shivers 7:2 7:7 7:11 8:12 39:16 70:11 87:10 89:4 112:18 112:23 122:9 145:23 146:15 shot 76:4 showing 70:11 79:3 87:10 89:4 112:17 122:9 sic 114:22 sidewalks 57:14 sign 114:4 146:3 signed 79:10 113:1 significantly 124:12 124:23	127:4 similar 34:21 34:23 35:2 35:24 35:24 36:7 36:16 47:4 78:3 85:8 similarities 72:17 simpler 111:3 simply 77:5 77:23 sincere 96:5 sincerely 96:8 singing 95:19 single 18:3 130:13 siren 63:11 sister 126:5 sisterhood 88:5 126:9 126:12 126:16 sisters 134:16 sit 75:17 104:11 136:17 145:4 sitting 102:20 103:11 situation	139:16 six 43:12 144:21 skies 55:16 skillset 109:24 slightly 97:4 123:10 123:22 slow 9:18 social 79:20 80:6 80:24 81:22 81:24 82:1 82:12 101:4 117:2 118:9 118:18 121:8 121:18 126:3 127:10 129:11 136:3 Society 72:19 72:25 74:15 74:23 75:7 75:19 76:8 77:9 solely 137:16 somebody 45:7 sometime 58:20 62:24 66:20 115:22 117:20 Son 100:11	songs 95:19 95:25 sororities 14:13 81:7 81:9 81:19 81:24 82:2 82:12 101:4 117:2 117:3 118:9 118:18 118:19 119:19 119:23 121:3 121:9 121:18 127:10 127:12 127:16 128:11 129:7 129:12 130:3 130:9 132:21 133:4 133:15 134:9 136:4 sorority 15:3 15:5 15:6 15:7 15:8 15:19 15:23 16:8 16:17 16:20 85:12 122:11 125:2 125:9 126:5 126:8 126:13 130:15 131:2 131:4 131:5 131:18
--	---	--	--

131:24	132:25	47:2	50:4
131:25	137:17	55:17	sport 14:21
132:8	140:11	81:2	81:12 81:14
132:17	sort 14:14	92:12 104:4	81:16
133:25	44:12	119:4 126:2	82:2
134:2	57:2 65:4	speaking 9:19	82:15
134:11	91:20 102:2	41:13	100:25
134:14	120:2	107:22	101:3 101:5
134:14	128:22	138:21	101:6 101:8
134:16	130:5 130:6	specific 16:2	101:9
134:16	137:7	35:14 38:12	101:11
134:17	138:14	46:16 46:18	101:13
134:20	139:25	46:19 48:23	102:4
135:5 135:9	140:24	49:9	102:12
sorry 9:22	sorts 142:1	49:17 62:10	102:16
12:17	sound 122:24	65:8	102:17
18:8 23:5	sounds 90:12	66:17 70:16	103:1 103:3
25:4	Southern	74:10	103:7
26:19 31:25	10:10	76:3 100:17	103:16
32:1	space 82:23	127:17	103:19
36:19 37:22	83:4	145:12	103:23
43:11 44:23	84:22 85:25	specifically	104:8
51:7 52:7	86:5	11:4	104:20
55:16 55:22	87:13 87:18	32:19	104:21
61:4	87:23 87:24	37:1 45:6	105:19
68:17 71:23	87:25	49:19 66:15	105:22
74:3	88:8	109:12	sports 82:4
78:12 79:21	88:10 88:15	118:8	101:18
82:19 84:13	88:15	120:23	102:17
84:25	90:4 90:9	127:9	102:22
90:5	90:20	specify 52:2	spring
90:18 91:24	spaces	speculate	105:1
92:22	80:16 84:16	44:5	139:19
93:6	84:21 84:23	spelled 88:21	staff 13:23
98:15	85:3 85:6	spirit 16:11	14:15
105:16	85:14 85:17	spiritual	26:2
120:10	85:25 88:13	39:11 39:20	30:24 32:15
120:15	speak 11:10	spite 80:11	89:13 123:1
120:25	11:13 11:20	spoke 45:23	staffed 90:11
122:1 129:5	18:18 23:21		stand 74:17
129:17			
129:25			

standards	23:16 36:18	134:10	35:10 35:12
49:13 52:24	50:18 50:25	stuck 85:14	35:14 35:16
53:3	52:17 78:11	student	35:20 35:21
63:23 64:3	78:12	8:18 9:3	36:10 36:17
stands 108:10	122:15	9:11 12:1	37:3
144:15	123:7	12:3 12:3	37:10 37:12
Stange 12:22	statements	12:4 12:5	37:25 38:12
start 36:8	114:4	12:6 12:7	40:12 40:23
started	State's	12:9	41:5
19:5	139:12	12:15 12:19	41:15
19:11 59:13	status 72:6	12:21	46:4 46:9
59:14	76:1	13:6 13:8	47:5 48:6
starts	step 31:21	13:10 13:11	48:7
79:24 80:1	31:23	13:14 13:21	49:16
state 8:10	133:22	14:1 14:5	51:1 51:3
57:10 89:20	stepping 98:2	14:8	51:6 51:7
90:13	134:5	14:11 14:17	51:14 51:22
98:5 112:24	steps	14:21 14:22	54:19 54:19
117:1 137:1	142:14	14:23 14:24	55:1 56:2
137:3 137:5	143:21	15:4	56:9
137:12	143:23	16:25	56:15 56:19
138:9	story 99:8	17:4 17:9	56:24
138:17	99:16 99:21	17:10 17:12	58:7 58:8
138:24	100:18	17:19 17:20	58:11 58:19
138:24	straits 99:19	17:23	65:16 65:21
139:21	strictly	18:3 18:5	73:16
139:23	69:19 85:13	18:5	74:9 82:6
140:3 140:9	strongly 50:9	18:10 18:11	82:9
140:16	50:19	18:13 18:18	83:25
141:9	51:1 51:8	19:9	84:4 84:8
141:12	51:13 51:21	19:17	85:1 85:5
141:16	52:6 52:7	21:3	86:10 92:24
141:16	52:9	21:11 21:15	93:8
141:21	52:15 67:21	22:3 22:7	93:12 93:21
141:24	67:24 68:23	23:17	95:1 96:7
141:25	69:4 69:9	24:8	96:15
144:22	100:14	24:12	107:24
145:6	structures	29:8	114:11
stated 34:4	133:1 133:4	31:12 31:24	116:17
statement		32:16 32:23	117:10
		33:10 33:21	117:19
		35:4 35:6	117:24
			119:20

120:9 125:3 133:20 134:2 136:7 138:14 144:6 144:10 students 9:9 12:15 13:3 17:10 17:13 17:16 17:17 18:14 18:19 19:1 46:10 46:11 46:21 46:24 57:12 85:7 85:21 93:16 94:20 95:8 95:21 122:17 122:19 123:14 125:24 133:7 studies 93:1 subject 13:6 39:10 71:2 submit 48:9 48:15 submitted 20:14 23:17 42:25 submitting 48:19 48:20 subordinates 13:13 13:24 26:22	27:2 32:18 33:2 33:8 56:18 56:23 143:3 143:4 143:11 substance 28:2 substantial 42:9 substantive 144:3 success 125:1 125:4 successful 122:18 123:8 suggest 98:23 suggested 21:3 29:17 41:22 suggesting 141:15 suggests 51:17 summer 20:6 28:22 46:5 46:7 46:9 46:10 46:22 47:1 115:16 144:7 sung 96:1 sunny 55:16 supervision 14:15 supervisor	61:6 61:9 support 58:17 79:19 80:5 80:15 80:23 85:9 87:2 87:13 88:1 122:18 supported 29:24 supportive 87:16 110:13 supposed 34:6 sure 7:24 8:8 13:2 14:12 16:19 29:11 29:16 31:4 36:21 41:4 41:12 44:11 59:2 64:22 65:2 65:4 87:22 89:25 90:16 91:15 95:15 102:11 102:19 108:18 112:8 118:4 120:1 123:23 133:18 134:20 135:18 135:25 137:6 140:2 140:4 140:19	141:20 143:18 surveyed 138:24 suspension 124:13 switching 97:3 sworn 7:7 Syria 111:10 <hr/> T <hr/> Tab 14:16 taking 99:18 talk 88:14 talked 32:5 32:7 67:18 talking 30:15 40:5 40:13 40:23 49:15 68:16 86:4 88:8 90:12 93:12 100:3 101:1 106:20 107:4 109:12 126:16 132:22 132:25 talks 87:16 87:18 89:7 task 33:20 128:3 128:8 tasked 32:12 34:5 taught 95:6 95:9 99:17
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teach 93:1	87:6	129:15	104:11
teaching 93:4	115:6	130:11	109:12
93:5	128:17	135:23	144:15
94:20 94:25	133:9	141:16	144:19
95:1 95:10	135:11	they've 92:18	145:4
team 32:14	146:9	102:4 137:3	today's 11:18
tendency 10:1	themselves	third 87:15	11:21
Tennessee 9:9	35:9 127:16	87:20	top 43:19
9:11	133:16	Thomas	70:22 71:25
term 84:21	thereabouts	79:10	79:24
114:21	71:14	112:24	89:5 112:19
114:25	there's	throughout	113:7
116:6 134:6	11:2	46:10 46:13	topics
134:9	17:17 40:10	64:16	11:11 11:13
terms 15:17	46:14 51:16	timeframe	tornado 63:15
17:15 17:23	57:6 57:7	50:22	total 14:2
19:7 27:1	57:10 75:24	145:10	Totally 110:1
36:22 42:22	79:25 96:22	timeline	tough 122:20
43:6 46:6	98:18	48:19 62:17	town 54:12
46:8 57:9	108:12	107:6 107:7	trained
62:18 64:23	108:16	timeliness	29:1 29:6
75:23 85:22	109:15	48:3	training
107:4 108:2	109:23	title 81:6	29:11 29:12
108:15	110:3	81:9	transgender
109:18	110:10	81:11 82:13	131:5
114:22	111:22	115:25	131:19
133:20	137:19	118:10	131:24
test 63:12	141:5	120:7	132:9
testified 7:8	145:11	120:20	132:18
41:18	they'd 48:16	120:21	133:24
testifying	they'll 47:6	120:23	134:15
10:14 42:18	they're 18:11	120:24	135:5
text 112:21	25:21 57:19	121:1 121:4	transitioned
Thank 9:25	58:13	121:6	19:11
11:16 26:20	74:4	121:14	treated 78:2
38:25 43:14	85:12	121:18	trouble 95:23
47:18 53:15	96:5	121:21	142:1
70:3 78:24	98:20 98:21	136:3 136:5	
	111:12	today 10:15	
	125:5	75:18	

true 75:1 92:23 95:3 96:24 99:8 102:16 108:22 trust 96:25 truth 91:6 93:23 try 7:22 8:2 67:12 85:2 107:11 trying 34:20 41:4 48:2 64:21 69:22 94:22 100:4 104:13 141:18 142:20 142:21 turn 57:25 79:14 80:8 113:14 114:13 twice 13:9 two-day 90:14 two-page 39:17 two-week 62:22 type 7:24 35:14 37:12 128:9 types 101:2 102:16 103:12 typically	13:9 <hr/> U <hr/> uh-huh 8:3 15:10 ultimately 63:4 undergraduate 10:9 15:18 89:18 123:12 underrepresen ted 83:22 85:22 understand 10:13 11:9 13:2 20:23 21:6 34:20 35:22 36:15 42:14 55:13 57:5 73:22 93:7 94:22 105:18 107:14 108:19 136:21 139:9 139:24 140:1 144:2 understanding 17:7 20:23 21:10 22:2 22:14 22:19 22:23 29:20 31:7 54:16 55:24	56:4 56:6 56:13 57:9 67:22 95:24 97:23 99:4 102:15 111:25 120:5 138:23 understood 21:1 21:19 22:17 29:16 31:4 41:4 44:12 65:2 unfounded 96:4 unh-unh 8:3 universities 9:7 139:8 university 8:14 8:17 8:23 9:1 9:6 9:9 9:11 9:12 9:14 10:10 10:11 10:11 10:15 11:10 11:25 12:2 12:23 13:10 16:11 20:7 22:24 25:8 25:9 25:10 29:8 30:23 34:4 35:4 40:21 42:3 42:5	42:18 44:8 46:3 46:6 50:8 50:25 52:14 56:1 56:14 58:5 58:8 58:10 58:21 59:4 59:23 64:14 65:20 66:8 66:16 67:6 67:12 69:3 69:9 69:17 71:8 76:18 77:8 79:5 79:18 80:1 80:14 80:22 81:20 82:22 83:2 84:14 85:2 85:18 85:23 86:18 87:12 88:6 89:17 89:19 92:6 97:3 97:4 97:11 97:19 100:12 101:17 102:25 104:7 105:21 106:2 107:12 107:21 107:23
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107:23	104:12	varies 18:1	80:12
110:22	108:20	variety 80:13	violence
111:7	113:2	various	91:11
112:22	114:14	14:8	Vogel 72:2
113:8	114:18	30:16	72:2 72:3
113:20	122:25	36:4 37:4	Von 12:22
115:23	129:17	37:6	
116:24	130:7	37:15 46:13	
119:14	131:22	85:21	<hr/> W <hr/>
120:7	Unless 72:22	126:24	wait 7:21
120:20	unwritten	verbal 8:2	7:22 43:11
121:16	118:16	versus	wasn't
122:12	119:1 119:7	69:10 96:23	16:15
123:15	119:10	via 24:16	18:9
125:21	119:15	48:22	27:24
127:2 127:8	update	vice 8:18	61:7
127:14	31:24 43:24	8:19 9:2	64:10
127:18	48:24 49:3	9:8 9:10	66:7
128:18	updated	12:1	118:1
129:6	48:9	12:14 12:18	118:13
129:10	75:24	12:21 12:22	128:3
129:13	115:23	13:16 24:23	140:24
129:21	116:2	138:18	140:25
130:6	updating 48:4	victims 80:17	141:11
131:10	107:6	views 57:13	141:23
131:20		57:20 58:19	water 26:15
135:22	<hr/> V <hr/>	97:1 97:2	26:15
135:25	vacation	97:25 110:9	53:6 106:10
136:2 136:4	54:11 55:10	110:9	ways 16:1
136:17	55:12	111:22	16:2
136:24	values 99:17	violate 51:20	17:17 102:3
139:11	Vanderbilt	56:23 67:23	125:20
139:18	137:2	112:7	web 124:5
144:25	138:10	violating	webpage 87:12
university-	138:11	56:18 121:4	website
owned 133:7	138:25	violation	122:25
university's	Vanderbilt's	52:11	WEDNESDAY 7:4
17:3 20:3	138:10	violations	week 46:14
50:18	varied 37:9		54:11
66:2			
66:24 80:15			
80:23 97:20			

weekly 13:8	53:16	106:12	88:20
13:13	70:8	107:13	89:6
weeks 39:25	78:22	107:22	89:12 89:15
47:5 47:9	87:7 89:1	132:23	90:24 91:13
weigh 69:9	106:16	132:25	W-o-m-x-n
welcome 26:16	112:14	133:3 133:6	88:21
111:11	122:6	140:12	wonder 75:2
We'll 41:11	145:21	146:3	wore 97:12
81:10	146:14	146:12	work 13:22
Wellness 12:4	whether 17:20	woman 131:2	14:8
we're 8:8 8:9	32:22	131:6	14:10 14:20
36:21 40:22	35:1	131:19	16:13
53:9	37:15	131:24	18:2 18:3
60:15 60:16	43:7	132:9	18:22
62:21	49:25	132:10	19:8 35:1
88:3	50:9 59:7	132:11	45:8
100:3	77:1	132:18	56:10 89:11
106:15	104:4	133:24	90:1
109:12	107:24	134:15	90:17
110:7	108:22	135:5	92:6 134:12
115:20	121:10	women 86:13	worked 9:12
123:6	128:5	87:17	20:25
128:19	135:23	89:6	21:5 32:14
132:25	136:10	89:25	working
141:12	136:13	90:3	33:8 46:7
141:15	136:18	90:10 90:16	works 14:12
141:20	139:16	91:12	14:17 72:19
142:1	white 90:11	92:3	72:25
145:17	Wiggins 14:16	92:10 92:14	73:8
145:22	William	92:19 101:9	73:10 73:12
146:1 146:9	112:23	126:18	73:15 73:23
146:12	witness	127:1	74:8
we've 31:8	9:20 9:22	women's 89:13	74:22
140:17	9:25 10:6	91:10	75:6
whatever 38:9	15:13 22:11	93:7 101:23	75:18 75:23
WHEREUPON	27:16 27:21	102:13	76:8 77:9
10:23	27:24 55:21	103:1 104:8	82:23
39:1	63:14 81:22	104:15	worship 95:16
43:15 47:19	82:19	Womxn 86:2	95:18 95:21
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	106:9	87:12 87:19	

<p>WRAC's 89:6</p> <p>wrestle 96:24</p> <p>write</p> <p>119:14</p> <p>119:16</p> <p>written</p> <p>118:13</p> <p>119:16</p> <p>135:15</p> <p>wrong 94:18</p> <p>108:20</p> <p>116:6</p> <hr/> <p>Y</p> <hr/> <p>yellow 122:21</p> <p>Yep 10:21</p> <p>yeses 82:18</p> <p>yet 13:3</p> <p>29:24 42:13</p> <p>91:9</p> <p>122:1</p> <p>135:13</p> <p>135:16</p> <p>135:19</p> <p>144:4</p> <p>you'll 79:9</p> <p>79:25</p> <p>112:19</p> <p>112:25</p> <p>114:14</p> <p>117:5</p> <p>yourself</p> <p>14:22 61:16</p> <p>you've 8:21</p> <p>8:22 11:6</p> <p>72:23</p> <p>105:17</p> <p>134:24</p>			
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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

NOTICE OF RULE 30(B)(6) DEPOSITION

Pursuant to Federal Rule of Civil Procedure 30, the deposition upon oral examination of the person identified below will be conducted, for use as evidence, at trial and otherwise, at the time and place stated below before a court reporter or other officer authorized by law to administer oaths, to continue from time to time until completed. The matters on which persons designated under Rule 30(b)(6) will be asked to testify are set forth in Exhibit A.

NAME: **The University of Iowa**
(through Melissa Shivers for topics 1, 3, and 9 of Exhibit A, and
through Andrew Kutcher for topics 2, 4, 5, and 8 of Exhibit A)
Iowa City, IA 52242

PLACE: **University Park Research Center**
Room W219
2500 Crosspark Rd, Coralville, IA 52241

TIME: **9:00 AM (3/27) and 12:00 pm (3/28)**

DATE: **March 27-28, 2019**

EXHIBIT 1	
DEPONENT NAME: Shivers	DATE: 3/27/19

IVCF App. 2867

IVCF App 2474

The deposition proceedings will be recorded stenographically.

Dated: March 22, 2019

Respectfully submitted,

/s/ Eric S. Baxter

Eric S. Baxter (*pro hac vice*)

Lead Counsel

Daniel H. Blomberg (*pro hac vice*)

The Becket Fund for Religious Liberty

1200 New Hampshire Ave. NW, Suite 700

Washington, DC, 20036

(202) 955-0095 phone

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ebaxter@becketlaw.org

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Christopher Hagenow

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Cedar Rapids, IA 52402

(319) 849-8390 phone

(888) 689-1995 fax

chagenow@whgllp.com

Counsel for Plaintiff

EXHIBIT A

List of Topics for Rule 30(b)(6) Witness

1. The University of Iowa's policies and/or procedures regarding registered student organizations, including all funding and benefits made available to such organizations, and including organizations such as fraternities, sororities, and sports clubs.
2. Student organizations that have been refused registration, deregistered, penalized, or placed on any sort of suspended status since 2017, and any investigations into those student organizations.
3. The adoption, interpretation, and enforcement of the University of Iowa's Human Rights Policy, Nondiscrimination Statement, and Statement of Policy.
4. Registered student organizations at the University of Iowa, including but not limited to fraternities, sororities, sports clubs, and sports teams since 2017 that have employed criteria for the selection of leadership positions, membership, or participation involving a preference for or against students with regard to their race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, political affiliation, or associational preferences.
5. The University of Iowa's decision to deregister InterVarsity Graduate Christian Fellowship, along with its decision to deregister any other student organizations that were deregistered in Summer 2018, along with its deregistration, suspension, or otherwise alteration the registered status of any student organization since Summer 2018.
6. The University of Iowa's responses to Plaintiffs' First Set of Interrogatories to Defendant University of Iowa.
7. Any documents produced by the University of Iowa in response to Plaintiffs' First Set of Requests for Production of Documents from Defendants.
8. Dockets 117-2 and 101-1 in *Business Leaders in Christ v. University of Iowa*, No. 17-cv-80 (S.D. Iowa).
9. The University of Iowa's efforts since the commencement of this lawsuit to enforce its Human Rights Policy.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served via email upon the following counsel of record on March 22, 2019, and via First Class/Priority Mail on March 22, 2019:

George A. Carroll
Assistant Attorney General
1305 E Walnut Street
Des Moines, IA 50319
george.carroll@ag.iowa.gov

/s/ Eric S. Baxter
Eric S. Baxter

Christensen, Betty [AG]

From: Nelson, William R
Sent: Wednesday, February 07, 2018 8:41 AM
To: Shivers, Melissa S
Subject: List of Spiritual Religious Orgs.xlsx
Attachments: List of Spiritual Religious Orgs.xlsx

Melissa,

Here is the list you requested. There are 32 RSOs.

In the review process, we reviewed 31 RSOs in this category, because we did not review BLinC.

I just wanted to explain the 31 versus 32 issue. Let me know if you need something else.

Bill

William R. Nelson, Ph.D.
Executive Director, Iowa Memorial Union
145 IMU
The University of Iowa
Iowa City, IA 52242-1317
319/335-3059
william-nelson@uiowa.edu
imu.uiowa.edu

EXHIBIT	
2	
DEPONENT NAME:	DATE:
Shivers	3/17/19

BLinC-DEF 003761

Name	Category
Bridges International (UI Chapter)	Spiritual & Religious
Campus Bible Fellowship	Spiritual & Religious
Campus Christian Fellowship	Spiritual & Religious
Cru	Spiritual & Religious
Chabad Jewish Student Association	Spiritual & Religious
Chinese Student Christian Fellowship	Spiritual & Religious
Geneva Campus Ministry	Spiritual & Religious
Hillel (University of Iowa)	Spiritual & Religious
Latter-day Saint Student Association	Spiritual & Religious
Muslim Students Association	Spiritual & Religious
Newman Catholic Student Center	Spiritual & Religious
Orthodox Christian Fellowship	Spiritual & Religious
Twenty Four Seven	Spiritual & Religious
Young Life	Spiritual & Religious
ASK Prayer Ministry	Spiritual & Religious
Salt Company - The	Spiritual & Religious
Baha'i Campus Association	Spiritual & Religious
Agape Chinese Student Fellowship	Spiritual & Religious
Chi Alpha Christian Fellowship	Spiritual & Religious
Christian Medical Association	Spiritual & Religious
Wall-Breakers	Spiritual & Religious
Business Leaders in Christ	Spiritual & Religious
Imam Mahdi Organization	Spiritual & Religious
Ratio Christi	Spiritual & Religious
Athletes in Action	Spiritual & Religious
Lutheran Campus Ministry	Spiritual & Religious
Love Works	Spiritual & Religious
Tau Omega Catholic Service Fraternity	Spiritual & Religious
International Neighbors at Iowa	Spiritual & Religious
St. Paul's University Center	Spiritual & Religious
Young Women for America at Iowa	Spiritual & Religious
Sikh Awareness Club	Spiritual & Religious

BLinC-DEF 003762

ATTORNEY-CLIENT PRIVILEGE REDACTED

From: Kutcher, Andrew M <andrew-kutcher@uiowa.edu>
Date: Fri, Jun 1, 2018 at 3:12 PM
Subject: Registered Student Organization Compliance - Action Required
To: "kkummer50 [REDACTED]" <kkummer50 [REDACTED]>

EXHIBIT 3	
DEPONENT NAME: Shivers	DATE: 3/27/19

NOTE: This communication is being sent to all Primary and Secondary Representatives, and Advisors, as they are listed on a Registered Student Organization's (RSO) OrgSync portal. YOUR ATTENTION AND IMMEDIATE ACTION IS REQUIRED.

Dear Kevin,

The Center for Student Involvement and Leadership (CSIL) has identified that the constitution of InterVarsity Graduate Christian Fellowship either does not include the current language related to the University of Iowa Human Rights Clause or it is missing in its entirety. All RSOs are required to have this Clause included verbatim in their constitution or bylaws.

Human Rights Clause:

In no aspect of its programs shall there be any difference in the treatment of persons on the basis of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification which would deprive the person of consideration as an individual. The organization will guarantee that equal opportunity and equal access to membership, programming, facilities, and benefits shall be open to all persons. Eighty percent (80%) of this organization's membership must be composed of UI students.

Your RSO must update your current governing documents to include the required Human Rights Clause to continue as a RSO now and in the future. Additionally, RSO governing documents may not include language that is considered contradictory to the Human Rights Clause. Any language considered contradictory, must be removed. Once you have made this update, you must submit all governing documents to CSIL using the form linked here:
<https://orgsync.com/14241/forms/311661>

If you have language in your constitution or bylaws that is outdated, often found in the membership section, you simply need to remove the old language and insert the required new language listed above. If you realize you do not have any part of the Human Right Clause, it needs to be inserted **VERBATIM**, within the membership section.

The deadline to submit changes is **June 15, 2018, or your RSO will be de-registered**. If de-registered, registration can be reinstated by submitting governing documents with required language to CSIL, using the link above. RSOs will receive feedback on their updates, and the submitting person will be updated via email if additional changes are required.

We recognize many RSOs require a vote of the membership to ratify governing documents. We ask you to insert the Human Rights Clause into your governing documents with the understanding you will hold a vote of confirmation once

the fall semester commences. If allowed by your constitution or bylaws, you may hold an electronic vote of confirmation immediately.

Please see the [FAQs](#) for more information.

Thank you for your attention and timely action to address this issue. Please to contact to CSIL staff at csil-student-org@uiowa.edu should you have any questions.

Andy Kutcher

Andy Kutcher, M.Ed.

he, him, his

Coordinator for Student Organization Deveopment

Center for Student Involvement & Leadership

andrew-kutcher@uiowa.edu

<http://csil.uiowa.edu>

Adaptability | Harmony | Positivity | Consistency | Arranger

Schedule an appointment with me

IMU Center for Student
Involvement
& Leadership

145 Iowa Memorial Union

Iowa City, Iowa 52242-1317

319-335-3059 Fax 319-353-
2245

getinvolved@uiowa.edu

ATTORNEY-CLIENT PRIVILEGE REDACTED

EXHIBIT	
4	
DEPONENT NAME:	DATE:
Shivers	3/27/19

From: Kutcher, Andrew M

Sent: Wednesday, June 13, 2018 4:02 AM

To: Schrock, Katrina N [REDACTED]@uiowa.edu>

Cc: Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; [REDACTED]

[REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>;

kkummer50 [REDACTED] King, Laurynn L <laurynn-king@uiowa.edu>

Subject: Re: InterVarsity Graduate Christian Fellowship Governing Documents

Hi Katrina,

We encouraged groups to get there governing documents submitted by the 13th in order for us to have time to review them and provide feedback prior to the 15th deadline. The 15th is our deadline for groups not wanting to be deregistered.

The form to submit will remain open for groups that go deregistered to submit after June 15. If a group goes deregistered they will become reregistered when they submit governing documents compliant with the Human Rights Clause.

Hope this makes sense. Please let me know what questions you have.

Best,
Andy

On Jun 12, 2018, at 11:45 PM, Schrock, Katrina N <[REDACTED]@uiowa.edu> wrote:

Andy,

In an email from Laurynn this morning we were told "**The updated document(s) are due tomorrow, June 13th or your student organization will be placed on unregistered status.**" However, an earlier email from you, dated June 1st, said: "The deadline to submit changes is **June 15, 2018, or your RSO will be de-registered.** If de-registered, registration can be reinstated by using the link above to submit governing documents with the Human Rights Clause and no language that is considered contradictory to the Human Rights Clause." Can you please confirm that we have until the close of business on June 15?

Thank you,
Katrina

From: Student Organization Help & Information

Sent: Tuesday, June 12, 2018 4:05 PM

To: Schrock, Katrina N [REDACTED]@uiowa.edu>; Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; Kutcher, Andrew M <andrew-kutcher@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Hi Katrina,

I just received word that we would not approve the change in language you proposed. Student orgs are free to express whatever language they desire in their mission/purpose, but the University and the Center for Student Involvement and Leadership must enforce our Human Rights Clause when it comes to leadership and membership.

I also wanted to let you know that I am out of the office starting tomorrow and will be back in on Tuesday. I will be doing my best to check email while away and would be happy to answer any further questions or address any concerns. I've copied my University Andemail address to this email in order to be able to follow up.

Best,
Andy

From: Schrock, Katrina N

Sent: Tuesday, June 12, 2018 11:25 AM

To: Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Andy,

Thank you for your clarification! Obviously, I will need to discuss any changes with the rest of the leadership team, but I do have a question. Would changing the language of the constitution from "must subscribe..." to something like "are requested to subscribe..." or "are strongly encouraged to subscribe..." make it so that the constitution is no longer contradictory? Again, I will need to discuss changes, but your input on this matter is greatly appreciated.

Thank you,
Katrina

From: Student Organization Help & Information

Sent: Tuesday, June 12, 2018 11:19 AM

To: Schrock, Katrina N [REDACTED]@uiowa.edu>; Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Katrina,

I recognize the wish to have leadership requirements based on Christian beliefs, however Registered Student Organizations are considered University of Iowa programs and thus must follow the Human Rights Clause in its entirety. Having a restriction on leadership related to religious beliefs is contradictory to that clause.

I'm happy to chat further about this and provide any information I can.

Best,
Andy

Andy Kutcher, M.Ed.
he, him, his

Coordinator for Student Organization Development
Center for Student Involvement & Leadership
andrew-kutcher@uiowa.edu
<http://csil.uiowa.edu>

Adaptability | Harmony | Positivity | Consistency | Arranger

[Schedule an appointment with me](#)

<image001.jpg>145 Iowa Memorial
Union
Iowa City, Iowa 52242-1317
319-335-3059 Fax 319-353-2245
getinvolved@uiowa.edu

From: Schrock, Katrina N

Sent: Tuesday, June 12, 2018 11:02 AM

To: Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu; [REDACTED]
[REDACTED]@uiowa.edu; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Andy,

I would guess that the issues you see involve potential contradictions to the part of the Human Rights Clause that states: "In no aspect of its programs shall there be any difference in the treatment of persons...". From my reading, the language of the constitution does not contradict the later part of the Clause, which states: "...equal access to membership, programming, facilities, and benefits shall be open to all persons". Membership, events, and other facets of the group are not restricted – the only restriction is specifically for leadership positions.

While I understand that this leadership restriction can be construed as a difference in treatment, it is also important to have Christian leadership in a Christian organization. We do not in any way discourage those who may not subscribe to the basis of faith in Article II from participating in IVGCF as members, but we do recognize that having Christian leadership is important to the fulfillment of our purpose.

The above are my thoughts, but I am open to having further dialogue on the matter.

Katrina

From: Student Organization Help & Information

Sent: Tuesday, June 12, 2018 10:43 AM

To: Schrock, Katrina N [REDACTED]@uiowa.edu>; Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Katrina,

On my initial review I see several issues. As part of compliance with the Human Rights Clause, organizations cannot have any language deemed contradictory to that Clause. I'm seeing potential contradictory language in Articles II, III, IV and VII. The language is directly related to the ability to become a member or to hold leadership positions.

Please let me know your thoughts, questions or concerns. I want to make sure this is clear.

Best,
Andy

From: Schrock, Katrina N

Sent: Tuesday, June 12, 2018 10:27 AM

To: Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED]

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Andy,

I've now used the form you linked to submit the updated constitution. Please let me know if there is anything else you need from us, and thank you for your quick reply and for checking into the submission.

Katrina

From: Student Organization Help & Information

Sent: Tuesday, June 12, 2018 10:06 AM

To: Schrock, Katrina N [REDACTED]@uiowa.edu>; King, Laurynn L <laurynn-king@uiowa.edu>

Cc: [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; [REDACTED]@uiowa.edu>; kummer50 [REDACTED] Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>

Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Hi Katrina,

Did you use the OrgSync form (<https://orgsync.com/14241/forms/311661>) to submit? I'm not seeing your submission in the form or on the InterVarsity Graduate Christian Fellowship's OrgSync portal.

Best,
Andy

From: Schrock, Katrina N
Sent: Tuesday, June 12, 2018 9:25 AM
To: King, Laurynn L <laurynn-king@uiowa.edu>
Cc: [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu; kummer50 [REDACTED]; Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>
Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Laurynn,

I was under the impression that the InterVarsity Graduate Christian Fellowship's constitution had been updated with the Human Rights clause, and submitted to OrgSync on either the 1st or 2nd of June. If this is not the case, I would appreciate if you would let me know as soon as possible, so that we can make the required changes.

Thank you,
Katrina

From: King, Laurynn L
Sent: Tuesday, June 12, 2018 9:15 AM
To: [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu
Cc: Schrock, Katrina N [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu; [REDACTED]@uiowa.edu; kummer50 [REDACTED]; Student Organization Help & Information <CSIL-Student-Org@uiowa.edu>
Subject: RE: InterVarsity Graduate Christian Fellowship Governing Documents

Thank you for your reply, [REDACTED]. It is important to keep your OrgSync profile updated with your new leadership team's contact information up-to-date, so we are able to reach out to the most current representatives.

Enjoy your day,
Laurynn

Laurynn King
she, her, hers
Administrative Services Coordinator
Center for Student Involvement & Leadership
laurynn-king@uiowa.edu
<http://csil.uiowa.edu>
Relator // Competition // Futuristic // Woo // Belief

<image002.jpg>
157 Iowa Memorial Union
Iowa City, Iowa 52242-1317
319-335-3059 Fax 319-353-2245
getinvolved@uiowa.edu

From: [REDACTED]
Sent: Tuesday, June 12, 2018 9:11 AM
To: King, Laurynn L <laurynn-king@uiowa.edu>; [REDACTED]@uiowa.edu
Cc: Schrock, Katrina N [REDACTED]@uiowa.edu; [REDACTED]

██████████@uiowa.edu>; ██████████@uiowa.edu>; ██████████@uiowa.edu>;
kkummer500██████████

Subject: Re: InterVarsity Graduate Christian Fellowship Governing Documents

Hi Laurynn,

We forwarded the original email to the current leadership team. Both ██████████ and I are no longer serving on the team. I believe they were working on updating this information, but I have CC'd them on this email.

Thanks,

██████████

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "King, Laurynn L" <laurynn-king@uiowa.edu>

Date: 6/12/18 8:44 AM (GMT-06:00)

To: ██████████@uiowa.edu>, ██████████

██████████@uiowa.edu>

Subject: InterVarsity Graduate Christian Fellowship Governing Documents

██████████ -

I am following up to several communications our office has sent regarding InterVarsity Graduate Christian Fellowship Governing Documents on campus. Our office has you listed as contacts for this student organization.

We've sent a few e-mails, and also left voicemails, over the past few months regarding the need to update the organization's governing documents to include the University of Iowa's Human Rights clause.

The updated document(s) are due tomorrow, June 13th or your student organization will be placed on unregistered status.

Please let me know a status update on these documents, or if you have any questions regarding the updates, and I can assist you.

Thank you in advance,

Laurynn

Laurynn King

she, her, hers

Administrative Services Coordinator

Center for Student Involvement & Leadership

laurynn-king@uiowa.edu

<http://csil.uiowa.edu>

Relator // Competition // Futuristic // Woo // Belief

<image002.jpg>

157 Iowa Memorial Union

Iowa City, Iowa 52242-1317

319-335-3059 Fax 319-353-2245

getinvolved@uiowa.edu

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

BUSINESS LEADERS IN CHRIST,
an unincorporated association,

Plaintiff,

v.

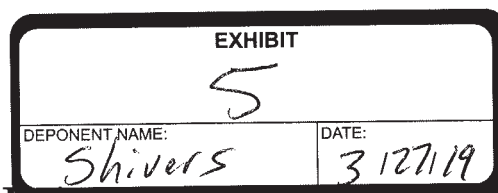
THE UNIVERSITY OF IOWA; LYN
REDINGTON, in her official capacity as Dean
of Students and in her individual capacity;
THOMAS BAKER, in his official capacity as
Assistant Dean of Students and in his individual
capacity; and WILLIAM NELSON, in his
official capacity as Executive Director, Iowa
Memorial Union, and in his individual capacity,

Defendants.

Case No. 3:17-cv-00080-SMR-SBJ

ORDER ON PLAINTIFF'S RENEWED
MOTION FOR PRELIMINARY
INJUNCTION

Plaintiff Business Leaders in Christ ("BLinC") seeks an Order granting its Renewed Motion for Preliminary Injunction. [ECF No. 51-1]. On January 23, 2018, the Court granted BLinC a ninety-day preliminary injunction ordering Defendants University of Iowa, Lyn Redington, Thomas Baker, and William Nelson to restore BLinC to registered student organization status. [ECF No. 36 at 31]. The parties jointly agreed to extend the injunction through June 30, 2018. [ECF No. 46]. In anticipation of its expiration, BLinC asks the Court to renew the preliminary injunction, thereby enjoining Defendants from interfering with BLinC's registered student organization status during the pendency of this litigation. The Court held a hearing on BLinC's original request for a preliminary injunction on January 18, 2018. BLinC requested oral argument on its renewed motion; however, the Court finds that in light of the previous hearing and the filings of the parties, the motion can be decided appropriately without it.



IVCF App. 2882

IVCF App 2489

The Court reiterates that “[f]acts and conclusions determined by a court in granting or denying a preliminary injunction are provisional and nonbinding.” [ECF No. 36 at 1–2] (citing *Henderson v. Bodine Aluminum, Inc.*, 70 F.3d 958, 962 (8th Cir. 1995) (per curiam); *Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1031 (N.D. Iowa 2011)).

After careful consideration of its prior Order, the parties’ submissions on this motion, and relevant caselaw, the Court finds that the preliminary injunction should remain in place. In its previous decision, the Court noted that the record contained evidence that another registered student organization had been allowed to operate on campus with membership requirements violative of the University’s Human Rights Policy. *Id.* at 28. Without more information, the Court had to conclude that it was possible that the differing views of the student organizations could account for the differential treatment. The University has now provided data from its ongoing efforts to review its administration of its Human Rights Policy. It appears a large number of student organizations were operating in violation of the University’s stated policies at the time the University revoked BLinC’s registered student organization status. [ECF No. 52-1 at 3]. The University does not reconcile that fact with how the proceedings against BLinC were carried out. Presently, too much remains unknown about what role BLinC’s viewpoint played, if any, in the decision to deregister the group. The Court determines that the preliminary injunction it previously imposed should remain in force throughout this action for the reasons stated both here and in the Court’s Order on Plaintiff’s Motion for Preliminary Injunction, [ECF No. 36].

The Court would also like to take this opportunity to remind and direct the parties to follow the Local Rules with respect to all future submissions. BLinC filed its motion after a court-imposed deadline without showing cause. BLinC also failed to deliver a paper copy of its motion and supporting filings—which together totaled more than 700 pages—with the Clerk of Court

despite previously being advised of that requirement for filings totaling more than 100 pages. *See* LR 5A(g)(8). Similarly, the Court declines to address Defendants' motion to strike, which was raised in a footnote of their response. *See* LR 7(e). The parties are advised that future violations of this type may result in their filings being struck.

For the foregoing reasons, Plaintiff BLinC's Renewed Motion for Preliminary Injunction is GRANTED. The Court orders Defendants to maintain BLinC's registered student organization status until the Court renders a judgment in this litigation. The Court waives the security requirement in Federal Rule of Civil Procedure 65(c).

IT IS SO ORDERED.

Dated this 28th day of June, 2018.



STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT

From: Christiansen, Erika E </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c697324856cf494b9b7899ccb6a304f2-eechrist>
To: Paul J Mintner (paul-mintner@uiowa.edu) <paul-mintner@uiowa.edu>, Kutcher, Andrew M <andrew-kutcher@uiowa.edu>
Subject: Non complaint list - Monday 6/18/18
Date: Mon, 18 Jun 2018 15:03:40 +0000
Inlinc-Images: image001.jpg

Chinese Student Christian Fellowship
American Institute of Aeronautics and Astronautics
Association of Nursing Students (UJANS)
English Society (University of Iowa)
Financial Management Association
Institute of Electrical and Electronic Engineers
Korean Conversation Group
Phi Beta Lambda
Society of Women Engineers
Net Impact UIowa
Public Relations Student Society of America (PRSSA)
American Academy of Pediatric Dentistry
Christian Pharmacy Fellowship
Graduate Student Anthropology Association (U of I)
InterVarsity Graduate Christian Fellowship
J. Reuben Clark Law Society
Student Iowa School Counseling Association
Tau Sigma Military Dental Club
Asian Pacific American Student Association (U of I)
German Club
Hong Kong Student Association
Indian Student Alliance (ISA)
Japanese Students and Scholars Club
Korean UIowa Students Association
Malaysian Student Society
Minority Association of Pre-medical Students
Multicultural Business Student Association
National Association for the Advancement of Colored People (UI Chapter of NAACP)
Persatuan Mahasiswa Indonesia di Amerika Serikat (Indonesian Student Organization)
Revolution Dance Company
Chinese Dance Club
Hawkapellas - Iowa
Iowa Agni
Young Americans for Liberty
Bass Fishing Team (Iowa)
Alpha Phi Omega-Omicron (APO)
Chinese in Iowa City
Code the Change
MEDLIFE (Medicine, Education and Development for Low Income Families Everywhere)
UISight
CMA EDU
Cookie Dokie
Red Shamrock Student Organization
Students for Human Rights
Campus Bible Fellowship
Cru
Geneva Campus Ministry
Imam Mahdi Organization
Latter-day Saint Student Association
Lutheran Campus Ministry
Sikh Awareness Club
Wall-Breakers
Young Life
Iowa American Student Dental Association (IASDA)

Spiritual & Religious
Academic
Academic
Academic
Academic
Academic
Academic
Academic
Environmental
Film/Publications/Media
Graduate & Professional
Graduate & Professional
Graduate & Professional
Graduate & Professional
Graduate & Professional
Graduate & Professional
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Multicultural
Performance
Performance
Performance
Political
Recreation & Wellness
Service
Service
Service
Service
Service
Special Interest
Special Interest
Special Interest
Special Interest
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Spiritual & Religious
Student Governance

Erika Christiansen

EXHIBIT	
6	
DEPONENT NAME: Shivers	DATE: 3/27/19

BLinC-Def008523

From: Christiansen, Erika E </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c697324856ef494b9b7899ccb6a304f2-cechrist>
To: Vogel, Jeremy M <jeremy-vogel@uiowa.edu>
Subject: RE: Org Sync help
Date: Mon, 18 Jun 2018 17:55:41 +0000
Inline-Images: image001.jpg

THANK YOU!!!!

From: Vogel, Jeremy M
Sent: Monday, June 18, 2018 12:36 PM
To: Christiansen, Erika E <erika-christiansen@uiowa.edu>
Subject: RE: Org Sync help

Just finished!

Let me know if there is anything else I can help with ☺

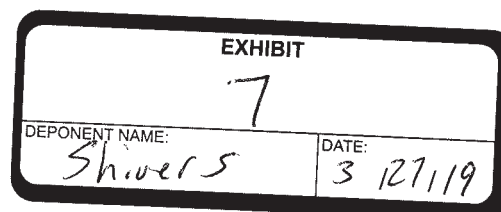
Best,
Jeremy

From: Christiansen, Erika E
Sent: Monday, June 18, 2018 11:57 AM
To: Vogel, Jeremy M <jeremy-vogel@uiowa.edu>
Subject: Org Sync help

Hi Jeremy,

When you have time today, can you please go to orgsync and change the following 38 organizations category to Defunct:

Chinese Student Christian Fellowship
American Institute of Aeronautics and Astronautics
Association of Nursing Students (UIANS)
Financial Management Association
Institute of Electrical and Electronic Engineers
Korean Conversation Group
Phi Beta Lambda
Public Relations Student Society of America (PRSSA)
American Academy of Pediatric Dentistry
Christian Pharmacy Fellowship
Graduate Student Anthropology Association (U of I)
J. Reuben Clark Law Society
Student Iowa School Counseling Association



Asian Pacific American Student Association (U of I)

German Club

Hong Kong Student Association

Japanese Students and Scholars Club

Korean U Iowa Students Association

Malaysian Student Society

Minority Association of Pre-medical Students

National Association for the Advancement of Colored People (UI Chapter of NAACP)

Revolution Dance Company

Chinese Dance Club

Young Americans for Liberty

Alpha Phi Omega-Omicron (APO)

Code the Change

MEDLIFE (Medicine, Education and Development for Low Income Families Everywhere)

CMA EDU

Cookie Dokie

Red Shamrock Student Organization

Cru

Geneva Campus Ministry

Imam Mahdi Organization

Latter-day Saint Student Association

Sikh Awareness Club

Wall-Breakers

Young Life

Iowa American Student Dental Association (IASDA)

Each account is disabled and name is updated to defunct summer 2018. If you come across any that are not updated, please let me know.

THANKS!

Erika

Erika Christiansen

she, her, hers

Assistant Director, Leadership & Service Programs

Center for Student Involvement & Leadership

erika-christiansen@uiowa.edu

[Schedule a meeting with me!](#)

IMU Center for Student
Involvement
& Leadership

145 Iowa Memorial Union

Iowa City, Iowa 52242-1317

319-335-3059 Fax 319-353-2245

<http://csil.uiowa.edu>

getinvolved@uiowa.edu

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

<p>BUSINESS LEADERS IN CHRIST,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>THE UNIVERSITY OF IOWA, <i>et al.</i>,</p> <p><i>Defendants.</i></p>	<p>Case No.: 3:17-cv-00080-SMR-SBJ</p> <p>DEFENDANTS' RESISTANCE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</p>
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
INTRODUCTION	5
FACTUAL BACKGROUND.....	6
SUMMARY JUDGMENT STANDARD	9
LEGAL ARGUMENT	
I. This Court Can And Should Use Martinez As Its Guide In Deciding Plaintiff’s Summary Judgment Motion.....	11
A. This Court May Apply Martinez Because The University’s Policy Is Substantially Similar To The Policy Set Forth By Hastings College of Law	11
B. This Court May Apply Martinez In Evaluating Plaintiff’s Free Speech And Free Association Claims	13
a. Plaintiff’s Ministerial Exception Claim Must Fail.....	14
II. The University Of Iowa Was Justified In Regulating BLinC’s Speech In Its Limited-Public Forum.....	15
A. The Limited Public Forum.....	15
1. The University’s Policy Is Facially-Neutral	16

2. The University’s Policy Is Neutral As-Applied.....	16
B. The University’s Policy Is Reasonable In Light Of The Purposes Of The Forum.....	22
1. Purposes Of The Forum	23
2. The University’s Policy Is Reasonable	24
III. This Court Must Deny Plaintiff’s Motion For Summary Judgment On Its Free Exercise Claim.....	28
CONCLUSION.....	38

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Alpha Delta Chi-Delta Chapter v. Reed</i> , 648 F.3d 790 (9th Cir. 2011)	12-13, 16-18, 25-26
<i>Braunfeld v. Brown</i> , 366 U.S. 599 (1961)	29
<i>Burnham v. Ianni</i> , 119 F.3d 668 (8th Cir. 1997)	33-34
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940)	29
<i>Celotex v. Catrett</i> , 477 U.S. 317 (1986)	9
<i>Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez</i> , 561 U.S. 661 (2010)	10-15, 17, 23-27
<i>Christian Legal Soc. Chapter of University of California v. Kane</i> , No. C 04-04484 JSW, 2006 WL 997217, at *1-4 (N.D. Cal. May 19, 2006).....	30-31
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993)	29, 35
<i>City of Cleburne, Texas v. Cleburne Living Center</i> , 473 U.S. 432 (1985)	34-35
<i>Employment Division, Oregon Department of Human Resources v. Smith</i> , 494 U.S. 872 (1990)	28-29
<i>Fraternal Order of Police Newark Lodge v. City of Newark</i> , 170 F.3d 359 (3d Cir. 1999)	36-37
<i>Follett v. McCormick</i> , 321 U.S. 573 (1944)	29
<i>Gerlich v. Leath</i> , 861 F.3d 697 (8th Cir. 2017)	16, 24
<i>Gillette v. United States</i> , 401 U.S. 437 (1971)	29
<i>Holt v. Hobbs</i> , 135 S. Ct. 853 (2015)	28
<i>Hosanna-Tabor Evangelical Lutheran Sch. v. EEOC</i> , 565 U.S. 171 (2012) ...	14
<i>Lamb’s Chapel v. Center Mirches Union Free Sch. Dist.</i> , 508 U.S. 384 (1993)	13, 22-23
<i>Lee v. Sixth Mount Zion Baptist Church</i> , 903 F.3d 113 (3d Cir. 2018)	15
<i>Mann v. Yarnell</i> , 497 F.3d 822 (8th Cir. 2007)	10

<i>Mitchell County v. Zimmerman</i> , 810 N.W.2d 1 (Iowa 2012)	35-36
<i>Murdock v. Pennsylvania</i> , 319 U.S. 105 (1943)	29
<i>Naucke v. City of Park Hills</i> , 284 F.3d 923 (8th Cir. 2002)	10
<i>Othman v. City of Country Club Hills</i> , 671 F.3d 672 (8th Cir. 2012)	10
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925)	29
<i>Pleasant Grove City v. Summum</i> , 555 U.S. 460 (2009)	15
<i>Prince v. Massachusetts</i> , 321 U.S. 158 (1944)	29
<i>Rosenberger v. Rector & Visitors of Univ. of Va.</i> , 515 U.S. 819 (1995)	16, 21
<i>San Jose Christian College v. City of Morgan Hill</i> , 360 F.3d 1024 (9th Cir. 2004)	28
<i>Sitizes v. City of West Memphis, Ark.</i> , 606 F.3d 461 (8th Cir. 2010)	10
<i>Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly</i> , 309 F.3d 144 (2002)	32-35
<i>Truth v. Kent School Dist.</i> , 542 F.3d 634 (9th Cir. 2008)	17-18
<i>United States v. Lee</i> , 455 U.S. 252 (1982)	29
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781 (1989)	16
<i>West Virginia Bd. of Education v. Barnette</i> , 319 U.S. 624 (1943)	29-30
<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981)	15
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	29
<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977)	29
<u>STATUTES</u>	
Federal Rule of Civil Procedure 56(a)	9
Federal Rule of Civil Procedure 56(c)(1)(A)	10
Federal Rule of Civil Procedure 56(c)(1)(B)	10
20 U.S.C § 1681-1688	18, 37
34 C.F.R. § 1641	18

INTRODUCTION

BLinC v. The University of Iowa is a difficult case. In its briefing, Plaintiff Business Leaders in Christ (“BLinC”) exhaustively discusses tangential issues such as the University’s Title IX programs, various scholarship programs and groups maintained in the spirit of inclusion and affirmative action, and the Christian Legal Society conflict which took place over a decade ago. The immensely important constitutional question before the court: which pillar of our democracy will prevail when First Amendment freedoms conflict with civil rights laws?

This case involves a rapidly-developing and unsettled area of law and is certainly not, as Plaintiff suggests, “open and shut.” Throughout its briefing, Plaintiff imputes significant ill will to the Defendant University and its Administrators and claims that it engaged in viewpoint discrimination and otherwise violated Plaintiff’s First Amendment rights in its attempts to enforce its long-standing Human Rights Policy. In the same breath, Plaintiff rightfully praises the University’s historic tradition of inclusion and the high value it places on religious diversity. At the heart of this matter lies the fact that the Defendant University and its administrators did the best they could to apply the University’s Human Rights policy in a viewpoint-neutral way, and to fairly respond to a legitimate student complaint. Defendants attempted to resolve a seemingly unresolvable conflict in order to protect the University’s mission and compelling interests in securing the civil rights of minority students and upholding the First and Fourteenth Amendments, while continuing to value discourse, education, and the marketplace of ideas.

Though this is a difficult case and a developing area of law, the University asserts that it cannot fund, with taxpayer money, a group which openly discriminates against members of a protected class by excluding them from the ranks of its leadership on the basis of sexual orientation and gender. To do so would contravene the public’s will to have civil rights laws in

place, and would violate the Constitutional rights of students from minority groups. BLinC argues that without official student recognition, it simply could not survive on campus, and that as a religious group it has protected rights to “equally access” public funds. BLinC also contends that the University engaged in viewpoint discrimination by failing to apply its Human Rights Policy consistently. However, as a government actor, the University has both the right and the heavy responsibility to regulate BLinC’s speech within its limited public forum in order to protect the rights of minority students to equally access their publicly-funded educational opportunities. BLinC has not been silenced by this deregistration. It may continue its activities and speech as before, and even as an unregistered student organization may access a significant number of University resources. If BLinC wishes to discriminate against LGBT+ students, it may do so, but it may not fund its efforts with dollars provided by the State of Iowa.

FACTUAL BACKGROUND

This case begins with a young, evangelical Christian man named Marcus Miller. At the time of the events at issue in the Petition, Miller was engaging with several Christian student groups on campus. Defendants’ Statement of Undisputed Material Facts (“DSUMF”) ¶ 4; Defendants’ Objections to Plaintiff’s Statement of Undisputed Material Facts (“DOSUMF”) ¶ 153. He held many evangelical Christian views, and felt that the Christian groups on campus were doing good work. *Id.* However, Miller began to struggle with his sexuality, and eventually came to the realization that he is gay. DSUMF ¶¶ 4, 50, 51. After attending BLinC meetings for some time, Miller contacted the group’s then-president, Hannah Thompson, about how he might become more involved in the organization, and mentioned that he was interested in taking a leadership role. DSUMF ¶ 51. Miller met with Hannah, and the two discussed their theological beliefs and whether Miller would be a good fit. DSUMF ¶ 52. During the course of that

conversation, Miller revealed to Hannah that he is gay. DSUMF ¶ 53. Hannah indicated that Miller's sexual orientation might be a problem, and told him that she would need to discuss the matter with the other leaders of BLinC. DSUMF ¶ 54. Hannah and her colleagues discussed Miller's sexuality at length, and decided that they would not extend an officer-level position to him because of his identification as a gay man. DSUMF ¶ 55–57. In her deposition, Hannah admitted that aside from being gay, Miller was otherwise qualified to hold a leadership position in BLinC. DSUMF ¶ 58. Hannah met with Miller again to discuss the group's decision not to offer him a leadership position, and left him with the distinct impression that his sexual orientation was the governing factor in her decision. DSUMF ¶ 59–61.

As a result of his conversation with Hannah, Miller made a complaint about the discrimination that he had faced with the University of Iowa's Office of Equal Opportunity and Diversity ("EOD"). DSUMF ¶ 67. Miller reported that BLinC, a Registered Student Organization ("RSO"), had violated the University's Human Rights Policy by denying him a leadership position because he is "openly gay." DSUMF ¶ 68. Constance Shriver Cervantes, an experienced attorney with the EOD, was asked to investigate the case. DSUMF ¶ 69. Thomas Baker, another experienced attorney who was, at that time, the Associate Dean of Students for the University, also participated in the interviews and assisted with the investigation. DSUMF ¶ 77. Shriver Cervantes looked at all of the evidence provided by the students, conducted interviews with both Hannah and Miller, and made credibility determinations based on her experience and training.¹ DSUMF ¶ 70–76. Applying the required legal standard, Shriver

¹ The University of Iowa's Human Rights Policy provides:

[I]n no aspect of [the University's] programs shall there be differences in treatment of persons because of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of

Cervantes decided that BLinC had violated the University's Human Rights Policy by excluding Miller from a leadership role on the basis of his sexual orientation. DSUMF ¶ 70–76, 82–84.

BLinC's new leaders, Jacob Estell and Brett Eikenberry, met with Dr. Bill Nelson, Associate Dean of Students and Executive Director of the Iowa Memorial Union, as part of the next step in the University's disciplinary process. DSUMF ¶ 86. Dean Baker was also present at the meeting. DOSUMF ¶ 194. The purpose of the meeting was to provide additional context and to permit the students to ask any questions they may have. DSUMF ¶ 93–97. Dr. Nelson used this meeting with the students to determine what sanctions would be appropriate given the severity of the Human Rights Policy violation. DSUMF ¶ 97. Dr. Nelson and Dean Baker explained the Human Rights Policy, and asked the students to make alterations to BLinC's constitution so that it would more clearly express their religious views. DOSUMF ¶ 213. BLinC agreed to detail its religious beliefs in its constitution. DOSUMF ¶ 215. After the meeting, Dr. Nelson issued a letter sanctioning BLinC for its violation of the Human Rights Policy and outlined three conditions that BLinC would need to meet in order to remain a registered student organization. DSUMF ¶ 106. Dr. Nelson instructed that BLinC should commit to future compliance with the Human Rights Policy, submit a list of qualifications for leaders which protected the rights of non-heterosexuals, and submit a plan for interviewing leaders which would not violate the Human Rights Policy. DSUMF ¶ 106.

BLinC submitted a revised constitution to Dr. Nelson, including a "Statement of Faith" which the group's leadership would be required to sign. DSUMF ¶ 107–08. The constitution contained a clause which stated:

consideration as an individual and that equal opportunity and access to facilities shall be available to all.

DSUMF ¶ 9.

We believe God’s intention for a sexual relationship is to be between a husband and a wife in the lifelong covenant of marriage. Every other sexual relationship beyond this is outside of God’s design and is not in keeping with God’s original plan for humanity. We believe that every person should embrace, not reject, their God-given sex.

DOSUMF ¶ 222. Upon review, Dr. Nelson and Dean Baker found that the newly-added provisions of BLinC’s constitution were facially discriminatory and would serve to exclude lesbian, gay, bisexual, and transgender students from the group. DOSUMF ¶ 227. Dr. Nelson rejected the changes and gave BLinC an additional ten days to comply with the requirements set forth in his sanctions letter. DSUMF ¶ 111.

BLinC indicated that it was unable to remove the offending provisions from its constitution, as it reflected BLinC’s members’ sincerely held religious beliefs. DOSUMF ¶ 230. The group appealed Dr. Nelson’s decision to Dean of Students, Dr. Lyn Redington, per the University’s appeal procedures. DOSUMF ¶ 231. Dr. Redington affirmed Dr. Nelson’s decision to reject BLinC’s new constitution, and explained to BLinC that the new language “would have the effect of disqualifying certain individuals from leadership positions based on sexual orientation or gender identity, both of which are protected classifications under Chapter 216 of the Iowa Code (the Iowa Civil Rights Act) and the University of Iowa Human Rights Policy.” DOSUMF ¶ 232. As a result of its refusal to comply with the terms of the University’s Human Rights Policy, BLinC was deregistered. BLinC subsequently filed this lawsuit. DOSUMF ¶ 233.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment is only appropriate if “the movant shows that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex v. Catrett*, 477 U.S. 317, 321 (1986). In considering a motion for summary judgment, the court

must view the evidence in a light most favorable to the nonmoving party. *Naucke v. City of Park Hills*, 284 F.3d 923, 927 (8th Cir. 2002). The nonmoving party may not rely on mere allegations or denials, but must demonstrate the existence of specific facts that create a genuine issue for trial. *Mann v. Yarnell*, 497 F.3d 822, 825 (8th Cir. 2007). A nonmoving party's assertion that a fact is genuinely disputed must be supported by materials in the record such as "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials" Fed. R. Civ. P. 56(c)(1)(A). A party may also show that a fact is disputed by demonstrating that the "materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B). A dispute is considered to be "genuine" if the evidence presented could cause a reasonable jury to return a verdict for either party. *Othman v. City of Country Club Hills*, 671 F.3d 672, 675 (8th Cir. 2012). A fact is material if its resolution affects the outcome of the case. *Id.* "Disputes that are not 'genuine,' or that are about facts that are not 'material,' will not preclude summary judgment." *Sitzes v. City of West Memphis, Ark.*, 606 F.3d 461, 465 (8th Cir. 2010).

LEGAL ARGUMENT

BLinC moves for summary judgment on its federal claims for Free Speech (Counts VII-VIII), Free Association (Count VI), Free Exercise (Counts III-IV), and its Religious Clause Claims (Counts I-II), and asks this Court to award nominal damages and to enter a permanent injunction against the University of Iowa. Defendants resist BLinC's motion on all counts as set forth below. BLinC's Free Speech and Free Association claims merge, and as such Defendants will address them together for brevity. *Christian Legal Soc. Chapter of the Univ. of Cal.*,

Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 680 (2010) (“CLS would have us engage each line of cases independently, but its expressive-association and free-speech arguments merge: *Who* speaks on its behalf, CLS reasons, colors *what* concept is conveyed. . . . It therefore makes little sense to treat CLS’s speech and association claims as discrete.”)

I. This Court Can and Should Use *Martinez* as Its Guide in Deciding Plaintiff’s Summary Judgment Motion

Plaintiff argues that *Martinez* does not apply here because 1) it believes the Supreme Court expressly limited its decision to situations involving an “all-comers” policy; 2) *Martinez* cannot be applied to religious student groups’ selection of their leaders because such a scenario would “raise unique constitutional problems;” and 3) because it claims the University’s actions are unreasonable and viewpoint discriminatory. Defendants urge this Court to reject Plaintiff’s arguments and to proceed with an analysis based on the framework set forth in *Martinez*. *See* 561 U.S. 661 (2010).

A. This Court May Apply *Martinez* Because the University’s Policy is Substantially Similar to the Policy Set Forth by Hastings College of Law

Defendants admit that the University does not require its student groups to comply with an “all-comers” policy. DOSUMF ¶ 1. Defendants also admit that in *Martinez*, the landmark case in which the Supreme Court upheld a public law school’s policy which “condition[ed] its official recognition of a student group—and the attended use of school funds and facilities—on the organization’s agreement to open eligibility for membership and leadership to all students,” the Supreme Court declined to address whether its holdings would extend to a narrower nondiscrimination policy. *Martinez*, 561 U.S. at 668, 698 (Stevens, J., concurring “The Court correctly confines its discussion to the narrow issue presented by the record . . . and correctly upholds the all-comers

policy.”). However, should this Court decline to grant Defendants qualified immunity in this case, Defendants urge it to apply the use the framework set forth in *Martinez* as a guide in analyzing Plaintiff’s Motion for Summary Judgment.

In *Alpha Delta Chi-Delta Chapter v. Reed*, one of the few U.S. Circuit Court cases to address the issue, the Ninth Circuit Court of Appeals heard a case very similar to this one. 648 F.3d 790 (9th Cir. 2011). In *Reed*, the plaintiffs, a Christian sorority and Christian fraternity, were denied official recognition by defendant San Diego State because plaintiffs required their members and officers to profess specific religious beliefs in violation of the school’s nondiscrimination policy. San Diego State’s nondiscrimination policy is nearly identical to the one maintained by the University of Iowa here, and states:

No campus shall recognize any fraternity, sorority, living group, honor society, or other student organization which discriminates on the basis of race, religion, national origin, ethnicity, color, age, gender, marital status, citizenship, sexual orientation, or disability. The prohibition on membership policies that discriminate on the basis of gender does not apply to social fraternities or sororities or to other university living groups.

Id. at 796. Upon review of the evidence, the Ninth Circuit determined that it could “see no material distinction between San Diego State’s student organization program and the student organization program discussed in *Christian Legal Society*, and therefore, conclude[d] that San Diego State’s program is a limited public forum.” *Id.* at 797. The Court held that the program governed by the “all-comers’ policy from *Martinez* and the program governed by the basic nondiscrimination policy in *Reed* were substantially similar, because both programs provided benefits to student groups in exchange for an agreement by the student groups to “abide by certain conditions, including an approval process and the school’s nondiscrimination policy.” *Id.* at 798. As such, neither program

was “open for indiscriminate public use.” *Id.*, citing *Lamb’s Chapel v. Center Mirches Union Free Sch. Dist.*, 508 U.S. 384, 392 (1993). As such, the *Reed* court applied *Martinez*, and engaged in a limited public forum analysis of plaintiffs’ free speech and expressive association claims. *Reed*, 648 F.2d at 798.

Like San Diego State and Hastings College of Law, the University of Iowa maintains an RSO program under which the University provides benefits to student groups in exchange for their agreement to abide by the terms of the Human Rights Policy. DSUMF ¶¶ 9–41; DOSUMF ¶ 237. As such, this Court should apply the limited public forum analysis set forth in *Martinez* in analyzing Plaintiff’s Motion for Summary Judgment.

B. This Court May Apply *Martinez* in Evaluating Plaintiff’s Free Speech and Free Association Claims

Plaintiff claims that the Court may not apply *Martinez* because “it cannot be applied to religious student groups’ selection of their leaders.” Plaintiff’s Memo, p.26. Plaintiff argues that “limits on leadership selection [for religious groups] raise unique constitutional problems”—an issue purportedly acknowledged by Justice Kennedy in his concurrence. Plaintiff’s Memo, p. 26–27. However, what Justice Kennedy actually stated was that *if* it “could be demonstrated that a school has adopted or enforced its policy with the intent or purpose of discriminating or disadvantaging a group on account of its views, petitioner also would have a substantial case on the merits if it were shown that the all-comers policy was either designed or used to infiltrate the group or challenge its leadership in order to stifle its views.” *Martinez*, 561 U.S. at 706 (Kennedy, J., concurring). No evidence exists that the University intended to discriminate or

disadvantage BLinC on the basis of its views. At most, there is a triable question of fact on that issue. Justice Kennedy's statement is hardly an admonition that a limited public forum analysis may not be applied to regulations which incidentally affect a religious group's ability to select its leaders.

a. Plaintiff's Ministerial Exception Claim Must Fail

Plaintiff goes on to cite *Hosanna-Tabor Evangelical Lutheran School v. EEOC*, for the proposition that the government may not restrict religious groups' selection of religious leaders. *See* 565 U.S. 171 (2012). In *Hosanna-Tabor*, the U.S. Supreme Court held that the First Amendment bars lawsuits brought by ministers against their churches for violations of employment discrimination laws. *Id.* Unlike the case at hand, *Hosanna-Tabor* involved private religious groups which were not the recipients of any sort of state funding or benefits. *See id.* The case involved a conflict over a church employee who believed she had been discriminated against on the basis of disability. *Id.* at 180–81. The Court ultimately determined that the Religion Clauses of the First Amendment “bar the government from interfering with the decision of a religious group to fire one of its ministers.” *Id.* at 181. This case is easily distinguishable from the case at hand, as the church involved was not receiving public money and did not exist in a limited public forum. As such, the government had less interest in regulating the group's speech and less authority to do so. As Justice Stevens pointed out in *Martinez*, [a]lthough the First Amendment may protect [a religious group's] discriminatory practices off campus, it does not require a public university to validate or support them.” *Martinez*, 561 U.S. 699. Though a religious group's right to select its leaders is undoubtedly protected by the First Amendment in a public forum, BLinC should not receive special dispensations to

discriminate due to its status as a religious group, since has chosen to exist within the “special characteristics of the school environment.” *Id.*, quoting *Widmar v. Vincent*, 454 U.S. 263, 268 (1981). Other cases cited by Plaintiff in support of its argument for the ministerial exception likewise involve employment disputes within private churches not being subsidized with public funds, and do not apply. *See Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113 (3d Cir. 2018).

II. The University of Iowa Was Justified in Regulating BLinC’s Speech in Its Limited-Public Forum

Plaintiff has not demonstrated that this Court should apply any other standard than the one set forth in *Martinez*. *See* 561 U.S. 661 (2010). As such, Defendants continue below with a discussion of the many disputed material facts ripe for decision by the factfinder, as they would be encountered under a limited public forum analysis of Plaintiff’s First Amendment claims.

A. The Limited Public Forum

The parties agree that the University has created a limited public forum for the speech of student groups. *See Martinez*, 561 U.S. at 679 n.11 (2010), quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009). As such, the University may regulate speech within the forum it has created, as long as the regulations are 1) viewpoint neutral and 2) reasonable. *Id.* The First Amendment rights BLinC asserts must be analyzed “in light of the special characteristics of the school environment.” *Id.*, quoting *Widmar v. Vincent*, 454 U.S. 263, 268 (1981).

1. The University's Policy is Facially-Neutral.

The University engages in viewpoint discrimination “when the rationale for its regulation of speech is ‘the specific motivating ideology or the opinion or perspective of the speaker.’” *Gerlich v. Leath*, 861 F.3d 697 (8th Cir. 2017), citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995). Here, the rationale behind the University’s regulation of speech by student groups is to protect the civil rights of University of Iowa students, not to silence a particular group or ban a particular point of view. DSUMF ¶¶ 9–29. The University’s Policy is viewpoint neutral on its face—a point that BLinC does not appear to contest. *See* DSUMF ¶ 9. As the Court stated in its January 23, 2018 Ruling, “the [University’s] policy is clearly not aimed at any particular view, ideology, or opinion. The language is familiar, essentially boilerplate language repeated in similar terms in civil and human rights codes nationwide, including the Iowa Civil Rights Act and the Iowa City Human Rights Code.” Ruling, 01/23/18, p. 24. Even if the University’s facially neutral policy had a disparate impact on religious groups, as alleged by Plaintiff, that impact would not preclude a finding that the policy is viewpoint neutral as written. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). As such, this Court should find that the University’s Human Rights Policy is facially neutral.

2. The University's Policy is Neutral As-Applied.

A determinative factor in this case in regard to many of Plaintiff’s claims is whether the University applied its Human Rights Policy in a view-point neutral way. “A nondiscrimination policy that is viewpoint neutral on its face may still be unconstitutional if not applied uniformly.” *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 803 (9th Cir. 2011). Here, the University has engaged in a uniform application of its policy to

all student groups which have been the recipients of formal complaints of discrimination. DSUMF ¶¶ 9–16, 42–44; DOSUMF ¶ 15. The University has not engaged in viewpoint discrimination in its application of the policy to other campus organizations and programs, but has allowed some exceptions for compelling reasons which support the educational and social purposes of the forum. DOSUMF ¶¶ 16–33.

That the University’s Human Rights policy has not been applied identically to each campus group through review of group constitutions, or to each scholarship or other program, is not dispositive of Plaintiff’s claims. The different application and many exceptions allowed by the University merely provide an issue of material fact to be decided by the factfinder. Plaintiff claims, without evidence, that Defendant engaged in view point discrimination, while Defendant claims, pointing to the wide variety of viewpoints displayed by RSOs (including some identical to Plaintiff’s) that it has *not* engaged in viewpoint discrimination. DOSUMF ¶¶ 16–33. In *Reed*, one of a handful of cases addressing a university’s application of its nondiscrimination policy in the First Amendment arena since the United States Supreme Court decided *CLS v. Martinez*, the plaintiff religious group argued that the defendant university had granted official recognition to some student groups in apparent contravention to the university’s nondiscrimination policy, while failing to grant official recognition to plaintiff. *Id.* The Ninth Circuit Court of Appeals, upon review of the evidence regarding the application of the policy to other student groups, determined that “the evidence that some student groups have been granted an exemption from the nondiscrimination policy raises a triable issue of fact.” *Id.* at 804, citing *Truth v. Kent School Dist.*, 542 F.3d 634, 650 (9th Cir. 2008). The Ninth Circuit opined that the plaintiff’s claims that the defendant university

had engaged in discrimination against it may not have been correct, and that the defendant university might simply have approved the groups at issue “because of administrative oversight,” or because the groups had agreed to abide by the nondiscrimination policy “despite the language in their applications,” and remanded the issue to the district court for consideration. *Reed*, 648 F.3d at 804.

Here, Plaintiff has accused Defendant of engaging in viewpoint discrimination, and exhaustively lists the various clubs, sports teams, and even scholarship programs which it views to be in violation of the University’s Human Rights Policy. *See* DOSUMF ¶¶ 16–35. These groups have been permitted to continue to exist as RSOs in spite of their apparent violations of the Policy for a variety of reasons—including administrative oversight by the University—but also for reasons which support the University’s educational mission. *Id.* For example, multiple groups provide safe spaces for minorities which have historically been the victims of discrimination, and many of the groups with which Plaintiff takes issue exist in compliance with federal laws like Title IX, which permits separate sports teams and housing options for men and women. *Id.*, *see also* 34 C.F.R. § 106.32 (permitting sex-segregated housing); 34 C.F.R. § 106.41 (permitting sex-segregated sports teams); 20 USC § 1681 (excepting tax exempt social fraternities or social sororities and various clubs and youth service organizations which have traditionally been limited to persons of one sex); Iowa Code Ch. 216.9 (exempting separate “toilet facilities, locker rooms, or living facilities for the different sexes so long as comparable facilities are provided”). Interestingly, BLinC’s former president, Hannah Thompson, does not take issue with sports teams—both collegiate and club—being segregated by sex. DSAMF ¶ 137. (Q: “You don’t see a problem with the University of Iowa

separating those teams by sex, do you?” A: “I do not.”). BLinC claims that it is being singled out for its sincerely held religious beliefs regarding sexual orientation and gender identity, while the University permits student organizations from every part of the political, cultural, and religious spectrum to register as official student groups on campus, as long as they agree not to violate the University’s Human Rights Policy. It is illogical for BLinC to make a claim of viewpoint discrimination while simultaneously pointing to groups which set forth identical conservative Christian views on homosexuality and yet have *not* been deregistered due to their willingness to comply with the Human Rights Policy. *See* DOSUMF ¶ 17. There is a triable issue of material fact regarding Plaintiff’s claim that the University discriminated and the University’s claim that the differences in application of the policy were a mixture of administrative oversight and justified exceptions to the policy.

Additionally, Defendants urge the Court to consider that despite a somewhat inconsistent practice of reviewing student constitutions, the “application” of the Human Rights Policy is not confined only to the insistence that student groups include the Policy language in their group constitutions. A major part of the “application” of the Policy consists of the investigation and enforcement mechanisms which support the Policy and its goals. DSUMF ¶¶ 9–16. Still, student group constitutions are supposed to be reviewed by University staff to verify that they contain the required Policy language when the group goes through the process to obtain official recognition by the University. DSAMF ¶¶ 123–28. This review ensures that students are aware that they must conduct their groups in compliance with the Human Rights Policy, and provides student leaders some familiarity with that language and University’s expectations. The fact that such a review

procedure exists does not mean that there are never oversights, as evidenced here.

However, the part of the process which emphasizes enforcement of the terms of the Human Rights Policy and the spirit behind the policy—which is to protect students’ civil rights—is the discrimination complaint process through the EOD.

Though this Court has not been satisfied with Defendants’ argument that its process is complaint-driven, that is the reality of the University’s system. As is the case with government agencies charged with investigating violations of civil rights laws, such as the Iowa Civil Rights Commission and the Equal Employment Opportunity Commission, the University disseminates information about its Human Rights Policy and attempts to ensure that the framework is in place to prevent discrimination from happening. Unfortunately, given the large number of student organizations and students on campus, the University simply cannot monitor every act by every individual in every group. By necessity, the University’s investigations are limited to instances in which students formally complain of discrimination.

If a student feels that he or she has been discriminated against by a registered student organization (which can happen whether or not a student group sets forth discriminatory language in its founding documents), the student has the option to make a formal complaint with the EOD. DSUMF ¶¶ 9–16. A student’s submission of a formal complaint triggers an investigation into the problem. DSUMF ¶¶ 9–16. The University does not have a practice of spontaneously digging into the activities of religious student groups in an attempt to unearth a sanction-worthy violation, and the review of BLinC’s constitution was triggered by the complaint process—not by any focused campaign against religious groups.

The question at issue here is not whether the University ensured that every organization's constitution was in perfect compliance with its policies governing RSOs, but rather, whether the enforcement mechanisms and policies requiring that sanctions be issued against a particular group would have been neutrally-applied after a complaint had been made. The University has only investigated three such formal complaints against registered student organizations in the past. DSUMF ¶¶ 42–44, 99–100; DOSUMF ¶ 15. One complaint was against a Christian student group which espoused similar beliefs to BLinC in regard to sexual orientation. DSUMF ¶¶ 42–44, 99–100; DOSUMF ¶ 15, 241–250. That complaint was determined to be unfounded and that groups was not sanctioned. DOSUMF ¶ 250. Another complaint was made against the UI Feminist Union by a male member of that group. DSUMF ¶ 43. That complaint was determined to be founded, and sanctions were issued against the group, though it was not an RSO at the time. DSUMF ¶ 43. BLinC also received sanctions as a result of its discriminatory behavior. DSUMF ¶ 106.

Universities engage in viewpoint discrimination when their action is the result of the “ideology or the opinion or the perspective of the speaker.” 861 F.3d 697, 705 (8th Cir. 2017), quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829–30 (1995). Here, Plaintiff simply has not shown, despite its 446 statements of “fact,” that any of the University's actions were taken as a result of animus toward religious groups or toward BLinC's particular beliefs about gay and transgender students. *See* DOSUMF ¶¶ 1–446. BLinC cannot show that the University treated the other student groups which had received Human Rights complaints differently than it treated BLinC. BLinC cannot point to any testimony by any University official which might indicate that he or she held

a view counter to BLinC's or had some devious motivation to harm BLinC, or even that he or she engaged in any ideological discrimination or favoritism. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) ("The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others."). The record is devoid of such evidence, because it simply does not exist. In fact, at a meeting to discuss sanctions, a University administrator praised the student leaders of BLinC for being excellent representatives of the University community. DOSUMF ¶ 219. BLinC has been treated identically to other groups which have received student complaints of discrimination. That the University failed to thoroughly review the constitutions of groups spanning the political, social, and religious spectrum—including groups espousing beliefs very similar to those held by BLinC—does not indicate discriminatory intent.

The University freely admits that its review process for student constitutions is inconsistent, and it has taken steps to resolve that issue—though with such a large number of student organizations and multiple staff members, the University has not been able to solve the problem overnight. BLinC is sharply critical of the University's efforts thus far to correct that process. *See* DOSUMF ¶¶ 406–446. That does not, however, impact the diligence with which the University has investigated student complaints of discrimination, or the repeated statements by its administrators demonstrating their intent to apply the policy in a viewpoint-neutral fashion. DSAMF ¶ 129.

B. The University's Policy is Reasonable in Light of the Purposes of the Forum

Educational institutions may "legally preserve the property under [their] control for the use to which it is dedicated." *Lamb's Chapel v. Ctr. Moriches Union Free Sch.*

Dist., 508 U.S. 384, 390 (1993). A university may restrict access to the public forum it has created, as long as the restrictions are “reasonable in light of the purpose served by the forum.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995), quoting *Cornelis v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 809 (1985). Public universities enjoy “a significant measure of authority over the type of officially recognized activities in which their students participate,” though the Court makes the final decision regarding whether a public university has exceeded constitutional constraints. See *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law*, 561 U.S. 661, 685–86 (2010).

1. Purposes of the Forum

“A college’s commission—and its concomitant license to choose among pedagogical approaches, is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process.” *Martinez*, 561 U.S. at 686. Plaintiff takes a rather narrow view of the University’s purposes for creating the limited public forum at issue in this case. Plaintiff indicates that the singular purpose of the forum is to “let[] students associate based on shared beliefs and interests” and to grant the groups freedom to organize and associate with like-minded students. Plaintiff’s Memo, p. 19. These are undoubtedly purposes of the forum, however there are many others which Plaintiff does not acknowledge. The University sets forth some of its goals for the forum in its “Registration of Student Organizations” document:

Student organizations are important links in the co-curricular activities of the University of Iowa. They play an important role in developing student leadership and providing a quality campus environment. As such, the University encourages the formation of student organizations around the

areas of interests of its students, within the limits necessary to accommodate academic needs and ensure public safety.

DSAMF ¶¶ 130–31. Ensuring academic growth and access to educational opportunities, and a safe environment in which to do so, are also purposes of the forum. DSAMF ¶¶ 130–34. Further, the University requires each student organization to abide by the mission of the University, its supporting strategic plan, policies, and procedures. DSAMF ¶ 132. The RSO document specifically incorporates the Human Rights Policy, by which the University strives to promote diversity and to ensure that all students are granted equal access to educational opportunities within the forum. DSAMF ¶ 133. The University expects that participation in student organizations will “enhance a student’s educational experience . . .” as opposed to providing a social scene for students. DSAMF ¶ 134. As the Court correctly stated in its January 23, 2018 Ruling,

These statements show that the intended purpose of the student organization registration program is to allow students to engage with other students who have similar interests and in doing so, students should only fear rejection on the basis of their own merits, not because of their membership in a protected class.

Ruling, 01/23/2018, p. 21. Much like the policy developed by Hastings College of Law in *Martinez*, the University of Iowa’s Human Rights Policy “conveys [the University’s] decision to decline to subsidize with public monies and benefits conduct of which the people of [Iowa] disapprove. *See* Ruling, 01/23/18 citing *Martinez*, 561 U.S. at 689–90.

2. The University’s Policy is Reasonable

Defendant argues that the University’s viewpoint-neutral Human Rights policy is a reasonable regulation on the limited public forum it created for the purpose of fostering academic growth for students, as well as providing them access to educational programs

and a safe environment in which to engage with their peers. In *Martinez*, the Supreme Court provided some guidance regarding what types of factors would weigh on whether a University’s regulation of speech by student groups was reasonable in light of the purposes of the forum. The court indicated that Hastings’ all-comers policy was undoubtedly reasonable, because it allows all students to access the “leadership, educational, and social opportunities afforded by [RSOs] . . .” *Martinez*, 561 U.S. 687–88. “Hastings does not allow its professors to host classes open only to those students with a certain status or belief, so the Law School may decide, reasonably in our view, that the . . . educational experience is best promoted when all participants in the forum must provide equal access to all students.” *Id.* (internal quotations omitted). The University of Iowa shares this goal in governing its forum for student groups, as demonstrated by its application of a nondiscrimination policy which is set forth to protect students from discrimination on the basis of protected characteristic. DSAMF ¶¶ 130–34. Importantly, The Supreme Court also noted that the Law School’s goal of bringing “together individuals with diverse backgrounds and beliefs, ‘encourages tolerance, cooperation, and learning among students’” was reasonable. The University of Iowa also shares this goal as evidenced by its support for nearly 500 student groups which span the religious, social, and political spectrum. Finally, the fact that the Law School’s policy subsumes state nondiscrimination laws was reasonable and reflective of the decision “to decline to subsidize with public monies and benefits conduct of which the people of California disapprove.” *Id.* at 689–90. The University of Iowa’s policy also promotes this reasonable goal, as it subsumes state and federal nondiscrimination law. *See* Iowa Code Ch. 216. Likewise, the Ninth Circuit Court of Appeals determined that the policy at issue

in *Reed* was a reasonable regulation on the defendant San Diego State's forum. Like the Court in *Martinez*, the Ninth Circuit highlighted the desire to promote diversity and nondiscrimination.

Interestingly, the Supreme Court further determined that Hastings' policy was "creditworthy" due to the "substantial alternative channels for [CLS-student] communication to take place." *Martinez*, 561 U.S. at 690. Since the Court had determined that the regulations set forth by Hastings were viewpoint neutral, and methods for communication by unrecognized student groups were abundant, Hastings' regulation was reasonable. The Ninth Circuit made a similar determination regarding San Diego State's policy in *Reed*, 648 F.3d at 799. Here, the University of Iowa provides ample avenues for unregistered student organizations to communicate with its student body, and as such, its policy is similarly "creditworthy." DSUMF ¶¶ 23, 36–41.

Plaintiff argues that the University's application of its policy, as demonstrated by its decision to deregister BLinC, was unreasonable for two reasons: 1) the University determined that the language BLinC included in its constitution was facially discriminatory; and 2) the University refused to allow BLinC to select "leaders who shared its beliefs." Plaintiff's Memo, p. 19. The University asserts that deregistering BLinC after it refused to revise its constitution to comply with the University's Human Rights policy was abundantly reasonable. Further, the University informed BLinC that its constitution did not comply with the University's requirements, and gave BLinC additional time to remove the offending language. DSUMF ¶ 111. BLinC appealed the matter, and Dr. Redington upheld Dr. Nelson's decision to deregister BLinC. DSUMF ¶¶

115–120. Both the University’s policy and its application of the policy were reasonable in this regard.

BLinC also indicates that the University acted unreasonably because it failed to allow BLinC to select the leaders of its group without interference. However, the “interference” with a group’s ability to select its members and leaders is the very situation discussed in *Martinez* and *Reed*. *Martinez*, 561 U.S. at 687–91; *Reed*, 648 F.3d at 799. In a limited public forum, the University may regulate some speech. In *Martinez*, the Supreme Court upheld a policy which permitted the University to interfere with student groups’ exclusion of potential members and leaders, while determining that the policy was a reasonable regulation on the forum.

Plaintiff complains that the “University has not even alleged, for example, that BLinC’s mission conflicts with the ‘academic needs’ of the University or its students or somehow threatens “public safety” and claims that there is “*overwhelming* evidence that BLinC never violated the Policy and *undisputed* evidence that it has agreed not to violate the policy going forward.” Plaintiff’s Memo, p. 20. Plaintiff then goes on to outline several disputed material facts—such as Ms. Shriver Cervantes’ testimony regarding Miller Miller’s claim that BLinC acted in violation of the Human Rights Policy. Plaintiff’s Memo, p. 20; DOSUMF ¶¶ 133, 295, 301, 390. Importantly, the University does contend that the language included in BLinC’s group constitution does not comport with the purposes of the forum—that is why the group was deregistered. Such a blatant rejection of gay and transgender students on the basis of protected characteristic cannot advance the University’s goals for inclusion and does not provide those students with equal access to the groups that their student activity fees fund.

III. This Court Must Deny Plaintiff's Motion for Summary Judgment on Its Free Exercise Claim

The First Amendment to the United States Constitution, in its Free Exercise Clause, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. Amend. 1. Plaintiff argues that “the University targeted the content of BLinC’s religious beliefs and its attempt to communicate those beliefs to potential leaders via its Statement of Faith . . .” Plaintiff’s Memo, p. 30. It is well-established that a government may regulate the conduct of religious groups—even when the behavior is prescribed by the individual’s religion, as long as the regulation is a “neutral law of general application.” *See Employment Division, Oregon Department of Human Resources v. Smith*, 494 U.S. 872 (1990), superseded by statute as stated in *Holt v. Hobbs*, 135 S. Ct. 853, 859–60 (2015).² “A law is one of neutrality and general applicability if it does not aim to ‘infringe upon or restrict practices because of their religious motivation,’ and if it does not ‘in a selective manner impose burdens only on conduct motivated by religious belief[.]’” *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1030 (9th Cir. 2004), quoting *Lukumi Babalu Aye*, 508 U.S. 520, 543 (1993). Further, even when the burden on religious practice by a neutral law of general applicability is substantial, the government need not demonstrate a compelling interest. *San Jose Christian College*, 360 F.3d at 1030. If a

² In *Holt*, the Supreme Court outlined the requirements of the Religious Freedom Restoration Act (“RFRA”), which Congress enacted relying on Section 5 of the Fourteenth Amendment for authority, requires that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, unless the government demonstrates that the application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.*, citing 42 U.S.C. §§ 2000bb-1(a), (b). The Court held that RFRA exceeded Congress’ powers under that provision in *City of Boerne v. Flores*, 521 U.S. 507 (1997). As a response to *City of Boerne*, Congress enacted RLUIPA, which limits government regulation of religious exercise by institutionalized persons. *See Holt*, 135 S. Ct. at 859–60. As such, the standard which applies in this case is the standard which permits government regulation of religious exercise by a neutral law of general applicability. *See Smith*, 494 U.S. at 878–82.

law is not neutral—here, if it discriminates against religiously motivated conduct—or is not generally applicable, strict scrutiny applies and the government interest must be narrowly tailored to advance a compelling government interest in order to survive.

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532 (1993).

In *Smith*, the Supreme Court outlined the many cases in which plaintiff religious groups have attempted to justify their violation of the law by pointing to their sincerely held religious beliefs. *See Smith*, 494 U.S. at 878–82. The *Smith* Court held that “[w]e have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition.” *Id.*, citing *United States v. Lee*, 455 U.S. 252, 263 n. 3 (1982) (nonpayment of taxes); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (failure to comply with labor laws); *Braunfeld v. Brown*, 366 U.S. 599 (1961) (Sunday-closing laws); *Gillette v. United States*, 401 U.S. 437, 461 (1971) (conscription of individuals opposed to a particular war on religious grounds). The Court noted that

[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections such as freedom of speech and of the press . . . or the rights of parents. . . . Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion . . .

Smith, 494 U.S. at 881–82, citing *Cantwell v. Connecticut*, 310 U.S. 296 (1940);

Murdock v. Pennsylvania, 319 U.S. 105 (1943); *Follett v. McCormick*, 321 U.S. 573

(1944); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S.

205 (1972); *Wooley v. Maynard*, 430 U.S. 705 (1977); *West Virginia Bd. of Education v.*

Barnette, 319 U.S. 624 (1943). Notably, none of the cases cited by the Court in which a successful religious exercise claim has been brought include as plaintiff a religious student group which has chosen to register on campus in order to receive money and other benefits from a public University.

In *Christian Legal Soc. Chapter of University of California v. Kane*, the U.S. District Court for the Northern District of California rejected plaintiff CLS's Free Exercise claim and its assertion that strict scrutiny should be applied in analyzing the nondiscrimination policy, on the defendant Hastings' summary judgment motion, holding that the policy "does not target or single out religious beliefs, but rather, is a policy that is neutral and of general applicability." *Christian Legal Soc. Chapter of University of California v. Kane*, No. C 04-04484 JSW, 2006 WL 997217, at *1–4 (N.D. Cal. May 19, 2006). The Hastings' policy, like the policy maintained by the University of Iowa, "prohibits discrimination on the basis of protected categories, including religion and sexual orientation." *Id.* at *24. Importantly, the Court held that

Contrary to CLS's contention, regulating the conduct of discrimination on the basis, *inter alia*, of religion is not equivalent to regulating religious beliefs. CLS may be motivated by its religious beliefs to exclude students based on their religion or sexual orientation, but that does not convert the reason for Hastings' policy prohibiting the discrimination to be one that is religiously-based.

Id. Like CLS, BLinC has failed to submit any evidence of the University's discriminatory intent in this case, instead focusing almost exclusively on the University's failure to police its review of student group constitutions for inclusion of the Human Rights policy and the University's decision to permit fraternities, sororities, sports teams, and groups and programs meant to assist historically groups which have been historically discriminated against to exist on campus. *See id.* at 27 ("CLS also argues that the

treatment of CLS was intentional and argues that CLS may rely on evidence of the circumstances surrounding the passage of the policy to demonstrate intentional discrimination against it. Yet, CLS does not submit any evidence with respect to the passage of the Nondiscrimination Policy. Nor does CLS present any other evidence demonstrating any discriminatory intent by Hastings.”).

Defendants must demonstrate that its Policy is both neutral and generally applicable. Here, Plaintiff provides three reasons why the University’s Policy is not generally applicable: 1) it was not enforced equally by the University; 2) the University has “categorically exempted a huge swath of student organizations from the reach of the policy”; and 3) it “silently approves” secular discrimination by banning “restriction[s] on leadership related to religious beliefs while allowing groups to restrict leadership around all sorts of other ideological and political beliefs.” Plaintiff’s Memo, p. 31–34.

Defendant sees no real difference between Plaintiff’s first and second points. BLinC takes issue with the fact that the University has exempted sororities, fraternities, and sports teams from enforcement of the “gender” provision of the Policy. However, BLinC fails to show any discriminatory animus toward religious groups or its particular religious views, given that other religious groups which maintain identical views remained registered. The difference between BLinC and those other groups is that based upon its interactions with a member, BLinC received a complaint of discrimination and violation of the Human Rights Policy. DSUMF ¶ 68. Once the complaint had been made, BLinC was treated no differently than any other group against which a complaint was filed. DSUMF ¶¶ 10–16.

Plaintiff attacks the University's description of its process as complaint-driven, arguing that a complaint-driven enforcement of the Policy "would only drive home the harm of selective enforcement since complaints are far more likely to be filed against unpopular or minority viewpoints on campus." Plaintiff's Memo, p. 32. However, Plaintiff has not shown that its contention has any basis in fact. Each of the University administrators testified that Human Rights Complaints are a relatively rare occurrence, and each could only remember three complaints during their time with the University. DSUMF ¶¶ 72, 99. Nor has Plaintiff demonstrated that its viewpoint is a "minority" viewpoint—though it may well be in the minority of organizations whose disapproval of homosexual conduct is strong enough to include a statement of it alongside its core beliefs and principles.

Plaintiff goes on to cite several cases for the proposition that the University may not engage in "selective enforcement" of its Policy against BLinC. In *Tenefly Eruv Ass'n, Inc. v. Borough of Tenefly*, a group of Orthodox Jews sued the Borough of Tenefly after Borough officials refused to grant it a religious exemption to create an unobtrusive *eruv* in the neighborhood by attaching black tubing to Borough telephone poles. 309 F.3d 144 (2002). The Third Circuit Court of Appeals held that the Borough government had violated the Free Exercise of the First Amendment in selectively enforcing its ordinance. *Id.* at 177–78. However, the *Tenefly* decision did not turn on the fact that neighbors had complained about the Orthodox Jews' construction of an *eruv*, as Plaintiff suggests, but rather on the fact that the Borough permitted nearly every other type of speech on its property but had refused to allow the *eruv* materials which were objectively less obtrusive than some of the other items placed on the telephone poles by the public. *Id.* at

167 (“[f]rom the drab house numbers and lost animal signs to the more obtrusive holiday displays, church directional signs, and orange ribbons . . . the Borough has allowed private citizens to affix various materials to its utility poles”). Borough representatives and community members had also allegedly made discriminatory comments about the Orthodox Jewish community, and had failed to inform them of the existence of the ordinance in question when first asked about the possibility of installing an *eruv* in the neighborhood. *Id.* at 151–56. *Tenefly* is hardly analogous to the case at hand. The Orthodox Jews’ practice presumably did not violate any civil rights laws. *See id.* The *eruv* was not publicly funded and was installed and maintained by a private company. *Id.* at 153. Unlike the fact pattern at issue in its case, the Borough’s clear concern that it would be “overrun” by Orthodox Jews demonstrates clear viewpoint discrimination. *Id.* (“A Council member whom the District Court was unable to identify noted ‘a concern that the Orthodoxy would take over’ *Tenefly*. Once Council member voiced his ‘serious concern’ that ‘Ultra-Orthodox’ Jews might ‘stone [] cars hat drive down the streets on the Sabbath.’”). *Id.*

Similarly, the *Burnham v. Ianni* case cited by Plaintiff does not stand for the proposition that a complaint-driven process is inherently unconstitutional. 119 F.3d 668 (8th Cir. 1997). In *Burnham*, a group of students put together a display of several photographs of their professors wearing costumes which depicted their particular areas of focus and interest. *Id.* at 670–73. Two of the professors chose to wear historic weapons as part of their costumes. *Id.* The University’s affirmative action officer complained about the photographs, calling them “offensive” and alleging that they were evidence of “sexual harassment.” *Id.* Eventually, the University removed the two offending

photographs from the display, citing a desire to “stop the disruption caused by the display and to prevent aggravation of the atmosphere of fear” on campus. *Id.* The Eighth Circuit determined that the University’s actions constituted viewpoint discrimination—not because the review of the photographs had been instigated by a complaint made by a professor, but rather, because the action taken by the University was intended to silence the plaintiffs’ view that “the study of history necessarily involves a study of military history, including the use of military weapons. *Id.* at 676. The criticism directed at the University was not based in the complaint-driven analysis, but on the University’s decision to cave to complaining voices rather than to objectively evaluate the problem at hand and to come to a situation which would not violate the speakers’ constitutional rights. *Id.* (“Freedom of expression, even in a nonpublic forum, may be regulated only for a constitutionally valid reason; there was no such reason in this case.”).

Finally, Plaintiff cites *City of Cleburne, Texas v. Cleburne Living Center*, and states that *Cleburne* enforced an ordinance “in response to ‘negative attitudes’ and ‘fear’ of neighbors.” Plaintiff’s Memo, citing 473 U.S. 432 (1985). In this landmark case, the United States Supreme Court invalidated the City of Cleburne’s enforcement of an ordinance which required a special use permit for the operation of a group home for individuals with intellectual disabilities, where no such permit should have been necessary. *Id.* at 435. The District Court found that the City Council’s insistence on the special use permit was based partly in its concern for the “negative attitude of the majority of property owners.” *Id.* at 448. The Court determined that such factors “are not permissible bases for treating [the group home] differently from apartment houses, multiple dwellings, and the like.” *Id.* This case, like *Tenafly* and *Burnham*, is not helpful

in analyzing the case at hand. The rationale behind the enforcement of the ordinance in *Cleburne* was nothing more than “an irrational prejudice” against those with intellectual disabilities—not a legitimate complaint by a community member that some facet of his or her civil rights would be violated by approval of the facility. *See id.* at 450. The complaint-driven process was not the point. *See id.*

Plaintiff cites no cases which actually support its contention that Defendants’ complaint-driven enforcement mechanisms foster an environment where “forms of discrimination that are technically forbidden by the Policy but acceptable to the University culture, such as in the context of sports and Greek groups, get a pass.” Plaintiff’s Memo, p. 32. Contrary to Plaintiff’s point, with a complaint-driven policy any student who felt that their civil rights were being trampled could make a Human Rights Complaint about any student organization at any time. Groups do not receive favorable treatment based on viewpoint. DSUMF ¶¶ 10–16. Students drive the complaint process, and students from both majority and minority groups have equal access and equal opportunity to make a complaint if their rights are infringed by an RSO. *Id.* RSOs which choose to discriminate on the basis of protected characteristic—despite having agreed to refrain from doing so—increase their chances of having a complaint made against them.

Finally, Plaintiff argues that the University’s policy is not generally applicable because the University allegedly approves secular activities “that equally threaten[] the purposes of the policy but [a]re not prohibited (and therefore approved by silence).” Plaintiff’s Memo, p. 33, citing *Mitchell County v. Zimmerman*, 810 N.W.2d 1 (Iowa 2012). In *Zimmerman*, the Iowa Supreme Court, interpreting *Lukumi*, held that a county ordinance prohibiting the use of steel-wheeled tractor tires on county roads by members

of the Old Order Groffdale Conference Mennonite Church was under-inclusive, because it “accommodates secular interests while denying accommodation for comparable religious interests.” *Id.* at 12. The court outlined an analysis to evaluate the “potential underinclusiveness or nongenerality of the challenged ordinance.” *Id.* citing *Fraternal Order of Police Newark Lodge v. City of Newark*, 170 F.3d 359 (3d Cir. 1999). Under *Fraternal Order*, the court must first identify the purposes the ordinance is designed to protect, and then ask whether the ordinance “exempted or left unregulated any type of secular conduct that threatened those purposes as much as the religious conduct that had been prohibited.” *Id.* If a law allows secular conduct which undermines the purposes of the law, then it “could not forbid religiously motivated conduct that did the same because this would amount to an unconstitutional ‘value judgment in favor of secular motivations, but [against] religious motivations.’” *Id.* However, if the exempted secular conduct was “sufficiently different in terms of its impact on the purpose of the law, the exemption would not render the law underinclusive.” *Id.* Importantly, the Iowa Supreme Court noted that “*Fraternal Order* makes it clear that not every secular exemption automatically requires a corresponding religious accommodation.” *Id.* The key question is whether secular exemptions threaten the purposes of a regulation to a greater or lesser degree than a religious exemption. *Id.* at 12–13.

To the extent that Plaintiff’s argument that Defendants’ regulation is underinclusive applies in a higher education limited public forum case, Defendants assert that the exemptions it has provided to campus groups including sports teams, fraternities, and sororities—which are distinct from the groups which have been unregulated as a result of administrative oversight—are a lesser burden on the purposes of the forum than

BLinC's exclusion of gay and transgender students. The University's exemption from the gender provision of its Human Rights Policy is supported by federal law, which it has a responsibility as a government actor to uphold, while BLinC's exclusion of gay and transgender students runs counter to both state and federal law. *See* Iowa Code Ch. 216; 20 U.S.C. §§ 1681–1688. Clearly, BLinC's desire to participate in illegal discrimination as a recipient of public money is a harmful to the stated purposes of the University's public forum, which include promoting diversity, inclusion, and providing a safe space in which students have equal access to educational opportunities.

Plaintiff goes on to argue that the University's Policy is not neutral. Plaintiff argues that "facial neutrality" is not enough, and states that the Free Exercise Clause forbids "covert suppression" of religion. Plaintiff's Memo, p. 34. Plaintiff claims that "there is nothing subtle or masked about the University's specific hostility to BLinC's statement of faith. *Id.* Then Plaintiff goes on to make the radical claim that because the University's nondiscrimination policy takes a position opposite to the one espoused by BLinC—namely, forbidding campus organizations to discriminate against gay and transgender students while simultaneously receiving public money and resources—that the University is openly hostile to BLinC. This claim is somewhat absurd, given that the University's policies, and the State of Iowa's civil rights laws, were in place long before BLinC came into being. DSAMF ¶ 122. BLinC then goes on to complain that it was the first and only student group to be deregistered based on its violation of the Human Rights policy. Plaintiff's Memo, p. 35. While BLinC's claim is true, the deregistration was not based in BLinC's religions exercise, but rather, in its refusal to comply with the Human Rights Policy, which was a prerequisite for continuing to receive benefits through the

State of Iowa. DSUMF ¶¶ 118–119. That BLinC was one of only three groups to receive a human rights complaint is hardly evidence that the University engaged in viewpoint discrimination against BLinC, when many other campus groups share its views on homosexuality and transgender students and remain active on campus.

CONCLUSION

Through its extensive briefing on its Motion for Summary Judgment and Permanent Injunctive Relief and exhaustive Statement of Facts, Plaintiff has highlighted the extent to which genuine material facts are at issue in every claim it makes. This is not a suitable case for dismissal on summary judgment motion. Defendants urge this Court to deny Plaintiff's Motion and to allow this case to proceed to trial.

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Original filed electronically.

Copy electronically served on all parties of record:

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on November 5, 2018:	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Betty Christensen</u>	

University of Iowa

2017-18 Year in Review Vice President for Student Life Departments

STUDENT LIFE AT IOWA

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HOME NEWS WOMXN OF COLOR NETWORK CREATES SPACE FOR DIALOGUE, SUPPORT, AND EMPOWER

Womxn of Color Network creates space for dialogue, support, and empowerment



By Laurie Haag on July 12, 2018

EXHIBIT	
9	
DEPONENT NAME:	DATE:
Shivers	3 12/1/19



App 2124

This year the Women's Resource and Action Center (WRAC) created a new programming initiative, the Womxn of Color Network (WCON). The mission of the WCON series is to create space for dialogue, support, and empowerment among students, faculty, and staff at University of Iowa. Through the co-creation of a supportive community of womxn, individuals will have the ability to explore their racial, ethnic, and cultural identities, share lived experiences, and discuss what it means to be womxn of color in our campus community. WCON programs were offered monthly beginning in the fall semester, for a total of seven programs focusing on different aspects of womxn of color's lives, including leadership, self-care, exercise, identity, and more.

According to Jessica Padilla, WRAC's NEW Leadership coordinator and founder of the WCON program, "It can be difficult to find each other on this campus, and it takes time for people to make connections with each other and with our own community. I thought it would be a great opportunity to create a place for all women to connect, network, and make community. I think this is very important because to survive anything without a community to support you can be very difficult." WCON presentations are designed to build community, provide support, and create a much needed space for womxn of color in the campus and community.

What we're doing here I hope is just the beginning of the community-building, sisterhood-building that we want to have here at the University of Iowa."

The Womxn of Color Network series started with a Fall Kick-Off Mixer featuring UI Vice President for Student Life Melissa Shivers. At the mixer, VP Shivers told the crowd, "It can sometimes be challenging to find a space to be exactly who we are. But this program is a space where things happen. This is a space where you can come and be. You can come and get support and encouragement... This program is an indication of what we need on our campus in order to build our community. What we're doing here I hope is just the beginning of the community-building, sisterhood-building that we want to have here at the University of Iowa." The Kick-Off attracted a capacity crowd at the Bowman House, made up of students, staff, faculty, and community members who engaged in community building exercises, enjoyed food, and shared their experiences of being womxn of color on campus. Other WCON events moved around campus partner spaces, including a presentation in the Iowa Memorial Union by Dr. Melissa Shivers and a Zumba and WERQ class in the Campus Recreation and Wellness Center. Other campus partners involved in the monthly events included the Rape Victim Advocacy Program (RVAP) and University Counseling Service (UCS).

In the coming year Padilla says the WCON program will continue to grow and build on the foundation laid by previous WRAC programs including Women Against Racism and The Sister Connection, providing a space for dialogue, support, and empowerment among students, staff, and faculty at the university. Programs will be held monthly in the fall and spring semesters, and Padilla hopes to present a nationally-known speaker to campus as part of the program.

Why the "x"?

"Womxn removes the sequences of m-a-n and/or m-e-n from the term "woman/en" that sheds light on the prejudice, discrimination, and institutional barriers womxn have faced, but to also show that womxn are not a sub-category of men, while providing active resistance to transphobia to include transwomen, trans*femme, and other gender non-confirming womxn."

Steinmetz, S. (1995). Womyn: The evidence, American speech. Vol. 70, No. 4, pp. 429–43. Durham, N.C.: Duke University Press.

Merbruja, L. (2005). 3 common feminist phrases that (unintentionally marginalize trans women. Everyday Feminism: <http://everydayfeminism.com/2015/05/feminist-phrases-marginalize-trans-women/>

2018 Year In Review

This article is part of the **2018 Year in Review**, which highlights some of the Division of Student Life's accomplishments from the previous academic year.

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HOME NEWS MEET THE WOMAN BEHIND WRAC'S WOMXN OF COLOUR NETWORK

Meet the woman behind WRAC's Womxn of Colour Network



EXHIBIT	
10	
DEPONENT NAME:	DATE:
Shivers	3/27/19

By Ellyssa Woods on October 02, 2018



this fall, WRAC's Womxn of Color Network will begin its second year in operation. It is led by Jessica Padilla, who began working at the Women's Resource & Action Center about two years ago.

Padilla happens to be a Hawkeye herself. She got her BA at the UI in 2014, where she studied International Studies, Spanish, and Critical Cultural Competency. She then switched sides of the state to get her Master's degree in higher education and student affairs at Iowa State University.

Growing up, she never gave too much thought to what she would be doing when she was older. She wanted to graduate college, and be the first in her family to do so. Padilla was a part of UI's TRIO Upward Bound Program, a college preparatory program for first-generation college students. It was at this program, she says, that she began to see herself as a Hawkeye.

As an undergraduate, Padilla was involved with a variety of student organizations. She was a member of ALMA, the Association of Latinos Moving Ahead, and a member Sigma Lambda Gamma, which she is now an intake advisor for. She also became a peer leader for Iowa Edge, a first-generation college program for minority students that occurs before On Iowa in the fall. She now resides on the planning committee for that program.

When she was younger, Padilla said she didn't even know that working on college campuses was an option. However, she knew she was passionate about serving minoritized students.

"Being in leadership roles is where I unconsciously found my calling," she says.

Throughout her undergrad years, she worked at the Center for Diversity and Enrichment. During her sophomore year, she met a graduate student, Elizabeth Martinez, from the HESA (Higher Education Student Affairs) program. Martinez asked her what she wanted to do after college, and Padilla said she wasn't sure. She liked being around the community, and talking to other students about why college can be an option for them.

Martinez told her about NASPA, a national organization for student affairs practitioners in higher education. They have an undergraduate fellowship program called NUFP (NASPA Undergraduate Fellowship Program) that she became involved with. Through that, Padilla got an internship at La Casa Cultural Latina, the Latino center at the University of Illinois at Urbana-Champaign.

This fall, Padilla will be starting her third year working at WRAC, where her main role is overseeing and planning the Iowa N.E.W. Leadership Institute. The institute is a 5 day program designed to empower womxn and increase their representation in public leadership. Padilla also happens to be an alumna of this program.

In starting the Womxn of Color Network, Padilla knew she wanted to create something that would build community for a group of students who may otherwise feel isolated on a large campus.

"I just wanted to make sure women of color always feel like this center is their space as well," she says. "We are a center where we work with an intersectionality lens, and we are very inclusive of everyone, so we want to make sure that is seen through our programming. That was my motivation for starting something like this."

She was influenced by Iowa State's Womxn of Color program, which is a two-day retreat. Padilla wanted to do something similar, but as a programming series hosted throughout the academic year. She has made sure that all of the facilitators are womxn of color that work in the campus community, and that each program is designed to build community, provide support, and create a much needed space for womxm of color on campus and in the community.

The next Womxn of Color Event will take place October 3, at The Bowman House on 230 N. Clinton St. More details are available here: <https://wrac.uiowa.edu/programs-and-services/womxn-of-colour-network/>.

Donate to help support the Womxn of Colour Network here: <https://goldrush.uiowa.edu/project/11131>

Department: Women's Resource & Action Center

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

**INTERVARSITY CHRISTIAN)
FELLOWSHIP/USA, and INTERVARSITY)
GRADUATE CHRISTIAN FELLOWSHIP,)**

Plaintiffs,

VS.

**THE UNIVERSITY OF IOWA; BRUCE)
HARRELD, in his official capacity as)
President of the University of Iowa and in his)
individual capacity; MELISSA S. SHIVERS,)
in her official capacity as Vice President for)
Student Life and in her individual capacity;)
WILLIAM R. NELSON, in his official)
capacity as Associate Dean of Student)
Organizations, and in his individual capacity;))
ANDREW KUTCHER, in his official)
Capacity as Coordinator for Student)
Organization Development; and THOMAS)
R. BAKER, in his official capacity as Student)
Misconduct and Title IX Investigator and in)
His individual capacity,)**

Defendants.

CASE NO. 3:18-CV-00080

**DEFENDANTS' RESPONSES
TO PLAINTIFFS' STATEMENT OF
MATERIAL FACTS IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

EXHIBIT	
11	
DEPONENT NAME: Shivers	DATE: 3/27/19

COME NOW the Defendants, The University of Iowa, Bruce Harreld, Melissa Shivers, William Nelson, Andrew Kutcher and Thomas Baker, and state:

1. InterVarsity Graduate Christian Fellowship (“InterVarsity”) is a chapter of InterVarsity Christian Fellowship/USA (“InterVarsity USA”). App. 1947 [Kummer Decl. ¶¶ 1-4].

RESPONSE: Admit.

2. Both groups are Christian ministries with the purpose of establishing and advancing “witnessing communities of students and faculty who follow Jesus as Savior and Lord” and who

are “growing in love for God, God’s Word, God’s people of every ethnicity and culture and God’s purposes in the world.” App. 1948 [Kummer Decl. ¶ 6].

RESPONSE: Admit.

3. InterVarsity USA was founded in 1877 at the University of Cambridge, England, and has been active on U.S. campuses since the late 1930s. App. 1948 [Kummer Decl. ¶ 7]. It currently has over 1,000 chapters on more than 600 campuses nationwide. App. 1948 [Kummer Decl. ¶ 9]. Over a dozen of those chapters serve colleges and universities in Iowa, including Iowa State University, the University of Northern Iowa, and the University of Iowa. App. 1948-49 [Kummer Decl. ¶ 10]. Several chapters are at the University of Iowa alone, including the graduate InterVarsity chapter that is a plaintiff in this case. App. 1948-49 [Kummer Decl. ¶¶ 8-10].

RESPONSE: Admit.

4. The graduate InterVarsity chapter had been a registered student organization at the University of Iowa for 25 years. App. 1949-49 [Kummer Decl. ¶¶ 8-10]. It welcomes everyone to participate in the group’s activities, including its weekly Bible studies and its monthly religious services that feature prayer, worship, and religious teaching. It likewise welcomes all students to join as members. App. 1951 [Kummer Decl. ¶ 22]; App. 1982 [Schrock Decl. ¶ 8]. And it has a twenty-five-year history of broadly serving the University community, including via service projects, educational events, interfaith activities, and other forms of campus-wide engagement. App. 1949-51 [Kummer Decl. ¶¶ 14-21]. In fact, the University previously recognized and awarded InterVarsity for its efforts in serving the entire University community. App. 1951 [Kummer Decl. ¶ 21].

RESPONSE: Admit.

5. InterVarsity's service is animated by its faith. Like other InterVarsity USA chapters nationwide, including those at Iowa State University and the University of Northern Iowa, InterVarsity has always required its student leaders to affirm its faith and agree to exemplify its Christian values. App. 1952 [Kummer Decl. ¶ 24].

RESPONSE: Admit that these statements are consistent with Kevin Kummer's affidavit signed on December 12, 2018. Deny any additional knowledge in regard to the practices of other InterVarsity USA chapters.

6. InterVarsity believes that this leadership criteria is necessary because its student leaders fill an important spiritual role for the group, such as leading its religious services and Bible studies; leading and participating in prayer, worship, and religious teaching; determining the religious content of its meetings; selecting guest speakers and identifying religious topics to cover during events; ministering to their peers individually; planning and scheduling ministry events on campus; and determining what kind of outreach and service activities to engage in to advance the group's religious mission. App. 1952 [Kummer Decl. ¶ 25]; App. 1983-84 [Schrock Decl. ¶¶ 20-24].

RESPONSE: Admit.

7. To prepare and support student leaders for their important leadership roles, both InterVarsity and InterVarsity USA provide significant religious training to their student leaders. App. 1953, 1954 [Kummer Decl. ¶¶ 27, 31]; App. 1983 [Schrock Decl. ¶¶ 15-17]. This includes both religious training retreats before the start of school and regular religious mentoring meetings during the school year. *Id.*

RESPONSE: Admit that these statements are consistent with Kevin Kummer's affidavit signed on December 12, 2018. Deny any additional knowledge in regard to the practices of other InterVarsity USA chapters.

8. InterVarsity's student leaders are the primary embodiment of InterVarsity's faith and Christian message to the University community. App. 1952 [Kummer Decl. ¶ 25]. The vast majority of a student leader's time is spent on ministry; very little is devoted to nonreligious matters such as administrative tasks. App. 1952-53 [Kummer Decl. ¶ 26]; App. 1984 [Schrock Decl. ¶ 25]. InterVarsity believes it is absolutely necessary for its leaders to agree with and live by the organization's beliefs. App. 1987 [Schrock Decl. ¶ 43]. Being led by individuals who deny or reject InterVarsity's faith would undermine the group's religious mission and message, App. 1953 [Kummer Decl. ¶ 29], and would compromise InterVarsity's Christian identity and purpose, App. 1987 [Schrock Decl. ¶ 43].

RESPONSE: Admit that InterVarsity's position is correctly set forth above. Deny that Defendants' actions in regard to InterVarsity's group constitution would force InterVarsity to be "led by individuals who deny or reject InterVarsity's faith," that the group's "religious mission and message" would be undermined, or that its Christian identity would be compromised.

9. No student has ever filed a complaint with InterVarsity or with the University about InterVarsity's religious leadership requirement. App. 1955 [Kummer Decl. ¶ 35]; App. 1986 [Schrock Decl. ¶ 37].

RESPONSE: Admit.

10. But this summer, for the first time, the University ordered InterVarsity to remove its religious leadership requirement, stated that InterVarsity could not even encourage its leaders to

agree with its faith, and warned that the University would deregister InterVarsity unless the requirement was removed. App. 1985-88 [Schrock Decl. ¶¶ 27-44]; App. 1955 [Kummer Decl. ¶¶ 35-37].

RESPONSE: Admit that the University required InterVarsity and many other student groups to remove any language contradicting the University's Human Rights Policy from RSO governing documents. P. App. 1992-93. Admit that University staff told Katrina Schrock that InterVarsity's restrictions on leadership appeared to violate the Human Rights Policy. P. App. 2004-11. Deny that the University told Ms. Schrock that InterVarsity "could not even encourage its leaders to agree with its faith." Rather, the University indicated to Ms. Schrock that the University would not approve language which "strongly encouraged" group leaders to "subscribe" to the group's mission. P. App. 2004-11. University staff stressed that "[s]tudent orgs are free to express whatever language they desire in their mission/purpose, but the University and the Center for Student Involvement and Leadership must enforce [its] Human Rights Policy when it comes to leadership and membership." P. App. 2005.

11. The University explained that it interprets and applies its Human Rights Policy to forbid any limitations on "the ability to become a member or to hold leadership positions" that are based on the nondiscrimination criteria listed in the Policy, including "religion." App. 1985, 1986 [Schrock Decl. ¶¶ 27, 36]

RESPONSE: Admit.

12. The University stated that it "recognize[d] the wish to have leadership requirements based on Christian beliefs," but "[h]aving a restriction on leadership related to religious beliefs is

contradictory” to the Human Rights Policy’s prohibition on religious discrimination. App. 1987 [Schrock Decl. ¶¶ 39-42].

RESPONSE: Admit that the statement was made in an email communication. Deny that the University’s policy is limited to restrictions based on religious beliefs. Rather, the email addressed religious beliefs, specifically, because the restriction in question was based on religious beliefs and not some other protected status.

13. Because InterVarsity did not change its religious leadership requirement, the University de-registered InterVarsity in the summer of 2018. App. 1987-88 [Schrock Decl. ¶¶ 43-44].

RESPONSE: Admit.

14. The University also deregistered several other religious groups, including the Christian Pharmacy Fellowship, the Chinese Student Christian Fellowship, the Geneva Campus Ministry, the Imam Mahdi Organization, the J. Reuben Clark Law Society, the Latter-day Saint Student Association, and the Sikh Awareness Club. App. 1987-88 [Schrock Decl. ¶ 44].

RESPONSE: Admit, with the qualification that many other groups (religious and nonreligious in nature) were also categorized as “defunct” as a result of this process. Those groups, in addition to the ones listed by Plaintiff, included the American Institute of Aeronautics and Astronautics, the Association of Nursing Students (UIANS), the Financial Management Association, the Institute of Electrical and Electronic Engineers, the Korean Conversation Group, Phi Beta Lambda, the Public Relations Student Society of America (PRSSA), the American Academy of Pediatric Dentistry, the Graduate Student Anthropology Association (U of I), the Student Iowa School Counseling Association, the Asian Pacific American Student Association (U of I), the German Club, the Hong Kong Student Association, the Japanese Students and Scholars Club, the Korean UIowa Students

Association, the Malaysian Student Society, the Minority Association of Pre-Medical Students, the National Association for the Advancement of Colored People (UI Chapter of NAACP), the Revolution Dance Company, the Chinese Dance Club, the Young Americans for Liberty, Alpha Phi Omega-Omicron (APO), Code the Change, MEDLIFE (Medicine, Education and Development for Low Income Families Everywhere), CMA EDU, Cookie Dokie, Red Shamrock Student Organization, Cru, Wall-Breakers, Young Life, and the Iowa American Student Dental Association (IASDA). P. App. 2134–2135.

15. After InterVarsity USA and InterVarsity filed the instant lawsuit, the University agreed to temporarily treat InterVarsity and all of the deregistered religious groups as if they had registered status. App. 2021 [Baxter Decl. ¶ 4]. But the University’s position on the Policy has not changed. It still takes the position that InterVarsity may not be a registered student organization if it requires or encourages its leaders to agree with its faith. App. 0319 [Nelson Dep. 255:13-256:5-16]; App. 1987 [Schrock Decl. ¶¶ 39-42].

RESPONSE: Admit that the University agreed to temporarily treat InterVarsity and all of the deregistered religious groups as if they had registered status. Admit that the University’s Policy has not changed. Deny the remainder, as all review of RSO constitutions has been put on hold pending the outcome of the *BLinC* litigation.

16. The University does not have an “all-comers policy” that requires all registered student groups to accept all students as members and leaders of the groups. App. 0358 [Nelson Dep. 299:21-300:17]; App. 0102, 0122 [Cervantes Dep. 19:9-11, 99:7-14]; App. 0038 [Baker Dep. 146:8-21].

RESPONSE: Admit.

17. Following the Supreme Court's decision in *Christian Legal Soc'y v. Martinez*, 561 U.S. 661 (2010), the University expressly considered and rejected changing its policy to an all-comers policy. App. 0038 [Baker Dep. 146:8-148:4]; App. 0358 [Nelson Dep. 300:14-17]; App. 1334 ¶ 2; App. 1342.

RESPONSE: Admit that Baker met with “several attorneys from the General Counsel’s office” at some point in 2010, and that the issue of an “all-comers” policy was discussed at that meeting. Baker 147:7–148:4; P. App. 38. The extent to which the subject was discussed by University counsel is protected by the attorney-client privilege. *Id.*

18. University officials are unaware of “any effort by the University to adopt an ‘All Comers’ Policy” since that time. App. 0038 [Baker Dep. 148:8-10]; *see also* App. 0102, 0122 [Cervantes Dep. 19:9-23, 99:7-14]; App. 0573-74 [Redington Dep. 20:7-23:3]; App. 0592.

RESPONSE: Admit that Baker is not aware of any efforts to adopt an “all-comers” policy at the University since the decision in *Christian Legal Soc’y v. Martinez*, 561 U.S. 661 (2010), was issued. Baker 148:8–10; P. App. 38. Deny that the citations to testimony by Schriver Cervantes or Redington support the remainder of Plaintiff’s assertions here.

19. Instead, the registration of student organizations has long been governed by a University policy entitled “Registration of Student Organizations” (the “RSO Policy”). App. 0287 [Nelson Dep. 125:10-22]; App. 0366.

RESPONSE: Admit, with the qualification that the deposition testimony cited merely states that the policy is “one of the three sections of the Code of Student Life that references student organizations” and that the purpose of the document is “[t]o talk about the registration of student organizations.” Nelson 125:10–22; P. App. 287. Nelson does not

advise as to the length of time the policy has been in place or whether the RSO Policy is the only document which “governs” in this area. *Id.*

20. The RSO Policy “encourages the formation of student organizations around the areas of interests of its students, within the limits necessary to accommodate academic needs and ensure public safety,” and provides that registered student organizations are “voluntary special interest group[s]” that are “separate legal entities from the University of Iowa and legally . . . not treated the same as University departments or units.” App. 0366; *see also* App. 0369-70; App. 0355 [Nelson Dep. 288:7-13].

RESPONSE: Admit.

21. The RSO Policy emphasizes that “[r]egistration of a student organization by the University does not constitute an endorsement of its programs or its purposes, but is merely a charter to exist.” App. 0366-68; App. 0355 [Nelson Dep. 288:14-289:8].

RESPONSE: Admit, with the qualification that the Policy also states that “[s]tudent organizations can exist whether or not the University endorses them pursuant to this policy.” P. App. 366.

22. General student organizations like InterVarsity have no authority to speak for the University, which “disavow[s] ownership” of speech by such groups. App. 0355 [Nelson Dep. 289:20-290:11].

RESPONSE: Admit.

23. The RSO Policy expressly anticipates that students will form groups “to organize and associate with like-minded students” and that they will limit membership in these groups to “any individual who subscribes to the goals and beliefs” of the organization. App. 0367. And the University “guarantee[s] an equal opportunity” for all student organizations to apply for

University funds and resources “without differentiation for reasons that violate the University Policy on Human Rights or inhibit the group’s exercise of First Amendment rights of free expression and association.” App. 0367.

RESPONSE: Admit that the University “acknowledges the interests of students to organize and associate with like-minded students,” and that “any individual who subscribes to the goal and beliefs of a student organization may participate in and become a member of the organization,” with the qualification that “[m]embership and participation in the organization must be open to all students without regard to race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual.” P. App. 366. Deny that the University guarantees an equal opportunity “to access” University funds and resources. The University merely guarantees an equal opportunity for RSOs to apply for funds. P. App. 366–67 (noting that “[n]othing in this section shall be construed to create or guarantee any expectation of the receipt of funding or other benefits from UISG and/or GPSG and/or Recreational Services by any student organization . . .”).

24. The University’s Human Rights Policy (“Policy”) broadly “prohibits discrimination” by the University, stating that “in no aspect of its programs”—including in “employment, educational programs, and activities”—“shall there be differences in treatment of persons on the basis of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender

identity, associational preferences, or any other classification that deprives the person of consideration as an individual.” App. 0376; App. 0383-84.

RESPONSE: Admit that the University maintains and implements a Human Rights Policy which prohibits discrimination, with the qualification that the language cited by Plaintiff is part of the University’s Nondiscrimination Statement. P. App. 383–84.

25. The RSO Policy incorporates the University’s Policy, and RSO constitutions are reviewed by the University to ensure they incorporate the Policy. App. 0367, 372.

RESPONSE: Admit. RSO constitutions are reviewed to ensure that they comply with the Human Rights Policy and other University Policies. P. App. 371.

26. Until recently, the Policy language adopted by the RSO Policy read as follows:

Membership and participation in the organization must be open to all students without regard to race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual.

App. 0367.

RESPONSE: Admit.

27. In July or August 2018, the University amended the language in its RSO Policy to insert a parenthetical after the word “sex” to state an explicit exemption for fraternities and sororities.

The RSO policy now reads as follows:

Membership and participation in an organization must be open to all students without regard to race, creed, color, religion, national origin, age, sex (*unless the organization is exempt under Title IX*), pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual.”

App. 1334 ¶ 3; App. 1348 (emphasis added); App. 0287 [Nelson Dep. 125:10-127:20].

RESPONSE: Admit.

28. To date, no similar change has been made to other versions of the Policy, such as in the nondiscrimination statement listed in Chapter 6 of the Community Policies section of the University Operations Manual. *See* <https://opsmanual.uiowa.edu/community-policies/nondiscrimination-statement>.

RESPONSE: Admit that the online University Operations Manual has not been updated. Deny the remainder for lack of knowledge. Defendants are not certain what Plaintiff means by “other versions of the Policy” and Plaintiff’s assertion lacks citation to the record.

29. Historically, the University has understood its RSO Policy, including the Policy language, to protect the right of a student organizations to restrict both leadership and membership to individuals who embrace the organization’s “goals and beliefs.” App. 0367.

RESPONSE: Admit that the University, through implementation of its RSO Policy, “acknowledges the interests of students to organize and associate with like-minded students.” P. App. 366–67. Deny that student organizations have the right to restrict leadership and membership to individuals who embrace the organizations “goals and beliefs” without qualification, as the University’s RSO Policy explicitly states that an organization should “be able to exercise free choice of members on the basis of their merits as individuals without restriction *in accordance with the University Policy on Human Rights.*” P. App. 366–67 (emphasis added). Deny that the appendix pages cited by Plaintiff support its contentions regarding the University’s historic understanding of its RSO policy or its implementation in regard to members and leaders of student groups. P. App. 366.

30. Before its actions in Fall 2017 against another religious registered student organization, Business Leaders in Christ (“BLinC”), the University had never deregistered or refused

registration to a student group for requiring its leaders or its members to agree to its mission, purpose, or faith. App. 0353 [Nelson Dep. 278:12-279:5]; App. 1911-13, 1916.

RESPONSE: Admit, with the qualification that the University officials involved in evaluating civil rights complaints against student groups had only received complaints against three groups: BLinC, the UI Feminist Union, and 24:7. Nelson 35:23–36:9; P. App. 264; Schriver Cervantes 16:20–17:17; P. App. 101-102.

31. Further, the University had reviewed and approved numerous constitutions for registered student organizations that required leaders or members to agree with the groups' missions, purposes, or beliefs.

RESPONSE: Admit.

32. For instance, the University approved the constitutions of numerous religious groups, including an actual church, that explicitly require their leaders to sign a statement of faith or satisfy other religious criteria. *See, e.g.*, App. 0789-91 (**Love Works**, requiring leaders to sign a statement of faith); App. 0788 (**24-7**, requiring leaders to “sign and affirm the Statement of Faith” and “live their lives in a manner consistent with the Code of Conduct”); App. 0816 (**Athletes in Action**, requiring leaders to “follow Jesus’ example of leadership, teaching by word and by example” and “live in a manner that is consistent with the Biblical teachings”); App. 0717 (**Christian Legal Society**, requiring “[a]ll officers” to “subscribe to the Christian Legal Society Statement of Faith”); App. 0738 (**Campus Bible Fellowship**, limiting voting membership to individuals “who bear clear testimony of conversion to Jesus Christ”); App. 0864 (**Chi Alpha**, 2012 constitution, requiring leaders to “be in sincere agreement with the Articles of Faith” and to “conform to the Christian standards of conduct of Chi Alpha”); App. 0795 (**Geneva Campus Ministry**, construing Policy as “not preclud[ing] additional religious and

moral qualifications for certain leadership positions”); App. 0703, 705-06 (**Imam Mahdi Organization**, Islamic group requiring its leaders to “refrain from major sins (*kaba’ir*)” and requiring both leaders and voting members to “[b]e Muslim, Shiea”); App. 0861 (**International Neighbors**, requiring leaders to commit to agree with and abide by group’s Christian faith); App. 0874-75 (**Multiethnic Undergrad Hawkeye Intervarsity**, same); App. 0807 (**Muslim Students’ Association**, allowing only Muslims to be voting members or leaders); App. 0824 (**The Salt Company**, a campus church requiring leaders to be members who “have professed their faith in the Lord Jesus Christ . . . and live according to the tenets of the Bible as explained by the Statement of Faith”); *see also generally* App. 0748 ¶ 3; App. 0773-0890 [Exhibit B-1].

RESPONSE: Admit.

33. The University has approved the constitutions of many organizations that limit their leadership or membership based on non-religious creeds or missions as well. *See, e.g.*, App. 0969 (**Feminist Majority Leadership Alliance**, requiring members to submit “written agreement” with “the Feminist Majority Foundation’s purposes and principles”); App. 1334, App. 1360 (**Feminist Union**, same); App. 1334, App. 1367 (**Iowa National Lawyers Guild**, requiring members to agree with effort to bring about “basic change in the structure of our political and economic system” “to the end that human rights shall be regarded as more sacred than property interests”); App. 0686 (**Korean American Student Association**, requiring members to “exhibit an optimistic attitude towards Korean culture” and stating that any member with a “negative attitude” will have their membership “revoked”); App. 1104 (**Latina/o Graduate Student Association**, limiting membership to “[a]nyone who supports the purpose of the organization, and is willing to commit to its objectives”; App. 1334 ¶ 6, 1376 (**National Society of Black Engineers**, requiring leaders to “put forth the effort to accomplish the goals” to “assist,”

“promote,” and “[i]nform African-American engineers”); App. 1150 (**Organization of Women Law Students and Staff**, open to all “who subscribe to the purposes for the organization” including to “recommend and implement new programs” to meet the “changing needs and problems of women in the legal profession”); App. 1107 (**SistaSpeak**, limiting membership to those “who identify with SistaSpeak’s vision and mission”); App. 1335 ¶ 7, 1378 [Exhibit F] (**Students for the Right to Life**, requiring “that members of this organization hold pro-life beliefs”); App. 0971 (**Spectrum UI**, opening membership “to anyone who supports the mission of the student organization,” which includes “eliminat[ing] homophobia, transphobia, sexism, prejudiced views and discrimination”); App. 1009-10 (**Trans Alliance**, requiring leaders to have “drive to execute the established goals” of “spread[ing] awareness of transgender issues and work[ing] to increase public knowledge of the transgender population”); *see also generally* App. 0773-1165 [Exhibits B-1, B-2, & B-3].

RESPONSE: Admit, though the extent to which each organization’s “mission” qualifies as a “creed” granting protection under the University Human Rights Policy has not been explored.

34. And while not explicitly limiting membership, dozens of University-approved constitutions send the same message by adopting a mission or purpose to suggest a preference for one particular creed (secular or religious) over another. *See, e.g.*, App. 0732 (**Cru**, purpose to “introduce students to Christ, help them to grow in faith, encourage them to passionately live life in a manner consistent with belief in the God of the Bible, and inspire commitment to advancing the purposes of God in the world.”); App. 1335 ¶ 8, 1383 (**Hawks for Choice**, purpose “to unite pro-choice students and educate the University of Iowa community on issues related to all peoples’ reproductive freedom”); App. 1061 (**Hindus Against Casteism**, purpose to “raise

awareness of the injustice of caste discrimination as well as build a group to help support [their] cause”); App. 1143-46 (**House of Lorde**, purpose “to advocate for the political interests of Black Lesbian et al GBTQPA+ students,” membership can be revoked for actions that “go against the support of Black Queer individuals and our Mission”); App. 0692 (**Students for Life**, purpose “to provide representation for members of the student body who hold pro-life views and to be a voice for the voiceless”); App. 1335 ¶ 9, App. 1389 (**UDems**, purpose “to promote the Democratic Party”); App. 1334 ¶ 10, 1393 (**University of Iowa College of Law Federalist Society**, purpose to “preserve the natural law of human freedom” and “[t]he separation of governmental powers”); *see also generally* App. 0773-1165 [Exhibits B-1, B-2, & B-3].

RESPONSE: Admit, though the extent to which each organization’s “mission” qualifies as a “creed” granting protection under the University Human Rights Policy has not been explored.

35. This welcoming of groups of diverse viewpoints and missions is consistent with other University policies as well.

RESPONSE: Admit, despite lack of citation.

36. The University’s “Statement of Religious Diversity,” for example, states that “the University neither promotes any particular form of religion nor discriminates against students, staff, or faculty on the basis of their religious viewpoints.” App. 0374.

RESPONSE: Admit.

37. And the University’s “Statement on Diversity” states that “[t]he University believes that a rich diversity of people and the many points of view they bring serve to enhance the quality of the educational experience at The University of Iowa.” App. 0143.

RESPONSE: Admit.

38. Notably, the University has also long allowed groups to form around not just diverse viewpoints, but also around protected characteristics.

RESPONSE: Admit.

39. It has approved the constitutions of dozens of organizations that explicitly restrict or control access to leadership or membership based on race, national origin, sex, sexual orientation, gender identity, status as a U.S. veteran, and/or military service. *See, e.g.*, App. 1144-45 (**The House of Lorde**, implementing membership “interview[s]” to maintain “a space for Black Queer individuals and/or the support thereof”); App. 0973-77 (**Chinese Basketball Club**, restricting membership to Chinese students and alumni); App. 0990 (**Chinese Students and Scholars Association**, stating that “[m]embership is only open to enrolled Chinese Students and Scholars”); App. 0908 (**Hawkapellas – Iowa**, “all-female a cappella group” with membership controlled by “vocal auditions”); App. 0921 (**Sigma Alpha Iota – Zeta Epsilon**, membership in organization for “those who share a commitment to music” is “open to any woman student”); App. 0979 (**Tau Sigma Military Dental Club**, restricting “[e]ligibility” to “all full-time, military-sponsored” students); App. 0981 (**UI Veteran’s Association**, restricting membership to “past or current military personnel” and their dependents); *see also generally* App. 0895-0906 (identifying **fraternities and sororities** with membership restricted to men, to women, or to men or women of a certain race, ethnicity, or sexual orientation); *see also* ¶ 17, *supra*.

RESPONSE: Admit.

40. And even without explicitly restricting membership based on protected characteristics, many organizations express preference for individuals of a certain characteristic through their chosen name and/or their mission to promote the interest of one particular group. *See, e.g.*, App.

1129 (**American Association of Women Dentists**, purpose to promote “the advancement and recognition of women in dentistry”); App. 1118 (**Reaching OUT in Business**, promoting “professional development opportunities to LGBTQ+ people and allies”); App. 1141 (**Women in Science and Engineering Ambassadors**, “encourag[ing]” its members to be “a woman, a student in a science or engineering field, or interested in science” and expressing purpose to “expand and improve educational and professional opportunities for women in all fields of science, technology, engineering and math”); *see also generally* App. 0774-1165 (**African Student Association, Agape Chinese Student Fellowship, American Indian Student Association, Arab Student Association, Asian American Coalition, Asian Fitness Association, Black Law Student Association, Chabad Jewish Student Association, Chinese Dance Club, Hispanic Dental Association, Hispanic/Latino Law Student Association, Hong Kong Student Association, Indian Student Association, Indonesian Student Organization, Iowa Men’s Hockey, Korean U Iowa Students Association, Latina/o Graduate Student Association, Latino Medical Student Association, Latter-day Saint Student Association, Lutheran Campus Ministry, Malaysian Student Society, Middle Eastern Law Students Association, Newman Catholic Student Center, National Association of Black Journalists, National Organization for the Professional Advancement of Black Chemists & Chemical Engineers, National Society of Black Engineers, Nepalese Student Association, Organization of Women Law Students & Staff, Outlaws, Pakistani Student Association, Persian Student Association, Reaching OUT in Business, Saudi Students Club, Society of Black Graduate & Professional Students, Society of Hispanic Professional Engineers, South Asian Student Alliance, Sri Lankan Students’ Association, Taiwanese Student**

Association, Thai Student Association, Turkish Student Association, Vietnamese Student Association, Women in Business, Young Women for America at Iowa).

RESPONSE: Admit.

41. There are also many groups that are designed for certain categories of individuals who are not protected by the Policy. *See, e.g.*, App. 1335 ¶ 11, 1399 (**First Generation Iowa**, organization “designed for students who are considered first generation college students,” *i.e.*, those “whose parents or guardians did not graduate from a four-year college or university”); *see generally* App. 0655 ¶ 3; App. 0773-86.

RESPONSE: Admit.

42. The University treats sports clubs as registered student organizations that are governed by the Policy. App. 0655 ¶ 3; App. 0666-0669; App. 0366.

RESPONSE: Admit.

43. The University has long allowed, and still allows, sports clubs to restrict membership, participation, and leadership based on sex. Specific examples include registered student sports clubs for men’s and women’s ultimate frisbee, ice hockey, lacrosse, rugby, volleyball, water polo, and soccer. App. ¶ 12, App. 1404-1530 (*see, e.g.*, **Lady Ice Hawks** at App. 1451, limiting club to “any and all females” and requiring minimum number of “female hockey players” for the competition team; **Women’s Soccer Club** at App. 1478, 1483, stating group is for “female students” and that “in order to be on the team, each woman must tryout”; **Women’s Club Volleyball** at App. 1507, limiting membership to “female[s]”; **Men’s Water Polo Team** at App. 1517, describing President as “him”; **Women’s Water Polo Team** at App. 1521, describing team as a “collection of women”).

RESPONSE: Admit. Title IX requires that men and women be provided equitable opportunities to participate in sports, and does not require institutions to offer identical sports but an equal opportunity to play. *See* 20 USC § 1681; 34 C.F.R. § 1641.

44. The University also administers, supports, or otherwise provides numerous programs, leagues, scholarships, grants, or other activities that discriminate based upon a characteristic identified in the Human Rights Policy.

RESPONSE: Admit.

45. For instance, the University's Athletics Department has over twenty Division I NCAA teams, which are divided into men's and women's teams. App. 1337 ¶ 13; App. 1532-1534; App. 0455 [Petty Dep. 44:14-19] (University counsel admitting that the sex discrimination was "patently obvious").

RESPONSE: Admit.

46. Iowa does not offer the same sports team options for both sexes—there are no NCAA Division I women's football, baseball, or wrestling teams, nor are there men's soccer, volleyball, softball, rowing, or field hockey teams. App. 1337 ¶ 13; App. 1534.

RESPONSE: Admit.

47. The University devotes significant resources to its Athletics Department. As of FY2013, its Athletics Department budget was \$80 million, and it had over \$700 million in facilities. App. 1337 ¶ 13; App. 1411, 1433. Recent reports put expenses for the department at \$128.9 million. *See* <https://www.thegazette.com/subject/news/education/university-of-iowa-athletics-reports-budget-surplus-for-2016-2017-20180219>.

RESPONSE: Admit.

48. The University also provides a number of other sex-segregated sports and recreational programs: intramural sports leagues, sports camps for children and young adults, and recreational activities. The University's intramural leagues that include "gender requirements" to participate include tennis, basketball, softball, volleyball, flag football, and dodgeball. App. 1337 ¶ 14; App. 1595-1619. The University's sports camps that are "limited by . . . gender" include camps for gymnastics, wrestling, and basketball (including a 2018 Father-and-Son basketball camp). App. 1338 ¶ 15; App. 1624-1651. University recreational clinics such as women's weight-lifting and rock-climbing programs also discriminate based on sex. App. 1338 ¶ 16; App. 1653-56.

RESPONSE: Admit.

49. The University also provides several programs that discriminate based upon protected characteristics or classes listed in the Human Rights Policy. App. 1338-39 ¶ 17; App. 1659; *see also* App. 1917-18.

- a. The **Iowa Edge Program** discriminates based on race because it is only open to "African American, Alaskan Native, American Indian, Asian American, Pacific Islander, Latino/a, and first-generation college students." App. 1770. The program sponsors a registered student group that gives "particular emphasis to students of color" in its membership and requires that its group president have participated in the Iowa Edge program or with the University's Center for Diversity and Enrichment. *See* App. 1783-89.
- b. The **Iowa First Nations Summer Program** discriminates based on race as a program for Native American high-school students to help them prepare to succeed in college. *See* App. 1778-81.

- c. The **University of Iowa National Education for Women (“N.E.W.”) Leadership** program discriminates based on sex because it is open only to “[a]ny student who identifies as a woman” and is “designed to empower women”; it is also supported by a fund administered by the University. App. 0463 [Petty Dep. 29:7-30:8]; App. 0518; App. 1338 ¶ 17; App. 1790-95.
- d. The **Military Veteran and Student Services** program and the **Peer Advisors for Veteran Education** program, which discriminate based on veteran status. *See* App. 1918 (MVSS); App. 1338 ¶ 17; App. 1796-97 (PAVE).
- e. The **TRIO Student Support Services** program is a federal grant program that the University has elected to participate in and administer for over 40 years, and which provides students individualized coaching, academic planning and skill development, financial literacy training, tutoring, and career, graduate, or professional school preparation and planning. *See* App. 0458-59 [Petty Dep. 9:6-13:13]; *see also* App. 1338 ¶ 17, App. 1852-53. Disability is one of the criteria for eligibility to participate in the program. App. 0459 [Petty Dep. 11:20-13:3].

RESPONSE: Admit each subpart.

50. The University also provides, supports, advertises, or otherwise administers scholarships, grants, and awards that discriminate based upon protected characteristics or classes listed in the Human Rights Policy. *See, e.g.*, App. 0353 [Nelson Dep. 280:10-281:17].

- a. *Scholarships, grants, and awards that discriminate based on race.* The **Advantage Iowa Scholarship** requires eligible students to be “black, Hispanic, Latino, Native American, or . . . Pacific Islander,” *or* to be the first member of the student’s family to attend college *and* to have gone through a federally-funded Upward Bound program

App. 0459-60 [Petty Dep. Petty Dep. 13:8-16:1]; App. 1338 ¶ 17, App. 1767-69. The **Iowa First Nations Tuition Scholarship** allows Native American students who are non-residents of Iowa to receive in-state tuition rates if they are descended from a tribe that was historically a First Nation's tribe in Iowa. App. 0461 [Petty Dep. 21:15-22:11]; *see also* App. 1338 ¶ 17; App. 1781-82 (listing specific eligible tribes); *see also* App. 0465 [Petty Dep. 37:2-38:25]; App. 0479 (**Robert D. Dockendorff Scholarship**, with "preference given to underrepresented minority undergraduate students (African American, Latino/a, or American Indian heritage)"; *see* App. 1338 ¶ 17, App. 1823-25, 1830 (**College of Public Health Diversity Scholarship**, which factors in whether an applicant is "African American, Hispanic, Native American, Pacific Islander, Multiracial"; the **Iowa Minority Academic Grant for Economic Success (IMAGES)**, which is awarded to "African American, Latino/Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native" applicants; the **Tom Brokaw Scholarship Fund**, for "Native Americans"; the **Ezra L. Totton Scholarship**, with "preference given to Black students").

- b. *Scholarships and awards that discriminate based upon veteran's status or service in the U.S. Military. See* App. 1338 ¶ 17; App. 1798-1804, 1832-39 (**Hawkeye Distinguished Veteran's Award**, provided annually to five Iowa City veterans, one of whom is active student at the University; the **University Armed Forces Award**, which discriminates based on status as a U.S. veteran or service in the U.S. military, offering scholarships up to \$15,000 and eligibility for in-state tuition rates; the **Ernie T. Pascarella Military Veteran Promise Award**, annual \$1,000 award for veteran;

the **Paul Larson Military/Veteran Student Scholarship**, up to \$2,000 for veterans and military students).

c. *Scholarships that discriminate on the basis of sexual orientation and gender identity.*

App. 0466 [Petty Dep. 39:1-40:20]; App. 0481 (**Rainbow Scholarship**, annual scholarship limited to “undergraduate student who is gay, lesbian, bisexual, or transgender”); *see also* App. 0465 [Petty Dep. 37:2-38:25]; App. 0479 (**Robert D. Dockendorff Scholarship**, with “preference given to” students “who are active in the Gay, Lesbian, Bisexual, Transgender community”).

d. *Funds that discriminate based upon disability.* App. 0462 [Petty Dep. 24:7-26:25];

App. 0484, 0486 (**Handicapped Projects Program Fund** and the **Learning Disability Assistant Fund**).

e. *Awards that discriminate based upon national origin.* *See* App. 1338 ¶ 17, App.

1835-39 (**Iowa MBA India and China Awards**, which offer full or partial tuition to MBA students who have citizenship in India or China).

f. *Scholarships and awards that discriminate based on sex.* *See* App. 1338 ¶ 17; App.

1809, 1820-21, 1837-38, 1848 (**Iowa MBA Women’s Award**; the **Kathleen Dore Women’s MBA Scholarship**; the **Henry Tippie Women’s MBA Scholarship**; the **M. Gladys Scott Scholarship**, available to “women majoring in Sports Studies”; **C. Pauline Spencer Scholarship** (same); **Lloyd and Gladys Burr Cunningham Nursing Scholarship Fund**, with “preference given to women from Iowa”; the **Margaret P. Benson Memorial Scholarship**, awarded to “[w]omen who are committed to women’s issues”).

- g. *Fraternity and sorority scholarships and awards that discriminate based on sex. See* App. 0463-64 [Petty Dep. 30:17-31:6]; App. 0519 (**Dinette L. Myers Quiet Leader Award**, for sorority member); App. 0464 [Petty Dep. 31:8-17], App. 0523 (**Mary Peterson Sorority Woman of the Year Fund**); App. 0464 [Petty Dep. 31:19-32:6] (**Andrew James Mogni Legacy Award**, awarded to “UI Fraternity Man”); App. 0464-65 [Petty Dep. 34:23-35:9]; App. 0562 (**Chi Omega Scholarship Fund**, for “female student”); App. 0465 [Petty Dep. 36:18-37:1]; App. 0565 (**Edith Williams Malone Scholarship**, with “preference” for “female students”).
- h. *Sports club funds that discriminate based on sex. See* App. 0464 [Petty Dep.33:11-34:22]; App. 0546-54 (**Women’s Water Polo Club, Men’s Rugby Club, Men’s Water Polo Club, Men’s Volleyball Club**);
- i. *Scholarships or funds that discriminate upon multiple protected classes. See* App. 1338 ¶ 17; App. 1841-42, 1824, 1828 (**Adah Johnson/Otilia Maria Fernandez Scholarship**, awarded to “woman student of color”; **Robert Vernon Family Memorial Fund**, with “preference given to American Indian, Black, and female minority students”; **Madeline P. Peterson Scholarship for American Indian Women**, for “woman student of American Indian descent with tribal affiliation”).

RESPONSE: Admit each subpart.

The Christian Legal Society’s Ordeal at the University of Iowa

51. In 1999 the Christian Legal Society (CLS) filed its application to renew its status as a registered student organization at the University. App. 0752.

RESPONSE: Admit, with the qualification that the CLS incident occurred in 2003 and 2004 and offers little support for InterVarsity’s position. As the Court noted in its

Order on Plaintiff’s Motion for Preliminary Injunction in *Business Leaders in Christ v. The University of Iowa, et al*, “the Court is not blind to the fact that these events occurred approximately fourteen years ago. Views regarding sexual orientation and gender identity have changed a great deal over the past fourteen years. Thus, the CLS incident’s probative value with respect to the present dispute is diminished both by its age and its ambiguity.” United States District Court for the Southern District of Iowa, Case No. 3:17-cv-00080-SMR-SBJ, Order filed January 23, 2018, p. 26.

52. In an accompanying letter to the then-Dean of Students, Phillip Jones, CLS noted that the chapter would require members to embrace its Christian beliefs and its moral code. App. 0752-54.

RESPONSE: Admit. See response to □ 51.

53. CLS asked the University if its beliefs and membership practices would be proscribed by the University’s Policy. App. 0752.

RESPONSE: Admit. See response to □ 51.

54. In response, Dean Jones issued a memo noting that the University’s Office of General Counsel had reviewed and cleared the proposed CLS constitution. App. 1340 ¶ 18, App. 1854-1855.

RESPONSE: Admit, with the qualification that Dean Jones stated that “there appear to be no first amendment violations in the organization’s constitution for local participation in a religious organization.” P. App. 1855. Dean Jones went on to caution that “the practices of the organization will have to be consistent with the spirit of open participation.” *Id.* See also, response to □ 51.

55. Defendant Thomas R. Baker was one of the University employees copied on Dean Jones's memo. App. 1340 ¶ 18, App. 1854-55.

RESPONSE: Admit. See response to □ 51.

56. Following this approval, CLS continued to operate as a registered student organization at the University. App. 1194-95 ¶¶ 4, 8.

RESPONSE: Admit. See response to □ 51.

57. On January 30, 2004, CLS contacted Thomas Baker, then the Associate Dean of Students, to address a new issue that had arisen. App. 0007 [Baker Dep. 23:14-24:10]; App. 0069; App. 0007-8 [Baker Dep. 25:13-27:1, 27:20-28:10].

RESPONSE: Admit. See response to □ 51.

58. A follow-up letter from CLS's attorney to Dean Baker noted that CLS had been "recognized as an official student organization by the University of Iowa at least since 1980." App. 0010 [Baker Dep. 37:2-8]; App. 0071; App. 0010-11 [Baker Dep. 37:23-39:18]; App. 1194.

RESPONSE: Admit. See response to □ 51.

59. But upon submitting a renewed "Recognition Form," CLS's constitution was rejected by the Office of Student Life for "failure to include" the language of the University's nondiscrimination policy. App. 0010 [Baker Dep. 37:2-8]; App. 0071.

RESPONSE: Admit. See response to □ 51.

60. Dean Baker wrote down notes regarding the situation, which stated that the University's Policy "doesn't preclude you from asking prospective officers to subscribe to a statement of faith," and that it "doesn't preclude your group from establishing reasonable leadership qualifications consistent with the purpose of your org." App. 0011-13 [Baker Dep. 40:21-47:3]; App. 0077.

RESPONSE: Admit that Baker responded to Mr. Nierman’s letter on February 20, 2004. Admit that Baker’s letter explained that “the Human Rights policy does not prohibit student groups from establishing membership criteria” with the qualification that Baker also clarified that the right to establish membership rules does not “extend to permit CLS or any other student group to reject prospective student members solely on the basis of race, gender, or sexual orientation.” P. App. 78. Baker also pointed out that CLS had not “cite[d] any judicial ruling on point that would nullify a viewpoint-neutral application of the Human Rights Policy to student religious groups with respect to membership discrimination on the basis of sexual orientation.” *Id.* Interestingly, Baker noted that “no complaint from the community has ever been filed with the UI Committee on Human Rights against a religious student organization alleging a violation of the Human Rights Policy.” *Id.* See response to □ 51.

61. Baker sent a formal letter on February 20, 2004 stating, *inter alia*, that the Policy “does not prohibit student groups from establishing membership criteria.” App. 0014-15 [Baker Dep. 51:20-52:6, 53:18-54:24]; App. 0078-80.

RESPONSE: Admit that Baker responded to Mr. Nierman’s letter on February 20, 2004. Admit that Baker’s letter explained that “the Human Rights policy does not prohibit student groups from establishing membership criteria” with the qualification that Baker also clarified that the right to establish membership rules does not “extend to permit CLS or any other student group to reject prospective student members solely on the basis of race, gender, or sexual orientation.” P. App. 78. Baker also pointed out that CLS had not “cite[d] any judicial ruling on point that would nullify a viewpoint-neutral application of the Human Rights Policy to student religious groups with respect to membership

discrimination on the basis of sexual orientation.” *Id.* Interestingly, Baker noted that “no complaint from the community has ever been filed with the UI Committee on Human Rights against a religious student organization alleging a violation of the Human Rights Policy.” *Id.* See response to □ 51.

62. The letter copied Dean Jones and Defendant William Nelson (“Dr. Nelson”). App. 0014 [Baker Dep. 51:20-52:2]; App. 0080.

RESPONSE: Admit. See response to □ 51.

63. The letter concluded that CLS could not omit the Human Rights Policy from its group constitution or even modify it. App. 0014 [Baker Dep. 51:20-52:2]; App. 0080.

RESPONSE: Admit. Baker explained the University’s responsibility to require that all groups include the Human Rights Policy in their constitutions, without exception. P. App. 78. Baker stressed that “viewpoint neutrality must be the guiding principle in the application of the Human Rights Policy. A decision to treat religious groups differently would invite a constitutional challenge by non-religious groups, who have the same right as religious groups to equal treatment.” *Id.* See response to □ 51.

64. But Dean Baker emphasized that “the Human Rights Policy does not prohibit student groups from establishing membership criteria” and that “[a] student religious group is entitled to require a statement of faith as a pre-condition for joining the group.” App. 0014-15 [Baker Dep. 53:18-54:1]; App. 0079.

RESPONSE: Admit. See response to □ 51.

65. The letter emphasized, in italics, that “[a]sking prospective members to sign the CLS statement of faith would not violate the UI Human Rights policy.” App. 0015 [Baker Dep. 54:2-24]; App. 0079 (emphasis in original).

RESPONSE: Admit. See response to ☐ 51.

66. Dean Baker further noted that a religious group “would not be required, and will not be required, to condone the behavior of student members—after they join your group—that is contrary to the purpose of your organization and its statement of faith.” App. 0016-17 [Baker Dep. 61:19-62:15]; App. 0079; App. 0017 [Baker Dep. 65:17-20].

RESPONSE: Admit. See response to ☐ 51.

67. He emphasized that “[i]ndividuals who fail to observe the CLS statement of faith may be dismissed as members.” App. 0079; *see also* App. 0025-26 [Baker Dep. 97:10-100:15].

RESPONSE: Admit. See response to ☐ 51.

68. With this understanding, CLS added the Human Rights Policy to its constitution, which was then approved by the University for resubmission to the University of Iowa Student Organization Recognition Board. App. 0017 [Baker Dep. 65:21-66:10]; App. 0081.

RESPONSE: Admit. See response to ☐ 51.

69. The University’s April 2004 approval letter reiterated that “organizational leaders may require members to accept the CLS statement of faith as a condition for participation.” App. 0018 [Baker Dep. 66:11-67:4]; App. 0081.

RESPONSE: Admit. See response to ☐ 51.

70. After the University approved CLS’s constitution, the matter was forwarded to the student government’s Student Organization Recognition Board for further approval. The student chair of the Board objected “on both ethical and moral grounds to this organization’s recognition” and stated that he would “not be able to put [his] signature on the recommendation form for the Christian Legal Society.” App. 1340; App. 1857.

RESPONSE: Admit. See response to ☐ 51.

71. He referred the matter to the Student Senate. App. 1340; App. 1858.

RESPONSE: Admit. See response to ☐ 51.

72. In response to the chair's statements, Dean Jones, then the University's Vice President for Student Services and Dean of Students, sent a memorandum in May 2004 to the Student Senate, instructing them that "CLS is entitled to ask its members to adhere to the group's statement of faith." App. 0765.

RESPONSE: Admit. See response to ☐ 51.

73. Dean Jones emphasized that it was his "obligation under the law and under University policy to realize the group members' freedom to promote their beliefs through association" and that the Student Senate was "bound by law to observe the same constitutional standards." App. 0765.

RESPONSE: Admit. See response to ☐ 51.

74. Dean Jones stated that he was "prepared to recognize the group if the CLS students' legal rights [were] not fully acknowledged" by the Student Senate. App. 0765.

RESPONSE: Admit. See response to ☐ 51.

75. Dr. Nelson was copied on Dean Jones's memo. App. 0765.

RESPONSE: Admit. See response to ☐ 51.

76. Several years later, in 2008, the Student Government denied funding to CLS because of its constitution and informed CLS's student president that timely funding for CLS could not be guaranteed because members of the Student Government were "uncomfortable with your organization." App. 0083-84; App. 0018 [Baker Dep. 69:14-70:2].

RESPONSE: Admit. See response to ☐ 51.

77. In response, the University twice instructed the Student Government that it could not discriminate against CLS in this manner. App. 0018 [Baker Dep. 67:15-68:24]; App. 0085; App. 0020 [Baker Dep. 75:12-23]; App. 0086.

RESPONSE: Admit that the University twice reprimanded the Student Government for failing to appropriate funding to CLS, and that it twice reminded the Student Government of its responsibilities as a government agent. Deny that the Baker deposition testimony cited supports Plaintiff's assertion. See response to □ 51.

78. In a memo dated October 21, 2008, Tom Rocklin, Vice President for Student Services and Dean of Students, reminded the Student Government that CLS “has been recognized as a University of Iowa student organization after full review of its application, including its constitution” and that “applicable law, including the United States Constitution . . . requires that funding requests from student organizations are processed in a content neutral manner,” “without any consideration of the organization’s viewpoint, including the Statement of Faith in the CLS constitution.” App. 0018 [Baker Dep. 68:14-71:16]; App. 0085.

RESPONSE: Admit. See response to □ 51.

79. Vice President Rocklin specifically warned the student leaders that they were “agents of the University and the State of Iowa” and thus as “agents of the state” could “be subject to personal liability” if they violated CLS’s “rights under the U.S. Constitution.” App. 0018 [Baker Dep. 68:14-71:16]; App. 0085.

RESPONSE: Admit that Rocklin warned the Student Government of their potential liability for constitutional infractions under the law in his letter. Deny that the Baker deposition testimony cited supports Plaintiff's assertions. See response to □ 51.

80. One week later, on October 28, 2008, Vice President Rocklin gave the student government leaders specific instructions on funding CLS and directed them to “process [CLS’s] request in a timely manner without consideration of membership rules as stated in the organization’s constitution.” App. 0020 [Baker Dep. 75:12-23]; App. 0086.

RESPONSE: Admit. See response to □ 51.

81. Dean Baker and Dr. Nelson were both copied on this memo and the student leaders were directed to contact Dean Baker with any further questions. App. 0020 [Baker Dep. 75:12-23]; App. 0086.

RESPONSE: Admit. See response to □ 51.

82. On February 26, 2009, four registered student groups—Outlaws, Law Students for Reproductive Justice, Iowa Campaign for Human Rights, and American Constitution Society—wrote a letter “to voice [their] objection” to the “recent decision to fund the Christian Legal Society,” claiming that “its constitution and membership requirements” violated the University’s Human Rights Policy. App. 0020 [Baker Dep. 76:11-22]; App. 0087-88.

RESPONSE: Admit. See response to □ 51.

83. Vice President Rocklin responded by letter dated March 6, 2009, stating that the Human Rights Policy did “not prohibit student groups from establishing membership criteria” and that the First Amendment protected religious student groups in “establish[ing] a statement of faith as a pre-condition for joining the group.” App. 0020-21 [Baker Dep. 77:18-79:1]; App. 0089; App. 0093-94; App. 0021-22 [Baker Dep. 79:5-81:17, 82:13-83:12].

RESPONSE: Admit, with the qualification that Rocklin also indicated that “[t]he CLS, like any other recognized student group, must welcome all students interested in attending group meetings, regardless of sexual orientation or other classification.” P. App.

89. Rocklin went on to indicate that “CLS did agree in 2004 to observe this requirement of the Policy on Human Rights, and it is currently observing this requirement.” *Id.* See response to □ 51.

84. In May 2009, the Student Government attempted to change its bylaws to bar funding to “exclusive religious groups,” which were defined as “organizations that restrict membership or access to programming according to religious belief.” App. 1340; App. 1866; App. 1881.

RESPONSE: Admit. See response to □ 51.

85. On June 3, 2009, attorneys for CLS wrote the University noting that “the recently adopted bylaws . . . conflict with [the University’s] previous decisions and threaten once more to violate the chapter’s First Amendment Rights.” App. 0169-71.

RESPONSE: Admit. See response to □ 51.

86. The University’s General Counsel responded the next day requesting additional time to respond, noting that the University “will not approve student government decisions denying funding to . . . [CLS] in violation of the Constitution.” App. 1340; App. 1885-86.

RESPONSE: Admit. See response to □ 51.

87. Vice President Rocklin again wrote a memo to the student government leaders, reminding them that they could be “subject to personal liability in court,” even for “inadvertently” infringing the “constitutional rights of religious student organizations.” App. 0768.

RESPONSE: Admit. See response to □ 51.

88. He directed the student leaders to “remove as soon as possible” the provisions restricting funds to exclusive religious organizations and stated that the offending provisions would be “considered suspended” until he received the “revised version.” App. 0768.

RESPONSE: Admit. See response to ☐ 51.

89. He further stated that the University's General Counsel recommended that his office "orient" the student leaders "each year regarding the interplay between the Constitution and the University of Iowa Policy on Human Rights." App. 0769.

RESPONSE: Admit. See response to ☐ 51.

90. He again emphasized that "student government leaders are state actors" and thus "must protect student organization members' constitutional rights at all times." App. 0769.

RESPONSE: Admit. See response to ☐ 51.

91. He warned that University action against religious organizations "raises a number of issues with legal implications, not the least of which involve an organization's right to free association, free speech, and equal protection of law." App. 0769.

RESPONSE: Admit. See response to ☐ 51.

92. Finally he stated that, for the upcoming school year, training on these issues would be "presented by Tom Baker" and that student government officials would be "required to attend." App. 0769.

RESPONSE: Admit. See response to ☐ 51.

93. Dr. Nelson was copied on the memo, as were the University's general counsel, Carroll Reasoner, and its senior associate general counsel, Maria Lukas. App. 0769.

RESPONSE: Admit. See response to ☐ 51.

94. On June 22, 2009, the University wrote CLS to note that the offending provisions had been removed from the student government bylaws and that "all religious student organizations will be permitted to apply for . . . funds," which would be "allocated in compliance with constitutional standards." App. 0770.

RESPONSE: Admit, with the qualification that Ms. Lukas also informed CLS that the University “decline[d] to provide an exemption from religious discrimination rules for religious student groups” as CLS had proposed. D. Supp App. 167. *See* response to □ 51.

95. One year later, on June 28, 2010, the United States Supreme Court issued its ruling in *Christian Legal Society v. Martinez*, where it held that universities could have student organization policies which “mandate acceptance of all comers,” where the groups “must ‘allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [her] status or beliefs.’” 561 U.S. at 671. The Court emphasized that its holding was limited solely to whether “compliance with an all-comers policy violates the Constitution.” *Id.* at 678.

RESPONSE: Admit that the United States Supreme Court ruled on *Christian Legal Society v. Martinez* in 2010. *See Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. 661 (2010). Deny Plaintiff’s other contentions insofar as analysis of a legal opinion is inappropriate for a Statement of Undisputed Fact. *See* LC 56(1)(3) (requiring a “statement of material facts setting forth each material fact as to which the moving party contends there is no genuine issue to be tried . . .”). Additionally, Defendants deny any remaining implication regarding the application of *Martinez* to the facts of the case at hand.

96. The next day, on June 29, 2010, CLS wrote to the University noting that “a story in today’s *The Daily Iowan* [had] suggested that the University was being pressed, yet again, by students hostile to CLS-Iowa to reconsider its status at the University based on the false premise that the Supreme Court’s decision yesterday would support reconsideration.” App. 1340; App. 1888.

RESPONSE: Admit. See response to ☐ 51.

97. Following the *Martinez* decision, the University's leadership met to discuss the ruling. They agreed that the University did not have an all-comers policy and rejected adopting an all-comers policy. App. 0038 [Baker Dep. 147:7-148:4].

RESPONSE: Admit that several University staff members met to discuss the *Martinez* decision. Deny that all staff members were in agreement about how they should interpret the policy at the time of the events at issue in the Petition—including whether registered student groups must “accept all students as members and leaders of the groups.” Nelson 301:15–302:14; P. App. 358-359 (Q: “With that understanding, was there agreement that the University does not have an all-comers policy?” A: “Was there agreement that we did not? I would say there was not agreement.”); Baker 147:7–13; P. App. 38 (Q: “As far as you know, did the University ever discuss the differences between those two types of policies?” A: “I know that there was a meeting after the Supreme Court issued its decision in 2010, and I was present at the meeting, so the issue of “All Comers” Policy did come up, and as I recall, the decision was that we would not make any changes in the Human Rights Policy.”); Cervantes 19:9–13; P. App. 102 (testifying that she does not understand the University's Human Rights policy to be an “all-comers” policy); Redington 20:23–21:4; P. App. 573 (testifying that she does not know the legal definition of an “all-comers” policy, and that she did not know at the time whether the University maintained an “all-comers” policy). Admit that the University did not implement an all-comer's policy.

98. The CLS chapter has continued to this day as a registered student organization at the University of Iowa campus with religious standards for its leaders. App. 1195-96.

RESPONSE: Admit. See response to ☐ 51.

The University's actions against BLinC and 24-7

99. BLinC is a religious student group that was a registered student organization (“RSO”) at the University from 2014 to 2017. App. 1290; App. 0599-0601.

RESPONSE: Admit.

100. BLinC requires its officers to agree with its faith because they are responsible for leading its members in prayer, Bible discussion, and spiritual teaching; for implementing and protecting the religious mission of the group; and for modeling BLinC’s faith to the group and to the public. App. 1291; App. 1295-96; App. 1312; App. 1202; App. 0601 [Thompson Dep. 15:8-12]; App. 0646 [Estell Dep. 44:2-6].

RESPONSE: Admit that the above-statements are consistent with Hannah Thompson’s affidavit, signed on December 12, 2017, and with Jacob Estell’s deposition testimony.

101. In February 2017, a student filed a complaint with the University alleging that BLinC denied him a leadership position because he was “openly gay,” and demanding that the University “[e]ither force BLinC to . . . allow openly LGBTQ members to be leaders or take away their status of being a student organization.” App. 1296, 1317.

RESPONSE: Admit.

102. BLinC denied the allegation, explaining that while the student could participate as a member, he could not serve as a leader because he disagreed with fundamental aspects of BLinC’s faith, including its beliefs regarding the authority of Scripture and Scripture’s teaching regarding sexual morality. App. 1297, 1324-26; App. 604.

RESPONSE: Deny. Much of the evidence shows that in her initial conversation with Mr. Miller, Ms. Thompson explained that he could not be a member of BLinC’s leadership

team because he is a gay man. D. App. 1317 (“I [Marcus Miller] was denied leadership . . . for being openly gay.”); D. App. 142 (“Student B [Hannah Thompson] stated that because Complainant was gay and might pursue a relationship as a gay person, he could not be a leader in BLinC.”); P. App. 115 [Cervantes 69:24–70:4] (Q: “Okay. And in his interviews with you, Marcus Miller told you that he was not allowed to be a leader of BLinC because he did not ascribe to their view of the Bible. Is that correct?” A: “He told me that he told them he was gay and they rescinded his offer.”), P. App. 116 [Cervantes 73:3–4] (“My recollection is . . . She [Hannah Thompson] told me he could not be a leader because he was gay.”), P. App. 117 [Cervantes 79:24–80:3] (Q: “So Hannah told you it wasn’t because he was gay, correct?” A: “No, Hannah told me it was because he was gay.”), P. App. 117 [Cervantes 80:18–24] (Q: “Did you have any reason to disbelieve that that’s . . . the reason Hannah did not allow him to become a leader?” A: “All I know is what she told me and that was because he was a homosexual, because he was openly admitting or acknowledging he was homosexual.”), P. App. 120 [Cervantes 89:13–19] (Q: “So why did you choose to seize on . . . the statement that Mr. Miller was excluded because he was gay and not all of the statements from Hannah that he was excluded because of his religious beliefs?” A: “Because Hannah told me he was excluded because he was gay.”), P. App. 120 [Cervantes 91:5–10] (Q: “And was there any reason why you discounted those parts of her statements?” A: “Because she told me she’d eliminate him because he was gay. She was pretty firm about that. There was no discussion of religious beliefs. She just said because he was gay, that’s it.”), P. App. 120-121 [Cervantes 91:21–92:8, 94:6–17]; P. App. 38 [Baker 148:19–25] (Q: “Okay. And what do you recall Hannah saying during that interview?” A: “What I recall Hannah saying off the top of my head was that Marcus Miller without being

prompted told her that he was openly gay and that because he said he was openly gay, that he was—according to Hannah, that they decided he was not eligible to be a leader.”).

103. In association with the University’s proceedings against BLinC, Associate Dean Tom Baker wrote a memo to Dr. Nelson, stating that “it will be important to clarify how the University Human Rights Policy operates.” App. 0090-91. He emphasized that “[t]he Human Rights Policy does not require that [BLinC’s] creed be modified.” App. 0090-91.

RESPONSE: Admit. In that same memo, Dean Baker made the distinction at issue in the BLinC litigation: “Consequently, denying a leadership application on the basis of a student’s homosexuality is not the same as denying a student’s leadership application for refusing to abide by the expectation that all members remain sexually abstinent regardless of their sexual orientation. While the latter is permitted under the Human Rights Policy, the former is not.” The University’s position is that Mr. Miller was denied a leadership position with BLinC because of his sexual orientation. See response to □ 102.

104. During a face-to-face meeting with BLinC’s leaders, Dean Baker explained that he had faced a similar situation with CLS in 2004, and that CLS had been allowed to stay on campus as an RSO. App. 1203; App. 0271 [Nelson Dep. 62:16-63:6]; App. 0043 [Baker Dep. 168:12-17].

RESPONSE: Admit, with the qualification that the CLS incident occurred in 2003 and 2004 and offers little support for InterVarsity’s position. As the Court noted in its Order on Plaintiff’s Motion for Preliminary Injunction in *Business Leaders in Christ v. The University of Iowa, et al*, “the Court is not blind to the fact that these events occurred approximately fourteen years ago. Views regarding sexual orientation and gender identity have changed a great deal over the past fourteen years. Thus, the CLS incident’s probative value with respect to the present dispute is diminished both by its age and its ambiguity.”

United States District Court for the Southern District of Iowa, Case No. 3:17-cv-00080-SMR-SBJ, Order filed January 23, 2018, p. 26.

105. BLinC responded that, like CLS, it needed its leaders to actually agree with and live by its beliefs. App. 1203.

RESPONSE: Admit.

106. Dean Baker agreed that this was permissible under the University Policy. App. 1203; App. 0647 [J. Estell Dep. 49:25-50:12]; App. 0271 [Nelson Dep. 64:7-15].

RESPONSE: Defendants are unable to admit or deny this statement, as it is unclear what Plaintiff claims is “permissible under University policy.” Defendants cannot make a blanket admission as to which “beliefs” it can require its members to live by without a more specific statement. Additionally, the deposition testimony cited does not support this statement.

107. Dean Baker gave an example that a student group promoting awareness about global warming could choose leaders based on its beliefs—declining, for example, to give a leadership position to a “climate denier”—and said that BLinC could similarly make leadership requirements based on its beliefs. App. 1203; 0647 [J. Estell Dep. 49:15-50:1-16]; App. 0271 [Nelson Dep. 64:7-22]; App. 0043 [Baker Dep. 168:22-169:1].

RESPONSE: Admit that Dean Baker made the analogy, with the qualification that it is unclear whether a climate denier would be considered a member of a protected class or a person against which discrimination is forbidden under the University’s Human Rights Policy.

108. Thus, at least “at the time of that meeting,” it was “permissible for a student organization at the University of Iowa to require its leaders to embrace the mission of the organization.” App. 0271-72 [Nelson Dep. 64:16-23]; App. 0043 [Baker Dep. 169:2-11].

RESPONSE: Admit, with the qualification that Baker limited his statement to groups which do not intend to pursue illegal activity—which would include discrimination on the basis of a protected class or characteristic. Baker 169:2–11; P. App. 43.

109. It was also acceptable for that requirement to be written into a student group’s constitution and for the group’s leaders to “be required to sign a statement affirming that provision of the constitution.” App. 0271-72 [Nelson Dep. 64:20-65:4].

RESPONSE: Admit.

110. But the University ultimately determined that BLinC could not “remain as a registered student organization in good standing” because BLinC’s “Statement of Faith, on its face does not comply with the University’s Human Rights policy since its affirmation, as required by the Constitution for leadership positions, would have the effect of disqualifying certain individuals from leadership positions based on sexual orientation or gender identity.” App. 0585 [Redington Dep. 67:14-68:17]; App. 402-03.

RESPONSE: Admit.

111. The same student who had filed a complaint against BLinC, also filed a complaint against 24-7 after he applied to lead their freshman bible study group. App. 0114-15 [Cervantes Dep. 67:12-68:4, 69:24-70:3]; App. 0199-211.

RESPONSE: Admit.

112. 24-7’s student leaders and voting members are required to sign its Statement of Faith. App. 0179-82.

RESPONSE: Admit.

113. 24-7 also requires applicants for leadership positions to confess any sins involving sexual immorality, including “inappropriate relations with the opposite sex” and “homosexuality.” App. 1340; App. 1892-1900.

RESPONSE: The 24:7 application asks applicants to discuss “[w]here [applicants] see those sins in [their] life? Have you done anything to see God transform your life in those areas?” There is no indication in the cited documentation that 24:7 would exclude a leader’s application based on any information provided. P. App. 1895.

114. 24-7 stated that because the student espoused a theologically revisionist belief about homosexuality, “it would be difficult” for him to be a leader with 24-7, because he “could not affirm the same beliefs.” App. 0126 [Cervantes Dep. 113: 12-22]; App. 0184.

RESPONSE: Admit.

115. Ultimately, however, the University found no “probable cause” against 24-7, because the student never confirmed whether or not he accepted 24-7’s religious beliefs. 24-7’s leaders thus never made a final decision about whether the student could serve as a Bible leader. App. 0126 [Cervantes Dep. 114:1-115:17]; *see also* App. 0283-84 [Nelson Dep. 110:13-113:6].

RESPONSE: Admit, with the qualification that the overriding reason behind Cervantes’ finding was that there was “insufficient evidence to show the decision was based on Complainant’s membership in a protected class . . .” D. Supp. App. 177. In her finding, Cervantes unequivocally stated that “treating [Complainant] differently than other members due to his sexual orientation would violate the university’s *Policy on Human Rights*.” D. Supp. App. 177.

Constance Cervantes

116. Constance Cervantes was designated as a 30(b)(6) witness to testify about the Human Rights Policy in BLinC's lawsuit against the University, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa). App. 1340; App. 1902.

RESPONSE: Admit.

117. Ms. Cervantes confirmed that the University did not have an all-comer's policy. App. 0102, 0104, 0122 [Cervantes Dep. 19:9-11, 27:15-28:2, 99:7-14].

RESPONSE: Admit.

118. In the course of the BLinC investigation, Tom Baker sent Ms. Cervantes "the most recent memo [he] could find" on the topic of student organizations with statements of faith. App. 0127 [Cervantes Dep. 119:2-24]; App. 0212; App. 0093-94.

RESPONSE: Admit.

119. Dean Baker noted that the memo had issued "before the US Supreme Court issued its decision in the Hastings Law College case, which had an 'all comers' policy," but that "the University of Iowa Human Rights Policy does not mandate an 'all comers' policy, so the Policy articulated in the 2009 memo regarding statement of faith is still current, as far as I know." App. 0127 [Cervantes Dep. 118:21-119:12]; App. 0212.

RESPONSE: Admit.

120. Ms. Cervantes acknowledged that she had received and read the memo, and that the memo's interpretation of the Human Rights Policy was still current and correct. App. 0127-28 [Cervantes Dep. 119:19-24, 121:4-10].

RESPONSE: Admit.

121. Ms. Cervantes acknowledged that, according to the memo, the Human Rights Policy “does not prohibit student groups from establishing membership criteria,” would not require, for example, “Campus Democrats . . . to admit self-identified Republicans into its membership,” and that “the university is obliged to protect the First Amendment right of [a student group’s] members to espouse the group’s basic tenets.” App. 0127-28 [Cervantes Dep. 119:13-122:9].

RESPONSE: Admit.

122. She testified that the Policy only “prohibit[s] discrimination on the basis of protected classification,” which she understood as prohibiting discrimination on the basis of someone’s “status” and not their “belief.” App. 0103, 0107-08 [Cervantes Dep. 22:12-23:2, 40:18-41:8].

RESPONSE: Admit.

123. She testified that a pro-life group could require even its members “to hold pro-life beliefs.” App. 0105-06 [Cervantes Dep. 32:2-33:11]; App. 0244-46.

RESPONSE: Admit.

124. A feminist group could require its “members to sign a statement supporting [its] principles.” App. 0106 [Cervantes Dep. 33:14-34:17].

RESPONSE: Admit, with the qualification that Cervantes stated that such a practice would not be allowed if “[it] prohibited membership based on a protected classification[.]” P. App. 106 [Cervantes 34:13-20].

125. And it would be “okay . . . for an organization to encourage its members to be women.” App. 0106 [Cervantes Dep. 35:8-23]; App. 0247-50.

RESPONSE: Admit.

126. With regard to religious status and belief, Ms. Cervantes testified that the Human Rights Policy prohibits discrimination on the basis of “religion,” which is a protected

classification, but that it does not prohibit discrimination on the basis of “religious belief,” which is not a protected classification. App. 0108-09 [Cervantes Dep. 42:4-15, 42:24-45:7].

RESPONSE: Admit.

127. Thus, she suggested that “a Catholic organization cannot exclude someone because they’re Muslim, but they could exclude them because they don’t embrace Catholic belief.” [App. 0109 [Cervantes Dep. 45:4-20].

RESPONSE: Admit, with the qualification that Cervantes actually stated: “I guess I’d have to know the facts of the case. How are they expressing they don’t understand those beliefs? So I’d look at all the facts and circumstances of the case, and if I felt based on all the facts and circumstances they were making a decision based on religion, I would find it a violation.” P. App. 109 [Cervantes 45:14–20].

128. Similarly, if a Muslim organization “exclude[d] someone” “from a leadership position” “because they’re Catholic,” “that would violate the prohibition against discrimination on the basis of religion,” but if that same organization “excluded . . . a Muslim student because they . . . rejected Muhammad as the prophet,” that could be “okay.” App. 0109 [Cervantes Dep. 46:2-47:25].

RESPONSE: Admit, with the qualification that Cervantes sees a distinction between belonging to a religious group and holding an opinion typically held by members of a particular religious group. P. App. 109 [Cervantes 47:22–25].

129. By contrast, Ms. Cervantes conceded that allowing fraternities to exclude women would violate the Policy “on its face.” App. 0113 [Cervantes Dep. 61:14-62:12].

RESPONSE: Admit.

130. Ms. Cervantes likewise admitted that, if the University's men's sports teams exclude women, that would violate the Policy, "[u]nless there was some other thing like some NCAA rule or something that would, you know, overrule our rule." App. 0123 [Cervantes Dep. 102:8-25].

RESPONSE: Admit.

131. Ms. Cervantes was aware that, "as an employee" of a state university, she had "an obligation to respect the First Amendment rights of students" and student groups, including their freedom of speech, freedom of religion, and right to assemble. App. 0101-02 [Cervantes Dep. 16:8-19, 17:13-18:2].

RESPONSE: Admit.

132. She conceded that a student group does not violate the Policy when it holds worship services or prayer meetings, propounds religious teachings, observes sacraments such as baptisms or communions, celebrates religious holidays, provides religious training to its leaders, or selects an ordained minister as one of its leaders. App. 0128 [Cervantes Dep. 122:10-19].

RESPONSE: Admit, with the qualification that Cervantes did not "concede" these things, as she had no motivation to deny them in the first place.

Thomas Baker

133. At the time of the BLinC investigation, Thomas Baker was the Associate Dean of Students. App. 0004 [Baker Dep. 10:17-21].

RESPONSE: Admit.

134. Dean Baker previously had been deeply involved with the issue involving CLS. *See* ¶¶ 45, 48-86, *supra*.

RESPONSE: Admit.

135. From that experience, he understood that a Muslim group excluding Christians who could not sign an Islamic statement of faith would not be a violation of the Policy: “the Muslim organization would have had a right under the Human Rights Policy to not accept the Christian as a member.” App. 0023 [Baker Dep. 87:21-88:5]; *see also* App. 0025-26 [Baker Dep. 97:10-100:15]; App. 0078-80 (agreeing that as early as 2004, the Human Rights Policy was understood to allow religious groups to exclude members who didn’t share their religious beliefs).

RESPONSE: Admit, though he later stated that if a Muslim group excludes students who are Christians from membership, that act could be a violation of the Human Rights Policy. Baker 91:3–9; P. App. 24.

136. Likewise, it was his understanding that “a religious student organization could require that members agree to the group’s tenets[.]” App. 0023 [Baker Dep. 86:14-21].

RESPONSE: Admit, with the qualification that the rest of Dean Baker’s statement says: “as long as the group’s tenants did not categorically prohibit gay students from becoming members.”

137. Other groups similarly had a right to exclude individuals who did not share the groups beliefs or mission. App. 0026 [Baker Dep. 101:3-8] (noting that “an environmentalist group can exclude climate deniers from membership in their organization”).

RESPONSE: Admit, with the qualification that it is unclear the extent to which the policy would exclude students based on a protected characteristic in example posed by Dean Baker.

138. Dean Baker understood that “the core principle” of the Policy is to protect against “differential treatment” based on “immutable characteristics”—*i.e.*, “what your eye color is,

what your skin color is, things like that.” App. 0009, App. 0035 [Baker Dep. 33:14-22, 134:8-25].

RESPONSE: Admit.

139. Baker acknowledged that “belief” is not an immutable characteristic. App. 0035 Baker Dep. 134:8-25]; *see also* App. 0035 [Baker Dep. 135:8-137:18] (acknowledging that it was “important” under the Policy to distinguish status discrimination from selection based on beliefs or conduct).

RESPONSE: Admit.

140. Thus, at all relevant times, he was “certainly under the belief that groups could have membership standards.” App. 0041 [Baker Dep. 160:10-12].

RESPONSE: Deny. At “the time that the CLS issue surfaced in 2004” Baker was under the impression that groups could have membership standards. Baker 160:10–12. ; P. App. 41.

141. And he further agreed that “forming a group around [a] particular principle is not inherently discriminatory.” App. 0029 [Baker Dep. 112:13-17].

RESPONSE: Admit.

142. Dean Baker even acknowledged that some forms of status-based discrimination— such as having sex-segregated fraternities, sororities, and sports team—were “acceptable.” App. 0029 [Baker Dep. 111:8-112:17].

RESPONSE: Admit.

143. Dean Baker was not aware of any change to the Policy or its interpretation since the time of the CLS issue. App. 0015-16, 0018, 0019, 0026 [Baker Dep. 57:8-58:7, 67:1-4, 71:6-16, 100:3-15]; *see also* App. 0573-74 [Redington Dep. 21:13-22:14] (same).

RESPONSE: Admit.

144. Dean Baker understood that, in enforcing the Human Rights Policy, the University had to follow the constitutional “principle of content neutrality.” App. 0011-12 [Baker Dep. 40:21-42:9]; 0077.

RESPONSE: Admit.

145. Dean Baker was fully aware throughout the BLinC investigation that he had an obligation as state employee to “conform to the First Amendment.” App. 0036 [Baker Dep. 138:14-25].

RESPONSE: Admit.

146. He understood that the Free Speech Clause protects the right of students to express their religious views on campus. App. 0036 [Baker Dep. 140:13-22].

RESPONSE: Admit.

147. He agreed that students may engage in all kinds of religious exercise, including activities such as praying, worshiping, preaching, and administering sacraments, which could make them the “functional equivalent” of a church. App. 0051-52 [Baker Dep. 201:9-20, 202:1-24]; *see also* App. 0824-26 (constitution of The Salt Company, an on-campus church organization); App. 1950 [Kummer Decl. ¶ 18] (“the Newman Catholic Student Center holds Mass for students several times throughout the week”).

RESPONSE: Admit.

148. He admitted that the University telling a religious group who to select as leaders would “raise questions under the Free Speech Clause.” App. 0037 [Baker Dep. 142:22-143:21].

RESPONSE: Admit.

149. And he admitted that the ability of groups, including on-campus religious groups, to select leaders based on their beliefs is “beneficial,” and an “aspect of democracy,” and a “positive good,” he just preferred that the selection be done by “popular vote and not by some other mechanism.” App. 0030-31 [Baker Dep. 117:13-121:5].

RESPONSE: Admit.

150. He noted specifically that the situation with BLinC did “raise First Amendment concerns in my mind.” App. 0037, 0041 [Baker Dep. 142:22-143:21, 158:4-13].

RESPONSE: Admit.

151. He knew that First Amendment issues were implicated by the University’s investigation of BLinC, and he located for Ms. Cervantes the University’s 2009 memo identifying the First Amendment protection for student groups with statements of faith and told her that this policy “is still current, as far as I know.” App. 0037 [Baker Dep. 144:4-145:20]; App. 0212; App. 0093.

RESPONSE: Admit.

152. Dean Baker acknowledged that religious groups play an important role on campus and that allowing them to “espouse a particular ideology or belief or a mission” is “beneficial” because it promotes “persistence,” *i.e.*, “it promotes progress toward graduation, it gives students a sense of camaraderie by meeting other students from their faith, working with other students from their faith.” App. 0030 [Baker Dep. 114:11-115:25].

RESPONSE: Admit.

William Nelson

153. In the BLinC lawsuit, Dr. Nelson was designated under Federal Rule of Civil Procedure 30(b)(6) to speak on behalf of the University concerning its “policies and/or procedures regarding registered student organizations,” including its Human Rights Policy. App. 0258

[Nelson Dep. 12:14-23]; App. 0361; App. 0284-85 [Nelson Dep. 115:16-116:7, 118:1-7] (acknowledging designation to testify for University regarding its “policies and/or procedures regarding Registered Student Organizations”).

RESPONSE: Admit.

154. Dr. Nelson had been involved in most of the incidents concerning CLS’s status as a registered student organization and was aware that penalizing a student group because of its religious beliefs “would be a violation of the law” and “would also violate the Human Rights Policy.” App. 0284 [Nelson Dep. 113:7-125:9].

RESPONSE: Admit.

155. Nelson admitted that other groups are allowed to “assemble around an agreed-upon mission.” App. 0297 [Nelson Dep. 167:22-23].

RESPONSE: Admit.

156. Political groups, for example, could require students to sign a statement affirming the group’s political values. App. 0297-98 [Nelson Dep. 168:25-170:1].

RESPONSE: Admit.

157. He admitted that telling student groups what they had to believe or say, including in their student group constitutions, violated federal and state law. App. 0278-80 [Nelson Dep. 91:25-95:12, 196:24-197:10].

RESPONSE: Admit.

158. Dr. Nelson acknowledged that it is the University’s desire “to encourage a broad diversity of student organizations” because they “add[] a richness to the educational experience and campus environment” and “provide . . . fellowship opportunities for very important learning

outside of the classroom, opportunities to engage the curriculum with the co-curriculum in a more practical experiential way.” App. 0356 [Nelson Dep. 290:12-291:2].

RESPONSE: Admit.

159. He further agreed that “an important part of the University’s purpose of having student groups” is to give students “opportunity to confront ideas that they might disagree with and learn how to debate and understand and grapple with positions that maybe they have never grappled with before.” App. 0356 [Nelson Dep. 291:7-15].

RESPONSE: Admit.

160. The only justifications Dr. Nelson provided for trying to regulate student groups’ selection of leaders is “to provide equal treatment to all under the law” and the University’s “obligation as an institution to comply with federal, state, and [the University’s] own . . . laws and policies. App. 0356-57 [Nelson Dep. 292:3-294:23]; App. 1340; App. 1923-25.

RESPONSE: Deny. The University publicly sets forth its goals in regard to the regulation of student groups in its policies and procedures governing those groups. In its “Registration of Student Organizations” document, the University states that “Student organizations are an important link in the co-curricular activities of the University of Iowa. They play an important role in developing student leadership and providing a quality campus environment. As such, the University encourages the formation of student organizations around the areas of interests of its students, *within the limits necessary to accommodate academic needs and ensure public safety.*” P. App. 366 (emphasis added). The University also requires each student organization to abide by the mission of the University, its supporting strategic plan, policies, and procedures. P. App. 366. The RSO document specifically incorporates the Human Rights Policy, which strives to ensure that

all students are granted equal access to educational opportunities. P. App. 366. The University expects that participation in student organizations will “enhance a student’s educational experience and the University deems this important to our students’ success . . .” P. App. 366.

161. But, “speak[ing] for the University,” Dr. Nelson acknowledged that “student groups are not acting on behalf of the University when they select their leaders” and neither University policy nor the law “require [the University] to control who student organizations select as their leaders.” App. 0357, 0356, 0357, 0305 [Nelson Dep. 294:4-7, 293:14-17, 294:24-295:2, 197:19-198:9].

RESPONSE: Admit.

Lyn Redington

162. Dean Lyn Redington was the Dean of Students during the BLinC investigation and until May 1, 2018. App. 0569-70. She conceded that University student groups had the right to form around common interests, including interests concerning religion, gender identity, politics, sports, music, drama, and art, and so forth. App. 0575 [Redington Dep. 26:25-27:13].

RESPONSE: Admit.

163. It was her understanding that the University was “obliged to protect the First Amendment right” of students to “espouse [a] group’s basic tenets.” App. 0574 [Redington Dep. 22:15-23:3].

RESPONSE: Admit.

164. Dean Redington agreed it would not “ever be okay for the University of Iowa to tell a religious student group that it cannot consider religion in selecting its leaders,” because “that’s

their belief,” which is “protected by the First Amendment.” App. 0576 [Redington Dep. 30:20-31:4].

RESPONSE: Admit.

165. If she ever “thought the University was doing that,” she hoped she would “try to stop them” as that “would raise red flags in [her] mind that the University should be very cautious.” App. 0576 [Redington Dep. 31:7-13].

RESPONSE: Admit.

166. Dean Redington agreed that a religious student group would not violate the Policy if it “allow[ed] everybody to join as a member” and only screened its leaders for “affirmation of the organization’s religious beliefs.” App. 0579-80 [Redington Dep. 44:13-45:9, 46:4-13].

RESPONSE: Admit.

167. She agreed it was problematic to tell a religious group it couldn’t use religion as a factor for selecting its leaders, while allowing an environmental group to use its environmental creed as a factor in selecting its leaders. App. 0585 [Redington Dep 66:5-14]. And she conceded that, under the University’s Policy, it was permissible for any group to restrict its leadership to individuals who shared that group’s philosophy or beliefs. App. 0581-82 [Redington Dep. 53:24-54:2].

RESPONSE: Deny. Redington reviewed all of the information and arguments made by Plaintiff’s counsel, and stated that she “doesn’t know” if BLinC’s Statement of Faith violated the Human Rights Policy. She agreed with Plaintiff’s counsel that “[t]here’s a conflict here, correct?” Redington 59:21–62:7; P. App. 583-584. Admit that Redington agreed that she may have made a mistake in claiming that BLinC had never asserted its “status” versus “belief” defense prior to its appeal to Redington. 72:19–75:3; P. App. 587.

168. **Error! Bookmark not defined.**Dean Redington agreed that part of learning in the university setting is “to be exposed to new ideas, different ways of thinking,” “[e]ven if those ideas might be offensive,” and that student groups were “absolutely” part of the process of helping “students to engage with difficult ideas and grapple with them and expand their intellectual horizon while at the University.” App. 0572 [Redington Dep. 16:18-17:19].

RESPONSE: Admit.

169. Dean Redington also acknowledged that “general” student organizations, which includes groups like InterVarsity, have “almost no connection” to the University and that the University has structured its RSO program to distance itself from groups’ individual messages or purposes. App. 0585-86 [Redington Dep. 69:15-72:18]; 0402, 0388.

RESPONSE: Admit.

The Student Org Clean-Up Effort

170. After Dean Redington denied the appeal, BLinC filed suit in this Court. Complaint, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Dec. 11, 2017).

RESPONSE: Admit.

171. On motion for preliminary injunction, the Court ordered that BLinC’s registered status be reinstated, in large part because the record evidence showed that other student organizations were “permitted to organize around their missions and beliefs, though [BLinC] cannot.” Order on Plaintiff’s Motion for Preliminary Injunction at 27, Dkt. 36, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Jan. 23, 2018).

RESPONSE: Admit.

172. The Court thus concluded that “on the current record” BLinC had “shown that the University does not consistently and equally apply its Human Rights Policy,” raising “an issue regarding whether BLinC’s viewpoint was the reason it was not allowed to operate with membership requirements that the University had determined violated the Policy, while at the same time [other groups were] not subjected to any enforcement action.” Order on Plaintiff’s Motion for Preliminary Injunction at 28, Dkt. 36, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Jan. 23, 2018).

RESPONSE: Admit.

173. In response to the Court’s order and in an effort to apply its Human Rights Policy more evenly, the University adopted a “Student Org Clean Up Proposal,” whereby it decided to review all student organization constitutions in late January and early February 2018 for compliance with the Policy. App. 0290-91 [Nelson Dep. 139:10-141:13].

RESPONSE: Admit.

174. The purpose of the review was to “[e]nsure all Registered Student Organizations (RSO) have governing documents that have all required statements,” meaning the “Human Rights Clause” and a required “Financial Statement.” App. 0291, 0302 [Nelson Dep. 143:11-144:19, 185:4-18]; App. 0407.

RESPONSE: Admit.

175. Reviewers were further instructed “to see if there were other perhaps contradictory language that was also to be noted.” App. 0291 [Nelson Dep. 144:4-6].

RESPONSE: Admit.

176. Specifically, reviewers were instructed to “[b]riefly skim” each constitution “to make sure no language that would contradict the HR Clause is included. App. 0302 [Nelson Dep. 186:1-6]; App. 0408; App. 0291.

RESPONSE: Admit.

177. Reviewers were told that “[i]f included,” contradictory language “is usually found in the leadership qualifications, elections or membership sections.” App. 0302 [Nelson Dep. 186:1-6]; App. 0408.

RESPONSE: Admit.

178. Constitutions with “language that contradicts the HR Clause” were to be referred to the University’s in-house counsel, Nate Levin. App. 0302 [Nelson Dep. 186:1-6]; App. 0408.

RESPONSE: Admit.

179. Contradictory language was defined as language requiring leaders or members to embrace certain “beliefs/purposes.” App. 0302 [Nelson Dep. 186:1-6]; App. 0408.

RESPONSE: Admit.

180. Reviewers were instructed that while registered student organizations could “still have purposes/mission statements related to specific classes or characteristics of the HR Clause,” “membership or leadership” could not “be contingent on the agreement, disagreement, subscription to, etc., of stated beliefs/purposes which are covered in the HR Clause.” App. 0302 [Nelson Dep. 186:1-6]; App. 0410.

RESPONSE: Admit.

181. The reviewers were instructed to “look at” religious student groups first. App. 0310-11; 0312; [Nelson Dep. 220:20-221:13; 227:16-228:4]; App. 0419.

RESPONSE: Admit.

182. The constitutions of religious groups were reviewed twice: the first review identified membership or leadership selection criteria and a second review was done to highlight groups whose criteria pertained to marriage or sexuality. App. 0310-12 [Nelson Dep. 220:9-227:15]; App. 0411-18.

RESPONSE: Admit that reviewers completed a second review. Deny that it was done to “highlight” groups criteria pertained to marriage or sexuality. Rather, Nelson testified that the second review was done to “double-check” and to “make certain[.]” App. 0310-12 [Nelson 227:1–5].

183. Notably, the University’s more than fifty sororities and fraternities were not part of the initial review, even though roughly 17% of the University’s students pledge and are impacted by their policies. App. 0310; 0307 [Nelson Dep. 207:10-13, 205:15-206:7]; App. 0411; App. 1938, 1940.

RESPONSE: Admit.

184. The review team was “told to hold off” on fraternities and sororities due to the “complexities” of their “national and international[]” connections, which would have triggered “several layers of consultation” if they were asked to make any changes. App. 0307 [Nelson Dep. 207:15-18].

RESPONSE: Admit.

185. Other organizations with national connections, such as the Federalist Society or InterVarsity, were not exempted from the initial review. App. 0307 [Nelson Dep. 208:1-9].

RESPONSE: Admit.

186. Ultimately, the constitutions of fraternities and sororities were also reviewed, but only after the University formalized its existing *de facto* exemption from the Policy that allowed them

to exclude members and leaders based on sex. App. 0312; 0307-08 [Nelson Dep. 126:2-127:20, 208:18-210:17]; App. 0411 (noting that social fraternities/sororities “maintain a legally protected single gender status”); App. 1330; App. 1334; App. 1345.

RESPONSE: Admit.

187. The exemption was justified on the ground that Title IX gives universities the discretion to allow fraternities and sororities to remain segregated by sex. App. 0308 [Nelson Dep. 210:12-211:25].

RESPONSE: Admit.

188. NCAA and other sports teams at the University are also allowed to remain segregated by sex based on a “long established” tradition, even though that also technically violates the Policy. App. 0308-09 [Nelson Dep. 212:19-213:16]; *see also* ¶¶ 30-32, *supra*.

RESPONSE: Admit.

189. And again for “historical reasons,” the University has also made an exception for sex-segregated student sports clubs which have “long [been] allowed . . . to be single sex,” with the University turning “a blind eye to that potential violation of the Human Rights Policy.” App. 0309-10 [Nelson Dep. 214:3-215:18, 218:3-219:24].

RESPONSE: Admit.

190. Currently, there is no intention to force “student sports clubs that are sex-based to integrate”; “they’re going to continue to be allowed to be single sex clubs.” App. 0310 [Nelson Dep. 219:15-220:2].

RESPONSE: Admit.

The University’s Deregistration of InterVarsity

191. In June 2018, Defendant Andrew Kutcher told InterVarsity that language in “Articles II, III, IV and VII” of its constitution contradicted the Policy. App. 0317 [Nelson Dep. 246:25-248:24]; App. 0422; App. 2007, 2015 [Schrock Decl.Ex. D & E].

RESPONSE: Admit.

192. The cited provisions in InterVarsity’s constitution simply require InterVarsity’s leaders to be Christian. App. 1995-98; App. 1983, 1986 [Schrock Decl. ¶ 19, ¶ 38].

RESPONSE: Admit.

193. InterVarsity’s president, Katrina Schrock, responded that it is “important to have Christian leadership in a Christian organization. We do not in any way discourage those who may not subscribe to the basis of faith in Article II from participating in [InterVarsity] as members, but we do recognize that having Christian leadership is important to the fulfillment of our purpose.” App. 0256; App. 0422-27; App. 2007, 2015 [Schrock Decl. Ex. D & E].

RESPONSE: Admit.

194. Mr. Kutcher responded that:

I recognize the wish to have leadership requirements based on Christian beliefs, however Registered Student Organizations are considered University of Iowa programs and thus must follow the Human Rights Clause in its entirety. Having a restriction on leadership related to religious beliefs is contradictory to that clause.

App. 0256; App. 0422-27; App. 2006, 2014 [Schrock Decl. Ex. D & E].

RESPONSE: Admit.

195. Katrina asked if rather than stating that leaders “must subscribe” to the group’s Christian beliefs the constitution could say “something like ‘are requested to subscribe . . .’ or ‘are strongly encouraged to subscribe’” App. 0256; App. 0422-27; App. 2005, 2013 [Schrock Decl. Ex. D & E].

RESPONSE: Admit.

196. Mr. Kutcher responded that the University would “discuss [that question] with our university attorney.” About five hours later, he sent an email stating that he had “just received word that we would not approve the change in language you proposed” because “the University and the Center for Student Involvement and Leadership must enforce our Human Rights Clause when it comes to leadership and membership.” App. 0256; App. 0422-27; App. 2013, 2005 [Schrock Decl. D & E].

RESPONSE: Admit.

197. Mr. Kutcher further stated that InterVarsity would be “deregistered” if it failed to submit a constitution with the required change, and that it could only “become reregistered when [it] submit[ted] governing documents compliant with the Human Rights Clause.” *Id.*

RESPONSE: Admit.

198. Dr. Nelson, the University’s Rule 30(b)(6) witness for construing the Policy as to student groups, testified that the “official interpretation” of the Policy was that “[t]he Human Rights Policy does allow you to . . . require leaders and members to share beliefs [and] purposes.” App. 0305 [Nelson Dep. 197:19-198:9].

RESPONSE: Admit that the above statement reflects Dr. Nelson’s understanding of the policy at the time of his deposition.

199. But when questioned about the language in InterVarsity email, he stated that the email must reflect the University’s “official position” because the University officer writing it “said that he received word from the General Counsel’s Office that the language they proposed was not acceptable.” App. 0318-19 [Nelson Dep. 250:14-253:9].

RESPONSE: Admit.

200. Dr. Nelson stated that it “appears that the -- the General Counsel has given . . . the direction,” and concluded that what InterVarsity was told must be “the position of the University.” App. 0319 [Nelson Dep. 255:13-256:5-16].

RESPONSE: Admit.

201. InterVarsity did not remove its requirement that its leaders embrace and exemplify its faith. The University deregistered InterVarsity for that reason, and only for that reason. App. 1987-88 [Schrock Decl.].

RESPONSE: Admit, with the qualification that Dr. Nelson also stated that he was not sure whether the constitution was still under review by the General Counsel’s office.

202. As a result of the University’s review of student groups, over thirty groups were deregistered. App. 2134-35 (University email identifying the 38 that were deregistered). Several of the deregistered groups were religious groups that required their leaders to agree with their faith. *See, e.g.* ¶ 34, *supra*, (listing **Imam Mahdi Organization**, which required both leaders and voting members to “[b]e Muslim, Shiea”; and **Geneva Campus Ministry**, which allowed “religious and moral qualifications for certain leadership positions”).

RESPONSE: Admit.

203. InterVarsity believes that maintaining registered status is very important to its ministry. App. 1989 [Schrock Decl. ¶ 51]; App. 1956-57 [Kummer Decl. ¶¶ 40-46].

RESPONSE: Admit.

204. Registered status makes RSOs eligible to access or apply for many unique benefits, resources, and opportunities. App. 1205-06; App. 0366; App. 0301 [Nelson Dep. 184:8-24]; App. 0404-06; App. 1327-29; App. 1188-93.

RESPONSE: Admit.

205. Without registered status, InterVarsity cannot participate in student orientation activities, including graduate and international student orientations, otherwise access student organization fairs or other University resources that allow groups to communicate about events (such as signs and billboards), or apply for funding. App. 1956-57 [Kummer Decl. ¶¶ 40-46]; App. 1989-90 [Schrock Decl. ¶¶ 51-54]. InterVarsity would also be ineligible for the free campus meeting spaces and dedicated RSO websites available to RSOs. App. 1989-90 [Schrock Decl. ¶¶ 51-53]; App. 1956 [Kummer Decl. ¶ 40]. And InterVarsity would be ineligible to engage in certain opportunities for speech that are available only to RSOs. App. 1956 [Kummer Decl. ¶ 40].

RESPONSE: Admit.

206. Losing registered status would further impose specific harms on InterVarsity because many of its leaders and participants are commuters and international students, for whom the benefits of RSO status are particularly important. App. 1957 [Kummer Decl. ¶¶ 45-46].

RESPONSE: Admit that Mr. Kummer has stated that many of InterVarsity's leaders and participants are commuters and international students. Deny that RSO benefits are especially important to those specific groups.

207. Even just the short period of deregistration that InterVarsity suffered was damaging. Being publicly deregistered for allegedly violating the nondiscrimination Policy harmed InterVarsity's reputation and made students more tentative to participate in the group. App. 1989-90 [Schrock Decl. ¶¶ 53]; App. 1959 [Kummer Decl. ¶ 54]. The University's action also harmed InterVarsity's ability to find, train, and retain student leaders. App. 1959 [Kummer Decl. ¶ 54].

RESPONSE: Admit that the statements above are consist with the information provided in Ms. Schrock and Mr. Kummer’s affidavits.

Current Policy

208. Under the University’s current articulation of its Policy, religious registered student organizations are not permitted to require their leaders to agree with and live by the organization’s religious beliefs. App. 0319 [Nelson Dep. 255:13-256:5-16]; App. 1987 [Schrock Decl. ¶¶ 39-42].

RESPONSE: Admit.

209. Other groups are still permitted to have statements requiring or “encouraging” their leaders and members to be part of a class protected under the Policy. *See* ¶¶ 34, 40, *supra*; App. 0106 [Cervantes Dep. 35:8-23]; App. 0247; *see also* App. 2024-2132 (providing examples of groups with current University-approved constitutions that limit leadership or membership based on characteristics identified in the Policy).

RESPONSE: Admit

210. For instance, feminist and pro-life groups are permitted to require their leaders and members to sign statements affirming the group’s ideological beliefs. ¶¶ 33, *supra*; App. 0105-06 [Cervantes Dep. 32:2-34:17]; App. 0244.

RESPONSE: Admit.

211. The group Iowa National Lawyers Guild is still a registered student group, and can “exclude people who don’t agree” with its political beliefs, even though Dr. Nelson agreed that would technically constitute discrimination on the basis of creed in violation of the Policy. App. 0319 [Nelson Dep. 253:10-16]; *see also* App. 2061-65 (**Caribbean Student Association**, a registered group that currently has a sex-based restriction on its “Miss CSA” officer, who is the

“crowned winner of the Miss CSA Pageant” and “her responsibility” is to help with community service projects and with “teaching the girls” who will be the next year’s pageant contestants).

RESPONSE: Admit.

212. Most of the other groups identified that limit their leadership or membership based on non-religious creeds or missions are still registered student groups. *Compare* App. 2134-35, with ¶ 33, *supra*.

RESPONSE: Admit.

213. Even most of the identified religious groups with explicit religious requirements for their leaders, including CLS, 24-7, and Love Works, were never deregistered and remain registered student organizations. *Compare* App. 2134-35, with ¶ 32, *supra*; *see also* App. 2025 (current Love Works constitution available online).

RESPONSE: Admit, with the qualification that the University has suspended its review of RSO constitutions pending the outcome of the *BLinC* litigation.

214. And all of the other groups identified that, while not explicitly limiting membership send the same message by adopting a mission or purpose to suggest a preference for one protected class over another or one particular creed (secular or religious) favoring a protected class over another, are still registered student groups. *Compare* App. 2134-35, with ¶ 40, *supra*.

RESPONSE: Deny. An RSO’s articulation of a purpose or mission does not automatically equate to a preference for one protected class over another.

215. The University’s own programs that differentiate in recipients and beneficiaries based on protected categories also remain in place. *See* ¶¶ 44-50, *supra*.

RESPONSE: Admit.

216. Several fraternities and sororities at the University state that they were founded to serve individuals from certain races or nationalities and have reported membership composed entirely of individuals from those populations. App. 1944 (listing Alpha Kappa Alpha, Alpha Phi Alpha, Delta Sigma Theta, Phi Beta Sigma as having 100% African American membership); App. 1945 (listing Lambda Theta Nu, Lambda Theta Phi, and Sigma Lambda Beta as having 100% Hispanic/Latino(a) membership); *see also* App. 2087-2110 (University webpages describing historically African-American and Hispanic/Latino chapters).

RESPONSE: Admit.

217. The University's website lists 53 fraternity and sorority chapters on campus, states that fraternities and sororities have been at the University for over 150 years and informs students that fraternities and sororities are the "largest and most successful support networks available to Hawkeye students." App. 1938.

RESPONSE: Admit.

218. The University's filings in the *BLinC* lawsuit have likewise admitted that it does not have an all-comers policy and does not evenly apply its policy to all registered student groups or University programs. For instance, the University admits that its new policy grants "many exceptions" to "various clubs, sports teams, and even scholarship programs"—as well as to Greek groups—and that it overlooks these "apparent violations" of its policy "for a variety of reasons," including that "multiple groups provide safe spaces for minorities." *See* Dkt. 81-1 at 17-18, *Business Leaders in Christ v. University of Iowa*, No. 17-cv-80 (S.D. Iowa); *see also id.* at 30 (admitting "the University's decision to permit fraternities, sororities, sports teams, and groups and programs meant to assist historically groups which have been historically discriminated against to exist on campus."); *accord id.* at 36 (noting "the exemptions [the

University] has provided to campus groups including sports teams, fraternities, and sororities”). The University also stated that it “freely admits that its review process for student constitutions is inconsistent.” *Id.* at 22. And the University states that it “admit[s] that the University does not require its student groups to comply with an ‘all-comers’ policy.” *Id.* at 11.

RESPONSE: Admit.

THOMAS J. MILLER
Attorney General of Iowa

/s/GEORGE A. CARROLL
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ATTORNEYS FOR DEFENDANTS

Original filed electronically.
Copy electronically served on all parties of record.

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on January 15, 2019:	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Betty Christensen</u>	



The Division of Student Life fosters student success by creating and promoting inclusive educationally purposeful services and activities within and beyond the classroom.

Fraternity & Sorority Life
260 IMU - Student Life Organization Office Suite
Iowa City, IA 52242

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EXHIBIT

12

DEPONENT NAME:

Shivers

DATE:

3/27/19

P000881

App 1938

IVCF App 2607

**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.

Civ. Action No. 18-cv-00080

**FIFTH DECLARATION
OF ERIC BAXTER**

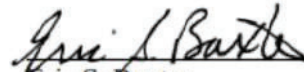
I, Eric Baxter, declare as follows:

1. I am Senior Counsel at the Becket Fund for Religious Liberty. I represent Plaintiffs InterVarsity Christian Fellowship/USA and InterVarsity Graduate Christian Fellowship in the above-captioned matter.

2. Attached as **Exhibit 1** is a true and accurate copy of an invoice produced by InterVarsity USA and bates-stamped IVCF-000372 to IVCF-000374.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 17th day of January, 2019.


Eric S. Baxter



AXLEY BRYNELSON, LLP

.....

2 East Mifflin Street Suite 200
 Post Office Box 1767
 Madison, WI 53701-1767

Federal I.D. # 39-0804160
 Please include our file number or
 invoice number with remittance.
 Telephone: (608) 257.5661
 Facsimile: (608) 257.5444

InterVarsity Christian Fellowship/USA
 635 Science Drive
 P.O. Box 7895
 Madison, WI 53707

Our File No. 15120.62788

PAID

FOR LEGAL SERVICES RENDERED,
 DISBURSEMENTS AND COSTS ADVANCED
 June 5, 2018-August 6, 2018

RE: IVCF-IOWA

Date (2018)	Description of Services Rendered	Hours
6/5	University of Iowa: Several Emails from and to Becket and to Greg re new enforcement practice.	.20
6/6	U of Iowa: email to Brian re staff contact information. Email to Kathie Haug and Howie Meloch re same. Emails from and to Becket re status. Emails from Kathy and Wade Summers; email to Becket lawyers re next steps.	.50
6/7	University of Iowa: Emails from and to Becket and from and to Greg and to Becket re representing InterVarsity.	.25
6/8	U of Iowa; Emails with Becket attys and with staff. Emails with Greg. Emails from and to staff and to Becket lawyers. Respond to question from Brian. Respond to question from Becket.	.90
6/9	Iowa: emails re next steps with Becket and staff.	.40
6/11	U of Iowa: Review recent emails from Staff; update Becket and suggest next steps. Emails from and to Becket and to Staff.	.35
6/13	Iowa: emails from InterVarsity student leader and from Wade and email to Becket re same. Emails from Becket and to Wade re clarification needed.	.35
6/14	Iowa: emails from and to Becket.	.10

6/15	U of Iowa: Email requesting status report to Wade; email to Becket re same. Emails from Becket and to Greg A/C Priv. [REDACTED]. Email from Wade with updates and email to Wade with additional questions, and to Becket.	.55
6/16	U of Iowa: email from Greg and to Becket.	.10
6/18	Iowa: Emails from and to Becket re status.	.05
6/22	U Iowa: email from and to Becket re status.	.05
6/26	Iowa: emails from and to Becket re status.	.05
6/28	Iowa: email from Becket and email to client re recent developments.	.15
6/29	Iowa: Emails from Becket and from 1st Amendment Partnership re language in the Order in Blinc.	.05
7/6	Iowa: Review email from Brian and voice mail from Kevin Kummer; email to Brian and conf with Kevin Kummer. Forward numerous emails to Becket.	1.15
7/7	Iowa: Review numerous emails from Kevin Kummer; respond to email from Becket re same; send email to Wade requesting update. Email from Wade and email to Becket.	.45
7/12	Iowa: emails from and to Becket re conf call and email to Kevin Kummer re same.	.10
7/13	Iowa: Emails from Becket and to Kevin Kummer and to Becket.	.15
7/16	Iowa: several emails with Kevin Kummer; emails from and to Becket; conference with Becket lawyers; Several emails to and from Wade Summers; many emails to and from Kevin Kummer. Conf with Wade, Becket lawyers Eric Baxter and Daniel Blomberg.	1.70
7/17	Iowa: Several emails among Kevin K and Becket lawyers; conf call with Kevin K and Becket lawyers.	.55
7/18	Iowa: Status report to Greg and Brian; Conf with Becket lawyers and Kevin K re background information; email from Greg and to Becket re Greg's questions.	1.60
7/19	Iowa: Review recommendation from Becket; emails from and to Greg Jao re same. Review emails from 1st Amendment Partnership to Tony Gatewood and emails from Wade and Becket re same; email to Tony Gatewood re same.	.30
7/20	Iowa: Review several emails with numerous attachments from Kevin Kummer; emails to Greg and Brian re same.	.45
7/23	Iowa: Several emails from and to Becket and from and to Greg re interview with student leader.	.35
7/25	Iowa: Emails from and to Greg Jao re arranging conf with A/C [REDACTED] and Becket; emails to Beck and A/C [REDACTED] re same. Respond to questions from Greg re which organizations received an email from the University on April 20. Email to Becket suggesting times A/C [REDACTED] A/C Priv. [REDACTED].	1.15

8/1	Iowa: Respond to email from Becket lawyer re conversation with Wade A/C Priv. [REDACTED]. Several additional emails to and from Greg Jao and from and to Becket.	.75
8/2	Iowa: several emails among Greg, Becket and me; conf with Becket attorneys. Report to Greg re same. Emails from Greg and to Becket re next steps. Review Greg's email to Jason and other advising A/C Priv. [REDACTED]. Call from Greg re his conversation with Wade.	1.35
8/3	Iowa: review draft A/C Priv. [REDACTED] and provide Becket with comments.	.60
8/4	Iowa: review emails from Kevin Kummer and several from and to Becket.	.10
8/6	Iowa: Review and comment A/C Priv. [REDACTED]; many emails from and to Becket and Greg and Christy re same. Conf call with Becket attys and Director of Communications, and Christy. A/C [REDACTED]. Several emails with campus staff and student leadership.	1.35
Total		16.15

Hours**Total****16.15****\$4,037.50**