

No. 19-1696

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

BUSINESS LEADERS IN CHRIST,

Plaintiff-Appellant,

v.

THE UNIVERSITY OF IOWA, ET AL.

Defendants-Appellees.

On Appeal from the U.S District Court for the
Southern District of Iowa,
No. 3:17-cv-00080

JOINT APPENDIX VOL. IX

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

<p>BUSINESS LEADERS IN CHRIST,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>THE UNIVERSITY OF IOWA, <i>et al.</i>,</p> <p style="text-align: center;"><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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COME NOW the Defendants, pursuant to Fed. R. Civ. P. 56 and Local Rule 7(e), and resist Plaintiff’s Motion for Summary Judgment, and state to the court as follows:

1. A court should only grant a motion for summary judgment if “the movant shows that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex v. Caltrett*, 477 U.S. 317, 321 (1986).

2. A dispute is “genuine” where 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.*

3. Here, Plaintiff has not demonstrated that “there is no genuine dispute as to any material fact” in this case. *See* Fed. R. Civ. P. 56(a); *Celotex v. Caltrett*, 477 U.S. 317, 321 (1986). To the contrary, Plaintiff’s briefing and voluminous Statement of Facts highlights the many material facts at issue in each of its claims.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiff's Motion for Summary Judgment in its entirety.

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Attorney General of Iowa

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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 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>	

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<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Betty Christensen</u>	



OFFICE OF
GENERAL COUNSEL

120 Jessup Hall
Iowa City, Iowa 52242-1316
319-335-3696 Fax 319-335-2830

22 June 2009

M. Casey Mattox, Esq.
Attorney at Law
Center for Law & Religious Freedom
8001 Braddock Rd, Ste 300
Springfield, VA 22151

Re: Christian Legal Society

Dear Mr. Mattox:

This letter responds to the concerns you raised in your June 3, 2009, letter, regarding the amendment of the By Laws of the Graduate and Professional Allocations Committee (GPAC) of the University of Iowa. You noted two provisions in particular: By Laws V(C)(3) and V(D)(8); and you requested that the University bring these By Laws into compliance with its constitutional obligations. Thank you for bringing these concerns to our attention.

We have reviewed the relevant provisions of GPAC's amendments to its By Laws and concluded that By Laws V(C)(3) and V(D)(8) should be removed. The Vice President for Student Services has taken action to remove these provisions. Funding requests submitted by religious student organizations are scheduled to be reviewed by GPAC in September. At that time, all religious student organizations will be permitted to apply for GPAC funds, and GPAC funds will be allocated in compliance with constitutional standards.

You requested institutional changes to avoid this situation in the future. We decline to provide an exemption from religious discrimination rules for religious student groups, as you have proposed. We have implemented training on these issues, however, for members of GPAC and the Student Assembly Budgeting & Allocating Committee (SABAC).

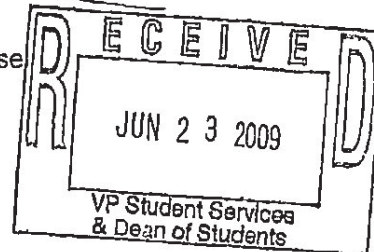
Again, we appreciate your bringing these issues to our attention. Please feel free to call or write regarding any remaining concerns you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria Lukas".

Maria Lukas
Senior Associate Counsel

C: Tom Rocklin
Tom Baker



BLinC-Def MSJ Supplemental Appendix 000167

JA 2337

TAB 30

2/22/2017

Print Response

admin only required

24:7 Student Leader Application

The purpose of this application is to help staff get to know you. There are no right and wrong answers, so you are free to be honest in your responses. Thank you for taking the time to fill it out!

Profile

Name: Marcus Miller
 email: marcus-miller@uiowa.edu
 contact phone: (515) 368-7152

EXHIBIT

tabbies

72 GK
9-20-18

What is your year in school?

- ☒ Freshman
☐ Sophomore
☐ Junior
☐ Senior
☐ Grad
☐ Other

Major

Business Management and Economics

Anticipated Graduation date

May 2019

2/22/2017

Print Response

Where are you living in the upcoming academic school year?

Daum Hall (RA)

Page 1 of 5

BACKGROUND AND PERSONALITY

1 *

Give a brief summary of your life including your home background and your spiritual background. Focus on the story of when and how Jesus redeemed your life and reconciled you to God through Jesus. Please be concise — limit to space below.

Growing up, I never had a personal relationship with God. I was agnostic in middle school, and thought going to church was a waste of time. God softened my heart and I accepted Jesus as my Lord and Savior when I was a sophomore in high school.

2 *

How have you seen the power of the gospel of Jesus transform your life over the past 1-2 years? List specific highlights and examples.

-Jesus has given me an incredibly missional heart. I love to be intentional with building friendships and relationships with those around me, with the hopes of one day being able to share the Gospel with them. I chose my room mate this year purposely (an atheist) to show him God's love through serving him and being a light.

-God has completely changed my what used to be a judgemental and prideful heart of one that wants to just love on others more and more. Being here at Lowe, I have realized that I am just as sinful as anyone else and no better than anyone else.

3 *

What, in your opinion, are your strengths and weaknesses?

Strengths: Relating to people and seeking out the lost.

Weaknesses: Pride and Selfishness

2/9

2/22/2017

Print Response

4 *

Please summarize your current involvements over the past year, including work, organizations, campus ministries, extra-curricular activities, etc. Do you feel like this schedule allowed you to steward your time well (Matthew 25:14-30)?

24:7 and Verve (2 nights a week)

Mock trial (3 nights a week)

Business Leaders in Christ (1 time a week)

I believe I did a good job balancing school, friends, and spending time in prayer and Bible study.

5 *

What are your spiritual gifts? If you don't know, go to our website and read this link:
<http://www.spiritualgiftstest.com/test/adult>

Evangelism, Mercy, Exhortation

Page 2 of 5

CHARACTER

AS BELIEVERS IN JESUS CHRIST, WE ARE ALL A WORK IN PROGRESS. 24:7 STAFF WOULD LIKE TO KNOW YOU BETTER AND SEE WHERE GOD IS AT WORK IN YOUR LIFE! REMEMBER THAT STRUGGLING WITH SIN DOES NOT NECESSARILY DISQUALIFY YOU FROM LEADERSHIP. IN FACT, AS YOU GROW IN MATURITY YOU WILL SEE YOUR SIN MORE CLEARLY AND HOLD ON TO JESUS' RIGHTEOUSNESS MORE TIGHTLY. NEVERTHELESS, GOD DESIRES THAT AS WE'RE BEING TRANSFORMED INTO THE IMAGE OF CHRIST OTHERS CAN SEE HIM THROUGH US.

1 *

What does it look like for you to follow Jesus on a daily basis? Give specific examples (e.g. prayer, Bible reading, relationships, journal, etc.) Where do you see room to grow?

Spending time in the Word is a major part of my walk with the Lord. In addition, I love discussing what I am reading with other believers, and challenging them to grow more and more. I am very intentional about spending time with non believers as well in order to build the relationships and love on them like Jesus would.

2/22/2017

Prior Response

2 *

The Bible's definition of sexual immorality is rooted in the Greek word pornea, which includes a wide variety of sins such as masturbation, viewing/addiction to pornography, fornication (sex outside marriage), lust, inappropriate relations with the opposite sex, homosexuality, etc. (1 Corinthians 6:12-20) Where do you see those sins in your life? Have you done anything to see God transform your life in those areas?

I am gay, and continue to wrestle with what the Bible actually teaches on the subject of homosexuality. Additionally, I struggle with lust, and I need to continue to trust that God will be enough and that ultimately I can be completely satisfied in Him.

3 *

What are your Biblical convictions about alcohol? Why? How are you doing at living out those convictions?

I believe that the root problem of alcohol is a heart issue. I believe that drunkardness is sinful, but no worse than anything else. I do not struggle with temptations to drink.

4 *

The Bible defines idolatry as worshiping something other than God (Romans 1:24-25). What is your heart prone to worship other than Jesus? (ex. body image, approval, success, food, pleasure, etc.)

Success and approval.

5 *

Taking an honest look at our sin can leave us feeling guilty or depressed. How does the message of the gospel comfort or encourage you? How do you hope in the gospel and not your performance?

It is comforting knowing that Jesus understands the pain and struggles that we go through. And not only that, but Jesus died for our sin and takes away the penalty that we deserve. Nothing can separate us from God's love. I can live confidently and boldly that my Savior has made a way for me and that the work is finished. Whenever I get discouraged, I look to the cross to remind myself of the love of God.

2/22/2017

Print Response

EXPERIENCE

AS BELIEVERS, WE HAVE ALL HAD DIFFERENT EXPERIENCES OF WORSHIP, COMMUNITY, AND MISSION. STAFF WANTS TO KNOW YOU AND HOW THE GOSPEL OF JESUS CHRIST IS MOVING YOU TO WORSHIP GOD, LIVE TRANSPARENTLY IN COMMUNITY, AND DESIRE TO MAKE DISCIPLES. IT IS OFTEN THROUGH EXPERIENCE THAT GOD HELPS US GROW PERSONALLY AND PREPARES US TO SERVE OTHERS.

1 *

Do you have a regular rhythm of confession and repentance in your life? What does that look like and how do you worship God through it?

I usually wrap my night up with prayer. My prayer life is definitely something that I need to work on. One thing this year that God revealed to me was my prideful heart towards partiers. I came to Iowa having a false idea that people who partied were somehow worse than I was. But I have since repented from that, I have a heart of compassion and love towards them.

2 *

When is the last time you "rebuked" or "restored" someone struggling with sin? How did you lead them in repentance and encourage them with the gospel? (Galatians 6:1; Proverbs 27:5-6)

I have a friend who recently gave his life to Christ last year who goes to Iowa. The first semester, he really struggled with partying and getting drunk. Over winter break, I met with him and wanted to encourage him to consider how his actions line up with what God wants. I always like to point the person to Jesus, rather than starting with the sin.

3 *

Are you in a CAMPUS Group or Verve group? Who are the leaders of this group? What does your involvement in this group look like? Be specific.

Yes, I am in Verve. Corey and Brandon are my leaders. I regularly attend, and actively participate. We are going through the Gospel Centered Life. One awesome thing that I learned was how Jesus had nothing in common with us, yet he still pursued us and still loved us like crazy. We rebelled against him and continue to sin against him. With this in mind, we need to have that same attitude with others in our life. We have to continue to love others even when they don't love us.

2/22/2017

Print Response

4 *

24/7 values holistic (all of life) discipleship. How have you been "discipled"? What did that entail? Have you had any experience trying to make disciples? If so, what did it look like?

I meet with Corey every week (or at least try to). Every week we would vary what we talked about. Sometimes we would read a passage and discuss it, and other times we would just talk about life and speak truth into each other's lives. This summer I am excited to learn how to better disciple others. I will be an intern at the Johnston Evangelical Free Church, and a lot of job will entail meeting with students one on one.

5 *

If you are a believer in Jesus, God calls you "an ambassador for Christ" (2 Corinthians 5:20). What does it look like for you to live life as Christ's ambassador? Give practical examples.

Being an ambassador for Christ means always being prepared to share Jesus with them. It also means constantly being a representative of Jesus through your actions. One practical thing I do is I almost always agree to help my friends study. When we study, I make it a priority to show them I care about them as a person, and so I make an effort to ask them about how they are doing. Additionally, if the opportunity arises, I try to ask them about what their beliefs are so that I can invite them to serve of 24/7.

6 *

Are you active in sharing your faith with others? How? Briefly describe your relationship with the last person you shared Christ with. How did you share Christ with them?

Yes. This is one of my spiritual gifts. There are several people that I am very intentional about sharing my faith with. One of them is my room mate, and we have had a lot of great discussions about what it means to follow Jesus and why I can trust that His Word is true. Another is a friend who I take MicroEconomics with. We study together regularly, and we have talked about his beliefs a little. I am in the process of sharing the explicit Gospel with him too.

2/22/2017

Print Response

How confident are you in sharing the gospel with someone who does not know Christ? *

- ☐ no experience
☐ not very
☐ average
☐ confident
☒ very confident

Page 4 of 5

CALLING

THE WORD "CALLING" MAY BE UNFAMILIAR TO YOU, BUT IT CAN BE VERY APPLICABLE TO LEADERSHIP, SCHOOL/MAJOR, WORK, AND THE REST OF LIFE. WHEN YOU ARE "CALLED" TO SOMETHING, USUALLY THREE THINGS ALIGN: (1) PERSONAL DESIRE TO DO SOMETHING, (2) FRIENDS/MENTORS AGREE YOU HAVE THE ABILITY TO DO IT, AND (3) THERE IS AN OPEN DOOR OR OPPORTUNITY.

1 *
Next school year, what will be the sphere(s) of influence you desire to focus on to see the gospel advance? Why? (ex: dorm hall, work, frat/sorority, athletic team, major, freshmen, club, Internationals)

Dorm hall. I will be an RA in daum next year. I will have a lot of access to people's lives which makes me super excited to get to share what God has done in my life with others.

2 *

Why do you want to be a 24/7 student leader?

I believe I can help serve the freshmen in Verve because I know how critical it is for people to get plugged in right away. I have a huge heart for the lost and believe I would have a ton of passion working with freshmen.

2/22/2017

Print Response

3 *

Do you feel called to be a CAMPUS leader or apprentice? How about a Verve group leader or a part of the Servant Team? Why?

Verve Group-- see answer above.

4 *

What are you passionate about? How could God use your passions/interests to advance His Kingdom? (e.g. hobbies, throw parties, interests, talents, sports, web design, event planning, etc.)

My passions are running, music, economics, and legal studies. I can use these as tools to connect with others so I can develop relationships with them to eventually share the Gospel with them.

5 *

What are your expected involvements next year? Will you have time to commit to being a 24/7 student leader? (i.e. RA, work, class load, organizations, etc.)

I will be an RA, and I will possibly be on the executive board for Business Leaders in Christ. I am unsure about what weekends I will be able to leave (for the retreats) but I will certainly be able to commit to serving the freshmen and leading a Bible study weekly.

6 *

What gets you excited about making disciples (Matthew 28:18-20)?

I love the opportunity God gives me to play a small role in His overall plan. His heart is for the entire nations, and I love being able to be a part of that. Seeing people come to know the Lord is one of the coolest things, and something that I have a huge heart for.

2/22/2017

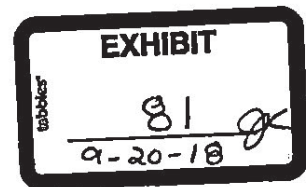
Print Response

7 *

To the best of your ability, describe your goals/vision for your time in college. What do you want to do after college?

I plan on majoring in Business Management and Economics. My goals are to continue to strive to be a light to those around me, and share the Gospel with at least 5 people per year. After college, I have considered law school, but I am not exactly sure.

TAB 31



MEMORANDUM

TO: Student A, Complainant
24:7, Respondent

FROM: Constance Schriver Cervantes *CS*
Compliance Coordinator
Office of Equal Opportunity and Diversity

DATE: July 24, 2017

SUBJECT: Finding on formal complaint of discrimination

I. SUMMARY

On February 20, 2017, Complainant filed a formal complaint with the Office of Equal Opportunity and Diversity against Respondent alleging that Respondent engaged in actions in violation of the University of Iowa's *Policy on Human Rights*.

This finding is issued in conjunction with the Office of Equal Opportunity and Diversity's investigation of Complainant's complaint.

II. FINDING

The evidence produced during the investigation does not provide a reasonable basis to believe the *Policy on Human Rights* was violated.

III. BACKGROUND

Complainant is a student at the University of Iowa, and a former member of 24:7.

Respondent is a registered student organization at the University of Iowa.

In addition to Complainant, the following witnesses were interviewed:

- Jacob Boyd, 24:7 Worship Leader, employed by Parkview Evangelical Free Church (Parkview)
- Scott Gaskill, former Pastor, 24:7 College Pastor, employed by Parkview
- Student C, member of 24:7

The following documents/information were reviewed:

- Copy of Facebook Messenger notes of meeting dates between Boyd and Gaskill and Complainant
- Constitution of 24:7

- Center of Student Involvement & Leadership Registered Student Organization Constitutional Standards and Guidelines
- "Nature of Complaints," notes from Complainant
- 24:7 Student Leader Application completed by Complainant
- 24:7 website: 247uiowa.edu

IV. SUMMARY OF REMEDY REQUESTED, ALLEGATIONS AND RESPONSES

Remedy Requested

Complainant requests that 24:7 be required to comply with the university's non-discrimination policy, or no longer be a recognized student organization, affiliated with the University of Iowa.

Allegations

Complainant states that he was denied a leadership position as a freshman Bible Study leader with 24:7 because of his sexual orientation.

Complainant indicated that at the end of the 2016 spring semester, he applied to be a Verve (freshman Bible Study) leader in 24:7. Complainant did not meet with any student officers or the members of the organization in regard to his application, but rather was interviewed by Boyd, one of the members of the Parkview's 24:7 staff. Complainant states Boyd told him he was "impressed," and there should be no reason he would not be selected.

Complainant stated that 24:7 knew of his sexual orientation, but initially, Complainant regarded his sexual orientation as a struggle with same-sex attraction, which was in line with Parkview's beliefs. Complainant told Boyd at the conclusion of his interview that he had potentially changed his mind, and might be open about being gay.

Complainant was then contacted by Gaskill, Parkview's College Pastor, and a member of Parkview's 24:7 staff, with a request to meet. Complainant met with Gaskill and advised Gaskill that he was struggling with being gay and Christian. Gaskill told Complainant if Complainant was openly gay he would not be acceptable as a leader in 24:7.

Gaskill held a second meeting with Complainant, with Student C also present. At this meeting Complainant expressed concerns that he would not be offered the Verve leader position unless he was "closeted." Complainant was told he could reveal he was "struggling with same-sex attraction," but not identify as gay. Complainant was advised by Gaskill that it was the combination of his views and orientation that prohibited him from being offered the position.

Complainant stated he did not have any further conversations with Gaskill because:

With regards to your question – I did not get back to Pastor Gaskill. The reason I did not was because his response was inherently discriminatory. The fact that he was not okay with me identifying as "gay" is inherently discriminatory—he wanted me to reject a core part of who I am. Although he claims a decision had not been made regarding my

leadership, this is misleading. His decision *was* already made: I could not be a leader if I was openly gay and/or engaged in a relationship. Period

The conditions that he placed upon me (the condition to both be single and to agree with his theological stance) is one that is simply not consistently applied. There is at least one leader in 24/7 who disagrees with 24/7's position on gay marriage, yet because she is straight, 24/7 does not care. Straight folks in 24/7 date all the time.

This underscores an important point: it is impossible to separate my theological stance with my identity. In other words, the real reason behind Pastor Gaskill's disapproval of me being a leader isn't my "theological stance." It is my identity. In fact during that second meeting with Pastor Gaskill I recall asking Pastor Gaskill whether it was my theological stance or my sexual orientation that was the reason for me not getting the leadership position right away. His answer was that it was a combination of both. Hence, this is a case of discrimination on the basis of sexual orientation – had I been straight, the fact that I didn't necessarily agree with 24/7's theological stance on marriage would have essentially been a non-issue, much like it is for at least one current leader.

Complainant understood he could still be a member of 24:7, but he chose not to be.

The Application completed by Complainant indicated his desire to be a Verve leader. In addition, one of the questions in the application provides as follows:

2. The Bible's definition of sexual immorality is rooted in the Greek word *porneia*, which includes a wide variety of sins such as masturbation, viewing/addiction to pornography, fornication (sex outside of marriage), lust, inappropriate relations with the opposite sex, homosexuality, etc. (1 Corinthians 6:12-20.) Where do you see those sins in your life? Have you done anything to see God transform your life in those areas?

Complainant's answer provided in part:

I am gay, and continue to wrestle with what the Bible actually teaches on the subject of homosexuality. ...

Response

It is 24:7's position that the church staff had not yet made a decision on Complainant's application to be a Bible Study leader in 24:7, and that 24:7 is entitled to restrict the leadership in 24:7 to those who agree with the theology 24:7 follows from Parkview, which includes the belief that homosexuality is a sin.¹

According to the 24:7 university website, 24:7 is a college ministry started by Parkview in the late 1990s. The 24:7's website includes a section entitled, "Who We Are," and therein lists the

¹ 24:7 is a registered student organization with the university. However, it appears to be completely controlled by staff employed by Parkview. For purpose of this Finding only, it is assumed that 24:7 is a student organization.

names and pictures of seven members of the Parkview staff, including Gaskill and Boyd. There is no mention of any student involvement in running the ministry. www.247uiowa.com/about.

24:7's Constitution, adopted August 9, 2004², provides in part:

CONSTITUTION OF 24-7

An Affiliated Student Group of Parkview Evangelical Free Church

Article II. Purpose

The purpose of 24-7 are [sic] to provide Christian community for University of Iowa students, to develop an awareness and commitment to meeting needs in our community, and to encourage development of leadership skills among its members.

Article III. Equal Opportunity and Equal Access

Participation in 24-7's regular meetings and activities is open to all members of the University of Iowa community. In no aspect of its programs shall there be any difference in the treatment of persons because of ...sexual orientation...subject to Articles IV and V. 24-7 will guarantee that equal opportunity and equal access to membership, programming, facilities and benefits shall be open to all persons subject to Articles IV and V.

Article IV. Statement of Faith

All Voting Members and all officers of 24-7 must agree to and affirm the following Statement of Faith:

I believe:

1. The Scriptures, both Old and New Testaments, to be the inspired Word of God, without error in the original writings, the complete revelation of His will for the salvation of men and the Divine and final authority for Christian faith and life.

²All university registered student organizations are required to follow the Registered Student Organization Constitutional Standards and Guidelines, <http://csil.uiowa.edu/manage/new-organization-constitutional-guidelines/>.

Under those guidelines, the university's Human Rights Clause must be included and must be written in a student organization's Constitution exactly as follows: *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.*

The clause in 24:7's Constitution does not meet the present language requirements, which the university last updated in October 2014.

2. In one God, Creator of all things, infinitely perfect and eternally existing in three persons: Father, Son and Holy Spirit.
3. That Jesus Christ is true God and true man, having been conceived of the Holy Spirit and born of the Virgin Mary. He died on the cross, a sacrifice for our sins according to the Scriptures. Further, He arose bodily from the dead, ascended into heaven, where, at the right hand of the Majesty on High, He is now our High Priest and Advocate.
4. That the ministry of the Holy Spirit is to glorify the Lord Jesus Christ and, during this age, to convict men, regenerate the believing sinner, and indwell, guide, instruct and empower the believer for godly living and service.

Article V. Members, Officers and Advisor

5.1 *Membership.* Membership in 24-7 shall be open to all University of Iowa students and any other person. Any member who completes a membership form, keeps the officers updated with his or her e-mail address, and signs the Statement of Faith set forth in Article IV shall be a Voting Member and shall be eligible to vote in elections described in this Constitution.

5.2 *Officers.* There shall be one elected President, who will appoint Growth Group Leaders and Project Leaders (there is no limit on the number of Growth Group Leaders and Project Leaders). The officers must agree with the Purpose set forth in Article II, sign and affirm the Statement of Faith set forth in Article IV, and endeavor to live their lives in a manner consistent with the Code of Conduct set forth in Paragraph 5.4.

5.3. *Elections, Appointment, and Term....* Growth Group Leaders and Project Leaders shall be appointed by or removed by the President...

5.4 *Code of Conduct.* All officers must endeavor to live their lives in a manner consistent with the Statement of Faith. Officers must abstain from all forms of sexual conduct and sexual relations outside the confines of marriage and/or the advocacy thereof. Officers must exemplify the highest standards of morality as set forth in Scripture.

5.5 *Advisor.* The Advisor shall be the Pastor of College Ministry of Parkview Evangelical Church in Iowa City, Iowa. The officers shall keep the Advisor informed of meetings, special events, financial matters, and other relevant matters.³

³ The Registered Student Organization Constitutional Standards and Guidelines, provides:

Article IV - Advisors

- a) Advisors of registered student organizations must be members of the University of Iowa faculty or administrative professional staff or they must be affiliated with the local, regional, national, or international affiliate of an organization.

<http://csil.uiowa.edu/manage/new-organization-constitutional-guidelines/>.

Jacob Boyd. Boyd is not a student nor an employee of the university. He is employed by Parkview as part of the 24:7 staff. There is no 24:7 advisor on the faculty or staff of the university.

Boyd provided details as to how 24:7 has been run in the past, including selection of leadership for 24:7 for the 2016-17 academic year, the year at issue here. The selection of officers for 24:7 was done by the staff of Parkview. The only two officer positions are President and Vice President. Parkview staff made the decisions as to who should be in those positions, and then gave the then current 24:7 President and Vice President the "recommendations" as to who should fill those roles for the upcoming year. Those recommendations were then followed. No vote by the members of 24:7 was held.⁴

For filling other leadership positions within 24:7, there was a leadership application process where interested students filled out an application on line. The applications were then reviewed by Parkview staff. The applicants were then interviewed by Parkview staff. After the interviews were completed, the information from the interviews was considered by Parkview staff, and Parkview staff made the decisions.⁵

Boyd met Complainant at the beginning of the fall of 2015. Complainant attended the 24:7 Wednesday meetings, and attended the Freshman Bible Study meetings called "Verve" at the Airliner in Iowa City on Monday nights.

In January 2016, Boyd learned Complainant was gay. Boyd stated they had a good relationship and Complainant confided in Boyd that he was a homosexual, and that he was struggling with that and theological belief. According to Boyd, the Bible states that acting upon same-sex attraction is a sin. Complainant indicated he was not planning on doing so.

Complainant applied to be a Verve leader for the 2016-17 academic year, by submitting an application at the end of March 2016. Boyd met with Complainant in the basement of the IMU to interview Complainant, and took notes.⁶ At the conclusion of the interview Boyd told Complainant he was impressed with him and he did not think there should be any problem. The interview lasted 20-30 minutes.

Following the interview Complainant told Boyd he was on the fence about what the Bible says about homosexuality. Complainant was not sure if he believed it was a sin to act on it. Complainant was unsure if that would create a problem with him being selected as a Verve leader. Boyd told Complainant he did not know, and that Boyd needed to discuss that with Gaskill. Boyd then called Gaskill and related the conversation he had with Complainant. Boyd

⁴ Boyd stated Parkview will be changing the 24:7 Constitution. In the past Parkview staff has chosen the officers of 24:7. The students will now select them. In the past there was no distinction between voting members and members.

⁵ Article V, Section 5.1 as set forth above provides the President is to appoint the group's leaders.

⁶ The notes from Boyd's interview with Complainant were requested as a part of this investigation, however, counsel for 24:7 responding for the organization indicated the organization did not have any notes.

then deferred further action on the matter to Gaskill. Boyd had no further meetings with Complainant, and no further discussions with Gaskill about Complainant.

Complainant's application for Verve leader was not discussed at the 24:7 leader selection meeting, held by Parkview staff after the completion of the interviews with individuals who had applied for leadership positions. Complainant's name came up in the selection meeting, and the Parkview staff was told Gaskill and Boyd were handling it. Boyd stated that after the final list of leaders was posted and Complainant was not on it, Boyd became aware Complainant was not selected.

Boyd indicated he knew of no prior similar situation. If an applicant reported they were involved in pre-marital sex that would raise a concern for leadership consideration. For Complainant, it was his belief about same sex attraction, that it was not a sin to act on same-sex attraction. If an applicant said they did not believe it was wrong to engage in pre-marital sex, that would be a problem with theology, and they would not allow that person to be a leader. Boyd would have referred such an applicant to Gaskill.

Scott Gaskill. Gaskill, the former Parkview 24:7 College Pastor, indicated he is not affiliated with the university and confirmed 24:7 has no advisor on the faculty or staff of the university. The majority of Gaskill's employment at Parkview involves leading the staff team and student leader team of 24:7. Gaskill confirmed the Statement of Faith in the 24:7 Constitution is a portion of the Statement of Faith from Parkview.

Gaskill indicated the purpose of Parkview's 24:7 staff team is to deal with 24:7. The President and Vice President of 24:7 are the only student officers in the organization. The students lead, but with "a lot of oversight" from Parkview. In the past, the Parkview staff has "approved" the officers. There is a regular meeting held on Sunday mornings at Parkview for student leaders of 24:7. For the 10 years that Gaskill has been with Parkview, the student officers of 24:7 have also been involved in Parkview. Gaskill stated there has never been an officer recommended by Parkview staff that was not affirmed by the student members. The current president of 24:7 was chosen by Parkview staff. There was no vote by the students. They may have had a hand raising to show agreement at one of the meetings, but he does not recall.

For other 24:7 leadership positions, interested students apply to Parkview on-line. These include the Verve and campus group leaders, for the biblical communities. Parkview staff and some student leaders interview the applicants. The interviewers then come back to Parkview staff with recommendations, and the Parkview staff team makes the final decisions on the applications. It is rare not to be made a leader as there are so many kinds of different positions, if the applicant agrees with Parkview's positions on the Bible's teaching.

Although the 24:7 Constitution references "voting members," there is no difference in the 24:7 organization between voting members and members. Members are not required to affirm Parkview's Statement of Faith. Leaders are required to affirm the Statement of Faith. The leadership application does not indicate that requirement, but that is covered in the interview.

Complainant filled out an application for a leadership position in 24:7. Boyd reported to Gaskill that after Complainant's interview, Complainant had asked Boyd what would happen if he did

not still believe what he had written on the application. There is a question on the application that addresses sexual sin. Complainant was now considering a revisionist point of view on homosexuality.

The traditional view, which is held by Parkview, is that sexuality is only acceptable to be expressed within the bounds of a marriage, and between one man and one woman. This theology is based on four passages in the Bible. The revisionists interpret the four passages differently and believe it is not a sin to express sexuality as a homosexual.

After speaking with Boyd, Gaskill asked Complainant to meet with him. The meeting lasted one hour. With respect to the above mentioned four biblical passages, Gaskill believes the passages are clear that homosexuality is a sin. Complainant had yet to decide whether he would stand by that traditional view or follow the revisionist view. Complainant called himself a "gay Christian," and Gaskill was uncomfortable with the term. Complainant wanted to know if this would affect his role with the leadership team.⁷

Gaskill stated he wanted Complainant to be part of the leadership team, but if Complainant was espousing this belief, it would be difficult, as Complainant could not affirm the same beliefs as Parkview. However, Gaskill stated he did not specifically tell Complainant that if Complainant was openly gay he would not be accepted as a leader. The conversation ended with Gaskill telling Complainant that Complainant needed to "land theologically" before they talked about leadership.

Student C, one of Complainant's peers, told Gaskill that Gaskill and Complainant had walked away from the meeting having heard different things. Student C indicated to Gaskill that Complainant felt misunderstood or not heard.

A second meeting was then held between Gaskill and Complainant, with Student C also present. Gaskill stated Complainant expressed his concern that he would not be offered the position unless he was "closeted." Gaskill told Complainant that Gaskill did not want Complainant to be closeted, but wanted Complainant to be true to his identity.

According to Gaskill, there was no resolution at the end of the second meeting, but that Complainant needed to decide where he landed theologically. When that occurred they could pick up the conversation about his leadership application. Gaskill stated he told Complainant he could "obviously" be in the organization, but that he was not sure how things would work out with the leadership position. Gaskill stated in his interview that he believed Complainant understood that if Complainant "landed" differently theologically than Parkview on the issue of homosexuality as a sin, Complainant's role in 24:7 would be different. It would be hard for Complainant to be a campus group leader and not affirm his core identity beliefs; but it would be difficult for Complainant to be in a leadership position, calling himself a gay Christian, and not espouse Parkview's core theological beliefs.

⁷ Gaskill did not ask Complainant if he was acting on his belief, engaging in sexual activity outside of marriage, but Complainant shared that he was not.

Complainant stated he asked Gaskill if it was his theological stance or his sexual orientation that was the reason for not getting the leadership position immediately and Gaskill's answer was it was a combination of both. Gaskill in a written response stated that he does not believe having a particular sexual orientation is sinful and denies making such a statement. He stated the concern focused on whether Complainant's theological views aligned with 24:7's, especially when Complainant was not sure what his views were. He asked Complainant "to pray, search the Scripture and come back...when his views were more solidified."

Gaskill stated he was open to further conversation, and that no final decision had been made, but that Complainant did not pursue it further.⁸

Student C. Student C joined 24:7 about a week after he began his freshman year at the university. He also attends Parkview church. He described Complainant as a friend.

Following Complainant's interview with Boyd, Complainant discussed it with Student C. Complainant related he felt the interview went well. However, at the end of the interview Boyd asked if Complainant had any questions and Complainant told Boyd he was still wrestling with 24:7's theological stance on homosexuality. Boyd told Complainant he would have to get back to him.

Student C then spoke with Gaskill before Gaskill's first meeting with Complainant. Student C explained to Gaskill that Complainant was worried because he had not been accepted into the leadership position for which he had applied.

After the first meeting between Gaskill and Complainant, Complainant told Student C he was very concerned and upset, and felt like he had not been heard. On the other hand, Gaskill told Student C after the same meeting that he had felt good about the meeting. Student C suggested a second meeting between Gaskill and Complainant.

Student C stated he was present at the second meeting, just to try to make sure the two were communicating with each other. At the meeting there was discussion of whether Complainant would be a leader in 24:7. Complainant said he was still wrestling with his own theological

⁸ There were attempts made to reach Gaskill further to determine if Gaskill would have selected Complainant for a leadership position in 24:7 if Complainant indicated he did not believe it was a sin to be gay, and where Complainant would have to have landed theologically to be selected for a Verve Leader. Attorneys for 24:7 indicated that Gaskill was no longer employed by Parkview, but that Boyd and Gaskill consulted on the questions and were in agreement on the following response:

Both of these questions are difficult to answer because they involve hypothetical situations that we never actually faced. As you will recall, [Complainant] communicated to us that he was reevaluating his theological beliefs and was not sure what he believed. So, we asked him to think through his beliefs and offered to continue the conversation once he did so. But [Complainant] did not pursue the matter further. Also, hypotheticals involve a myriad of different variables and nuances. Answering each would require more conversations to avoid misunderstanding, and thus impossible to answer in the abstract. Speculating about what we might have done in an imaginary situation, where so many variables are unknown, casts no light on whether 24:7 violated any University policies in its interactions with [Complainant].

position as to whether homosexuality was a sin. Gaskill indicated he wanted to give Complainant space to "land" on a theological stance.

Student C indicated he did not recall the specific exchange Complainant stated occurred, wherein Complainant asked Gaskill if it was his theological stance or his sexual orientation that was the reason for not getting the leadership position immediately, and Gaskill's answer was it was a combination of both. Student C stated to the best of his recall the content of the conversation as a whole was largely centered on how theological positions affect personal practice.

Following the meeting Student C felt the decision on Complainant's application had not been made, and consideration of his application would be contingent on Complainant landing on a theological stance, so that a decision could be made with complete information. Parkview wanted its theology to be unified for the leadership position of Verve leader in 24:7, and Parkview wanted Complainant to have its stance for that position.

V. APPLICABLE POLICIES

Policy on Human Rights:

The University is guided by the precepts that in no aspect of its programs shall there be differences in the treatment of persons because of ... sexual orientation ... These principles are expected to be observed in the internal policies and practices of the University; specifically in the ... in policies governing programs of extracurricular life and activities...

<http://opsmanual.uiowa.edu/community-policies/human-rights>

VI. ANALYSIS AND CONCLUSION

The purpose of a formal investigation is to determine, based on sufficient evidence, whether there is a reasonable basis to believe that a violation of the policy has occurred. The standard for evaluating evidence gathered in the investigation is by a preponderance of evidence which requires the investigator to determine whether it is more likely than not that a given fact is true, or a given event occurred.

For a violation of the *Policy on Human Rights* here, the evidence must show that an individual was treated differently than others were treated in a university program, and that the differential treatment was based on a protected class, including sexual orientation.

The University of Iowa has a categorical non-discrimination policy. The *Policy on Human Rights* prohibits discrimination in its programs based on protected classifications, including sexual orientation. There is no distinction within the *Policy on Human Rights* for membership as opposed to leadership positions. The policy provides: *in no aspect of its programs shall there be differences in the treatment of persons because of ... sexual orientation ... These principles are expected to be observed in the internal policies and practices of the University; specifically in the ... in policies governing programs of extracurricular life and activities...*

Complainant applied for the position of Verve leader. In his application, Complainant stated he was gay and that he continued to wrestle with what the Bible actually teaches on the subject of homosexuality. He was interviewed for that position by Boyd, who stated he knew prior to the interview that Complainant was gay.

At the conclusion of the interview with Boyd for the position, Boyd knowing Complainant was gay, told Complainant he was impressed with him and he did not think there should be any problem with his selection as a Verve leader.

Complainant was not selected as a Verve leader. Complainant alleges that he was not selected to the position because of his sexual orientation. Respondent denies that this was the basis for non-selection.

The preponderance of the evidence supports the following:

Although Gaskill did not ask Complainant if he was engaging in sexual activity outside of marriage, Complainant shared that he was not, and so there is no evidence indicating that was the reason Complainant was not selected.

Gaskill stated no decision had been made, and he was waiting for Complainant to come back to him with his theological stance on homosexuality. Complainant stated he did not get back to Gaskill because Gaskill made it clear to him he would not be selected. The evidence is insufficient to determine if the fact that Complainant was not chosen as a Verve leader was because Complainant did not get back to Gaskill to detail his theological beliefs, or because of a discriminatory reason.

A refusal to allow Complainant to be considered as a Verve leader, and treating him differently than other members due to his sexual orientation would violate the university's *Policy on Human Rights*. However, there is insufficient evidence to show the decision was based on Complainant's membership in a protected class, therefore, no policy violation is found.

VII. APPEAL PROCEDURES

If the Office of Equal Opportunity and Diversity concludes that the complaint is unfounded, the Complainant may appeal the finding on the grounds that the decision was arbitrary and capricious or that the investigating office did not follow procedures resulting in prejudice to the Complainant. Appeals must be made electronically or in writing⁹ and submitted together with all supporting documentation to the Office of Equal Opportunity and Diversity within ten (10) university business days of the receipt of the finding. Generally within two (2) university business days, the Office of Equal Opportunity and Diversity will transmit the notice of appeal and the case record to the appropriate appeal officer, as described on the Office of Equal Opportunity and Diversity website: <http://diversity.uiowa.edu/policies/discrimination-complaint-procedures>.

⁹ The address to submit such an appeal is: diversity@uiowa.edu or Office of Equal Opportunity and Diversity, 202 Jessup Hall, 5 West Jefferson St., Iowa City, IA, 52242-1316.

The appeal officer, or the appeal officer's designee, will issue a written decision on the appeal to the Complainant and the Office of Equal Opportunity and Diversity within 20 university business days of the receipt of the appeal, although this time frame may be extended due to the complexity of the case or the severity of the allegations.

In cases where the appeal is denied, such action constitutes final university action on the matter, subject to appeal to the Iowa Board of Regents. In cases where the appeal is successful, in whole or in part, the appeal officer/designee will advise the Office of Equal Opportunity and Diversity regarding appropriate measures to address the issues of concern raised in the appeal.

For complaints that conclude in a finding that there is a reasonable basis to believe that a policy violation has occurred and sanctions have been imposed, Respondents may appeal such findings through the grievance procedures applicable to them. The Respondent may challenge any sanctions imposed as a result of a finding through available grievance procedures.

VIII. NOTE ON CONFIDENTIALITY AND RETALIATION


The Office of Equal Opportunity and Diversity considers all information received in connection with the filing, investigation, and resolution of complaints to be confidential. Disclosure of information in connection with this complaint is limited to those individuals necessary to its investigation and resolution, and it is expected that the parties will observe the same standard of confidentiality. The individuals copied on this finding are administrators who have authority and responsibility for the University of Iowa student organizations, or for the Respondent and would be critical to any sanction that might be imposed. This practice of maintaining confidentiality is in the best interests of all the parties to the complaint and failure to respect confidentiality may be regarded as retaliation. University policy prohibits retaliation against individuals who file complaints and against those who participate in complaint investigations as witnesses.

cc: Georgina Dodge, Chief Diversity Officer and Associate Vice President, Title IX
Coordinator
Jennifer Modestou, Director, Office of Equal Opportunity and Diversity, Deputy Title IX
Coordinator
Lyn Redington, Assistant Vice President, Dean of Students
William Nelson, Executive Director, IMU
Anita Cory, Associate Director, Student Organization and Leadership Program, Center
for Student Involvement and Leadership
Casey Mattox, Senior Counsel, Director of Center for Academic Freedom, counsel for
24:7

TAB 32

MEMORANDUM

TO: Student A, Complainant
UIowa Feminist Union, Respondent

FROM: Constance Schriver Cervantes
Compliance Coordinator
Office of Equal Opportunity and Diversity 

DATE: June 17, 2015

SUBJECT: Finding on formal complaint of violation of the Policy on Human Rights

I. SUMMARY

On May 8, 2015, Student A filed a formal complaint with the Office of Equal Opportunity and Diversity against the UIowa Feminist Union, alleging that Respondent organization had engaged in actions in violation of the University of Iowa's *Policy on Human Rights*.

This finding is issued in conjunction with the Office of Equal Opportunity and Diversity's investigation of Student A's complaint.

II. FINDING

The evidence produced during the investigation provides a reasonable basis to believe that the university's *Policy on Human Rights* has been violated.

III. BACKGROUND

Student A, at the time of the complaint, was a graduate student and a Teaching Assistant in the College of Education. He has since graduated. His complaint arises out of his treatment as a student member of the organization, and not as an employee of the university. He indicated he had in the past attended meetings, but had not done so in the recent past due to his schedule as a graduate student and Teaching Assistant.

The UIowa Feminist Union is a University of Iowa recognized organization. It meets regularly. It has no web page but does have a Facebook page, the handling of which is the subject of the complaint. Announcements by the organization concerning meetings, activities and events are made through the Facebook page.

Anita Cory, Associate Director, Center for Student Involvement & Leadership, participated in the investigation by being present at the interviews and in discussion about the allegations and responses.

In addition to the Complainant, this investigator and Dr. Cory interviewed the following witnesses:

- Student B, University of Iowa student and co-president of the UIowa Feminist Union; and
- Laurie Haag, Program Developer, Women's Resource & Action Center and faculty advisor for the UIowa Feminist Union.
- On two separate occasions interviews were scheduled by agreement with Student C, University of Iowa student and co-president of the UIowa Feminist Union. However, Student C did not appear as scheduled for either interview. Student C did submit a written statement.¹

IV. SUMMARY OF REMEDY REQUESTED, ALLEGATIONS AND RESPONSES

Remedy Requested

Student A requested removal of posts that referenced his messages on Facebook, removal of other individuals from the Facebook page, and his reinstatement in the forum.

Allegations

Student A states he was a member of the UIowa Feminist Union and on April 4, 2015 he posted a link to an article on the UIowa Feminist Union Facebook page. He alleges that in response to his post, one of the UIowa Feminist Union Facebook group members, a non-university student, attacked him personally and specifically targeted him because he is a man. On April 6, 2015, Student A removed his original post, which had the effect of removing the replies to the post. He then sent a private message through Facebook to the non-university student, explaining his intent in making the first post, the concerns he had with her replies, his removal of the post and his blocking her from further Facebook contact with him. He was then removed as a member of the organization's Facebook group by one of the co-presidents, no longer had access to the page and therefore was unaware of the continued conversation about him and the article he posted.

Responses

Student B is one of the co-presidents and a co-administrator of the page. On April 6, 2015, the non-university student referenced above posted on Facebook the private message sent to her by Student A, and a series of replies were then made in response to it. Student B, upon viewing this post and the responses made to it, removed Student A from the Facebook group, which had the effect of not allowing him access to the Facebook page, and in turn access to information about upcoming meetings, activities and events of the organization.

¹ The written statement indicated among other things, that the organization had an unspoken rule that anyone who desires to follow the organization's social media account had to be enrolled in the university. She also noted that the non-university student in question here was not a member of the organization. In addition, from the statement it is clear she was not aware of the original thread from the Facebook page.

Student B subsequently learned Student A had contacted the Office of Equal Opportunity and Diversity to express his concern over his treatment on the Facebook page, and his removal from the group. After she learned of the contact, she contacted the non-university student mentioned above for her version of what had occurred and she inquired whether that person wanted to pursue any action against Student A.

Student B stated she removed Student A from the UIowa Feminist Union group because she: 1) was concerned that Student A had “removed” posts; and 2) wanted to avoid fighting and bullying which she felt he was doing. She did not review the article or the posts in question prior to taking her action. She at no time contacted Student A to obtain his version of the events, although she did see his concerns expressed in an e-mail to the Office of Equal Opportunity and Diversity.

V. APPLICABLE POLICY, ANALYSIS AND CONCLUSION

The university’s *Policy on Human Rights* provides, in part:

The University is guided by the precepts that in no aspect of its programs shall there be differences in the treatment of persons because of ... sex... that deprives the person of consideration as an individual, and that equal opportunity and access to facilities shall be available to all. These principles are expected to be observed in the internal policies and practices of the University; specifically ... in policies governing programs of extracurricular life and activities;

(University of Iowa’s *Policy on Human Rights*, emphasis added.
<http://www.uiowa.edu/~our/opmanual/ii/03.htm>).

The article, which was originally posted on the Facebook page by Student A (referenced only by a link to its location on the internet), is entitled, *‘1 in 5’: how a study of 2 colleges became the most cited campus sexual assault statistic*. (www.vox.com/2014/12/11/7377055/campus-sexual-assault-statistics).

The article explains the background of the study from where the “1 in 5” statistic was derived, and indicates therein that the lead researcher stated it was never meant to be applied nationwide. Rather, the lead researcher felt sexual assault was potentially unique at each university. The figure did not actually appear in the original report of the study. The article discusses other studies: a new study that has been developed that a number of universities may be administering; and proposed legislation to require annual surveys at every college about sexual assault and campus environment, which would be made public.

In response to the post (of the link to the article), a number of replies were made by group members, and in particular by a group member who was a non-university student, which quickly escalated to comments by the non-university member such as:

“You need to step out of the conversation as a person with male privilege if you think belittling victims by wagging your finger at statistics is at all addressing and dismantling male entitlement, the root of sexual assault.”

(Student A) [sic] showing how someone with a privilege hurts the allyship they purport to have by taking up space and demanding things they deem "objective." This is why I don't bother with male feminists.

Thank you v [sic] much for educating me, a woman, on feminism and what is best for me. Definitely out of the ordinary for a man to do!

It's funny how you can spot a sexist man from a mile away because they will give themselves away by insisting on "objectivity" and semantics, rather than tackle the actual issue of their entitlement that makes them think they can talk down to women.

Your privilege is relevant to how you interact with women. In this case, you shared an article that only serves to cast doubt on how many victims of sexual assault there are on campuses. The reality is that there are so many unreported because of articles like this and men like you, because you simply don't believe them

Seriously all i [sic] have for you is a bunch of middle fingers, I don't need to justify my existence and explain your privilege to you.

Remember (Student A) is oppressive enough to think that men can be the victims of sexism. This is not "reasonable discourse," this is typical male entitlement insisting on having an equal voice on sexism."

At some point, Student A removed his original post of the link, which had the effect of removing all of the replies, including the above quoted comments. He then through the Facebook page "messed" the non-university student and others who had replied to his original post, stating:

"As a courtesy I am informing you that the post is being taken down and reposted with a clearer explanation of purpose. At the same time, you have attempted to assault, insult and be discriminatory based solely on assumptions you have about me, specifically as a man. That is sexist. Feminism is not some special field that you get to be abusive to others because you disagree. I was polite and never insulted you once, yet you continued in your abuse instead of discussing what was wrong with the article. You came from a spot of privilege thinking you had more rights than I to have an opinion about a topic. You were also treated with polite reasoned discussion instead of abusive language. If you were a man posting the same things against me and I was a woman, what you were doing would [sic] sexist and abusive, which means it was sexist. Feminism is about gender equality first and foremost. That is the kind we should be seeking, not where one group of us has special rights to insult and abuse others. It violates the principles of feminism that we seek to promote and threads like this one will only serve to further promote misguided and wrongheaded movements like Men's Right Groups and Alpha Male, providing fodder that feminists are unable to engage in polite, reasoned discussion."

The non-university student on April 6, 2015 posted the above message and a new thread of replies began. It included comments, by her such as:

"Men cannot handle the idea that their voices are not needed on things that don't concern them.

This. Is. Why. I. Don't. Trust. Male. Feminists."

Another individual in a reply stated, "He needs to be removed."

Student B, upon checking the e-mail page that morning found the above thread and removed him from the group.

Later that morning, Student A went on Facebook, and saw he had been removed. The next day he e-mailed the Office of Equal Opportunity and Diversity to express his concerns about the UIowa Feminist Union and his treatment on the page. That e-mail from Student A was copied to the student listed on the Facebook page as the President. That student then forwarded the e-mail to the two current co-presidents. Student B then contacted the non-university student involved as noted above, to get her version of the events, and then to determine if she wanted to pursue any action against Student A.

Based on a preponderance of the evidence, as set forth above, the action taken by the officer of the UIowa Feminist Union in removing Student A from the Facebook group was in violation of the university's *Policy on Human Rights* in that he was removed because of his sex. The explanation as to why he was removed was not supported by the evidence. He did not remove posts of others to the group, but rather removed his own post on which replies had been made that attacked and insulted him. Further, it appears from a review of all of the Facebook entries that any fighting and bullying were done by others, because of his sex, especially the non-university student, who was not removed but rather invited to pursue action against Student A.

VI. NOTE ON CONFIDENTIALITY AND RETALIATION

The Office of Equal Opportunity and Diversity considers all information received in connection with the filing, investigation, and resolution of complaints to be confidential. Disclosure of information in connection with this complaint is limited to those individuals necessary to its investigation and resolution, and it is expected that the parties will observe the same standard of confidentiality. The individuals copied on this finding are administrators who have authority and responsibility for Center for Student Involvement and Leadership or for the respondent and would be critical to any sanction that might be imposed. This practice of maintaining confidentiality is in the best interests of all the parties to the complaint and failure to respect confidentiality may be regarded as retaliation. University policy prohibits retaliation against individuals who file complaints and against those who participate in complaint investigations as witnesses.

cc: Georgina Dodge, Chief Diversity Officer and Associate Vice President
Jennifer Modestou, Director, Office of Equal Opportunity and Diversity
Monique DiCarlo, Sexual Misconduct Response Coordinator
Tom Rocklin, Vice President for Student Life, Interim Dean of Students
Bill Nelson, Assistant Vice-President for Student Life
Belinda Marner, Assistant Vice-President for Student Life

Anita Cory, Associate Director, Center for Student Organizations & Leadership
Laurie Haag, UIowa Feminist Union Advisor, Women's Resource & Action Center

TAB 33



**Center for Student Involvement
& Leadership**

145 Iowa Memorial Union
Iowa City, Iowa 52242-1317
319-335-3059 Fax 319-353-2245
getinvolved@uiowa.edu
imu.uiowa.edu/students

June 19, 2015

Mr. Christopher Dusek,

Dear Mr. Dusek:

On May 8, 2015, I understand you filed a formal complaint with the Office of Equal Opportunity and Diversity against the UIowa Feminist Union, alleging said organization had engaged in actions in violation of the University of Iowa's *Policy on Human Rights*. In particular, you alleged you received discriminatory treatment as a member of a public forum (Facebook) and this organization due to your sex.

Your complaint was made to Ms. Constance Schriver Cervantes, Compliance Coordinator, in the Office of Equal Opportunity and Diversity. Because the allegation involved a student organization, Ms. Schriver Cervantes and Dr. Anita Cory, Associate Director of the Center for Student Involvement & Leadership, investigated the situation collaboratively. In late May and early June, Ms. Schriver Cervantes and Dr. Cory interviewed or communicated with Feminist Union leaders and their advisor to investigate the allegation that policy had been violated. In addition, Ms. Cervantes and Dr. Cory utilized data from the Feminist Union Facebook page that illuminated the conversation resulting in alleged discriminatory action against you.

The findings of the Office of Equal Opportunity and Diversity regarding the formal complaint of violation of Policy on Human Rights, *in redacted form*, is attached to this letter. In short, based on a preponderance of the evidence as outlined in the attached letter, the actions taken by officers of the UIowa Feminist Union in removing the you from the Facebook group was determined to be in violation of the University's *Policy on Human Rights* in that you were removed because of your sex, functionally barring you from participation in the organization's communication forum.

I concur with Ms. Schriver Cervantes and Dr. Cory's findings and therefore am requiring the following action plan items be implemented to provide education for the Feminist Union and restitution for you:

First, the Feminist Union will host an educational opportunity in which an expert educator provides knowledgeable resources and facilitates a dialogue around complex issues of gender, sex, allyship, and communication in a public forum. Ms. Wanda Malden, Senior EEO Coordinator, has agreed to provide this education.

Second, in order for the education program to be meaningful and beneficial, the Feminist Union co-Presidents and administrator(s) of the Facebook page, will meet with Ms. Malden for dialogue, education, and engagement in creation of the curriculum for the educational session for the Feminist Union.

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Third, the Feminist Union will develop a protocol for managing content and/or conflict in their public meetings and forums (including Facebook) that adheres to the mission of the organization, currently stated on the Facebook page. They will provide this document via email to the Center for Student Involvement & Leadership, attention Dr. Anita Cory (anita-cory@uiowa.edu), no later than September 15, 2015.

Finally, the Feminist Union co-President(s) and/or Facebook page administrator will reinstate you to the organization's page and remove all prior posts that reference you, the article, and the debate that took place on the Facebook page no later than July 15, 2015.

Information related to this policy violation will be kept on file in the Office of the Dean of Students and the Center for Student Involvement & Leadership.

If you have any questions or need additional information, please contact me directly.

Sincerely,



William R. Nelson, Ph.D.

Director, Center for Student Involvement & Leadership and Iowa Memorial Union

TAB 34



**Center for Student Involvement
& Leadership**

145 Iowa Memorial Union
Iowa City, Iowa 52242-1317
319-335-3059 Fax 319-353-2245
getInvolved@uiowa.edu
lmu.uiowa.edu/students

June 25, 2015

Ms. Nailah Roberts (nailah-roberts@uiowa.edu)
Ms. Caitlyn Strack (caitlyn-strack@uiowa.edu)
Feminist Union Co-Presidents

Dear Ms. Roberts and Ms. Strack:

On May 8, 2015, a male student filed a formal complaint with the Office of Equal Opportunity and Diversity against the UIowa Feminist Union, alleging said organization had engaged in actions in violation of the University of Iowa's *Policy on Human Rights*. In particular, the reporting party alleged he received discriminatory treatment as a member of a public forum (Facebook) and this organization due to his sex.

The complaint was made to Ms. Constance Schriver Cervantes, Compliance Coordinator, in the Office of Equal Opportunity and Diversity. Because the allegation involved a student organization, Ms. Schriver Cervantes and Dr. Anita Cory, Associate Director of the Center for Student Involvement & Leadership, investigated the situation collaboratively. In late May and early June, Ms. Schriver Cervantes and Dr. Cory interviewed or communicated with each of you and your advisor, Laurie Haag, to investigate the allegation that policy had been violated. In addition, Ms. Cervantes and Dr. Cory utilized data from the Feminist Union Facebook page that illuminated the conversation resulting in alleged discriminatory action against the reporting party.

The findings of the Office of Equal Opportunity and Diversity regarding the formal complaint of violation of *Policy on Human Rights*, in redacted form, are attached to this letter. In short, based on a preponderance of the evidence as outlined in the attached letter, the actions taken by officers of the UIowa Feminist Union in removing the reporting party from the Facebook group was determined to be in violation of the University's *Policy on Human Rights* in that he was removed because of his sex, functionally barring him from participation in the organization's communication forum.

I concur with Ms. Cervantes and Dr. Cory's findings and therefore am requiring the following action plan items be implemented to provide education for the Feminist Union and restitution for the reporting party:

First, the Feminist Union will benefit from an educational opportunity in which an expert educator provides knowledgeable resources and facilitates a dialogue around complex issues of gender, sex, allyship, and communication in a public forum. Ms. Wanda Malden, Senior EEO Coordinator, has agreed to provide this education, which is to be scheduled, arranged, and completed by the Feminist Union during a well-attended public meeting no later than October 1, 2015. She can be reached at wanda-malden@uiowa.edu.

Second, in order for the education program to be meaningful and beneficial, both of you, as the Feminist Union co-Presidents and administrator(s) of the Facebook page, must meet with Ms. Malden for dialogue, education, and engagement in creation of the curriculum for the educational session for the Feminist Union well in advance of the date scheduled for the program.

Third, the Feminist Union should develop a protocol for managing content and/or conflict in their public meetings and forums (including Facebook) that adheres to the mission of the organization, currently stated on the Facebook page. Please provide this document via email to the Center for Student Involvement & Leadership, attention Dr. Anita Cory (anita-cory@uiowa.edu), no later than September 15, 2015.

Finally, the Feminist Union co-President(s) and/or Facebook page administrator must reinstate the reporting party to the organization's page and remove all prior posts that reference him, the article, and the debate that took place on the Facebook page no later than July 15, 2015.

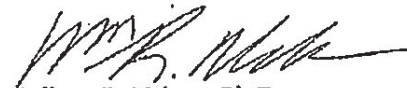
This decision is final, and failure to complete any or all of the aforementioned sanctions will result in further disciplinary action by the Center for Student Involvement & Leadership. Please indicate your acceptance of this decision and resulting sanctions no later than 5:00 pm on Friday, July 10, 2015.

If you wish to appeal this decision, a written letter must be delivered to the Office of the Dean of Students, 135 Iowa Memorial Union, Iowa City, IA 52242-1317, within 10 University business days following your receipt of this letter.

Information related to this policy violation will be kept on file in the Office of the Dean of Students and the Center for Student Involvement & Leadership.

If you have any questions or need additional information, please contact me directly.

Thank you for your time and cooperation,



William R. Nelson, Ph.D.

Director, Center for Student Involvement & Leadership and Iowa Memorial Union

cc: Thomas Rocklin, Vice President for Student Life and acting Dean of Students
Laurie Haag, Advisor, Feminist Union
Anita Cory, Associate Director, Center for Student Involvement & Leadership
Kristi Finger, Coordinator, Student Organization Development, The Center for Student Involvement & Leadership

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN 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 R. BAKER, in his
official capacity as Assistant Dean of
Students and in his individual capacity; and
WILLIAM R. NELSON, in his official
capacity as Executive Director, Iowa
Memorial Union, and in his individual
capacity,

Defendants.

Civil Action No. 17-cv-00080-SMR-SBJ

**PLAINTIFF'S RESPONSE
TO THE INDIVIDUAL
DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACT**

ORAL ARGUMENT REQUESTED

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Counsel for Plaintiff

**Admitted pro hac vice*

Plaintiff Business Leaders in Christ (“BLinC”) responds to the Individual Defendants’

Statement of Undisputed Material Facts as follows:

THE KEY PLAYERS

1. The University of Iowa (“University”) is a state institution of higher education governed by the Iowa State Board of Regents. Iowa Code §§ 262.7; 263.

Response: Admitted.

2. Business Leaders in Christ (“BLinC”) is a student organization which was founded on April 1, 2014. *Exhibit C* to Petition filed December 11, 2017; App. 1.

Response: Admitted that BLinC is a student organization that was founded in the Spring of 2014, and that its original constitution is dated April 1, 2014. BLinC SoF ¶¶ 95-96. BLinC was officially registered in the fall of 2014. BLinC SoF ¶ 95.

3. Hannah Thompson (“Thompson”) is a former student, who was co-founder and President of BLinC during her time at the University. Thompson 7:14–19; App. 35. Thompson graduated from the University of Iowa in 2017. *Id.*

Response: Admitted that Hannah Thompson is a former student of the University of Iowa who graduated in 2017. BLinC SoF ¶ 93. Admitted that she was the co-founder of BLinC and that she was the president of BLinC during part of her time at the University. BLinC SoF ¶¶ 94, 97-98.

4. Marcus Miller is a former student and BLinC member who sought a leadership position with the group but was rejected after he revealed to the organization’s leadership that he is gay. Depo. Ex. 91; App. 123.

Response: Admitted that Marcus Miller was a student at the University of Iowa. BLinC has no knowledge of whether he is a “former” student. Admitted that Marcus Miller was a

member of BLinC who sought and was denied a leadership position with the group. BLinC SoF ¶¶ 109, 142. Denied to the extent the University Officers assert that Marcus Miller was denied a leadership position because he is gay. BLinC SoF ¶¶ 133, 142, 147, 212, 286, 290. Marcus Miller was denied a leadership position because he rejected BLinC's religious beliefs and refused to abide by them. *See* BLinC SoF ¶¶ 111-42, 147, 212, 286, 290.

5. Dr. Lyn Redington ("Redington") was Assistant Vice-President and Dean of Students at the University of Iowa at the time of the events at issue in the Petition through May 1, 2018. Redington 5:23–6:8; App. 39-40.

Response: Admitted.

6. Dr. William Nelson ("Nelson") was formerly the Executive Director of the Iowa Memorial Union, and is now Associate Dean of Students and Executive Director of the Iowa Memorial Union. Nelson 8:19–9:4; App. 47-48.

Response: Admitted.

7. Constance Schriver Cervantes ("Schriver Cervantes") is an attorney and Compliance Coordinator in the Office of Equal Opportunity and Diversity. Schriver Cervantes 5:12–14; App. 18.

Response: Admitted.

8. Thomas Baker ("Baker") is an attorney and works in the Office of the Dean of Students. Baker 3:15–23. Baker has been employed with the University of Iowa since 1985, and has held many titles during that time. Baker 3:6–14; App. 27.

Response: Admitted.

UNIVERSITY OF IOWA HUMAN RIGHTS POLICY AND COMPLAINT PROCESS

9. The University abides by the following Human Rights policy in all of its endeavors:

The University of Iowa brings together in common pursuit of its educational goals persons of many nations, races, and creeds. The University is guided by the precepts that in no aspect of its programs shall there be differences in the 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 consideration as an individual, and that equal opportunity and access to facilities shall be available to all. These principles are expected to be observed in the internal policies and practices of the University; specifically in the admission, housing, and education of students; in policies governing programs of extracurricular life and activities; and in the employment of faculty staff and personnel. Consistent with state and federal law, reasonable accommodations will be provided to persons with disabilities and to accommodate religious practices. The University shall work cooperatively with the community in furthering these principles.

Depo. Ex. 20; App. 111.

Response: Denied that the University abides by this policy in all of its endeavors. *See, e.g.,* BLinC SoF ¶¶ 29-35, 446. Also, the policy as applied to student organizations is shorter and has been modified. BLinC's SoF ¶¶ 9-13.

10. Individuals who believe that they have been discriminated against in violation of the Human Rights Policy are encouraged by the University to bring a complaint to the Office of Equal Opportunity and Diversity ("EOD"). Depo. Ex. 20; App. 111.

Response: Admitted. Defs.' App. 112.

11. The University distinguishes between formal and informal complaints of discrimination. Depo. Ex. 20; App. 111.

Response: Admitted. Defs.' App. 112-13.

12. If an individual makes a formal complaint regarding a violation of the Human Rights Policy, the complaint will be investigated by the EOD, the respondent will be notified of the

complaint, the respondent and other witnesses will be interviewed, and the EOD will issue a written finding regarding whether the investigation resulted in a “reasonable basis to conclude, by the preponderance of the evidence, that the respondent violated the Policy on Human Rights.” Depo. Ex. 20; App. 111.

Response: Admitted. Defs.’ App. 113.

13. Written findings are provided to the respondent, the alleged victim, and the chief administrative officer in the unit or his or her designee. Depo. Ex. 20; App. 111.

Response: Admitted. Defs.’ App. 113.

14. Where the respondent to a formal complaint is a student, the Dean of Students will review the findings of the EOD and determine, based on the EOD’s findings and input, appropriate corrective measures and/or sanctions. Depo. Ex. 20. The Dean will go on to implement appropriate corrective measures and/or sanctions consistent with University procedures. Depo. Ex. 20; App. 111.

Response: Admitted. Defs.’ App. 113-14; *see also* BLinC’s SoF ¶¶ 391-400..

15. Both findings of probable cause of discrimination and the issuance of sanctions may be appealed. Depo. Ex. 20; App. 111.

Response: Admitted. Defs.’ App. 114-15.

16. Sanctions against students are governed by the “Student Judicial Procedure” document. Depo. Ex. 20; App. 111.

Response: Admitted. Defs.’ App. 114.

17. At the time of the facts at issue in the Complaint, University officials disagreed or were uncertain about whether the University had an “all-comers” policy, but most agreed that the University did *not* have an all-comers policy. Nelson 300:14–302:13; Redington 20:19–21:12; Cervantes 19:9–11; Baker 146:18–21; App. 22, 33, 42, 85-86.

Response: Denied that, at the time of the facts at issue in the Complaint, University officials disagreed about whether the University had an “all comers” policy. There is no admissible evidence that any University official believed that the University did have an “all comers” policy. Admitted that some University officials were uncertain about whether the University had an “all comers” policy. Defs.’ App. 42, 85-86. Admitted that most officials, including those authorized to speak for the University in discovery as Rule 30(b)(6) witnesses, agreed that the University did *not* have an all-comers policy. Defs.’ App. 22, 33; *see also* BLinC SoF ¶¶ 1-3, 88-91, 251, 361.

18. The University values diversity and inclusion, the inclusion of various religious groups, and sets forth its Statement of Religious Diversity and the University Calendar in part as follows:

Religious history, religious diversity, and spiritual values have formed a part of the University of Iowa’s curricular and extracurricular programs since the founding the University. In order to advance religious diversity on campus, the University makes reasonable accommodations for students, staff, and faculty whose religious holy days coincide with their work schedules and classroom assignments. As a public institution, the University neither promotes any particular form of religion nor discriminates against students, staff, or faculty on the basis of their religious viewpoints.

Depo. Ex. 18; App. 109. In its policy, the University sets forth various methods for students, faculty, and staff to observe religious holidays without penalty. Depo. Ex. 18; App. 109.

Response: Admitted that this is the University’s Statement of Religious Diversity and the University Calendar. Denied that the University values the inclusion of all religious groups, as demonstrated by its exclusion of BLinC and its exclusion of several other religious groups this summer. *See, e.g.*, BLinC SoF ¶¶ 429-34.

UNIVERSITY OF IOWA NONDISCRIMINATION STATEMENT

19. The University sets forth its official Nondiscrimination Statement as follows:

The University of Iowa prohibits discrimination in employment, educational programs, and activities 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. The university also affirms its commitment to providing equal opportunities and equal access to university facilities.

Depo. Ex. 21; App. 117.

Response: Admitted. *But see* BLinC's SoF ¶¶ 9-13.

UNIVERSITY OF IOWA STATEMENT ON DIVERSITY

20. The University sets forth its official statement on diversity as follows:

The University of Iowa values diversity among students, faculty, and staff, and regards Equal Employment Opportunity and Affirmative Action tools to achieve diversity. The 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.

Depo. Ex. 22; App. 87.

Response: Admitted. Defs.' App. 118.

STUDENT ORGANIZATIONS

21. A student organization at the University of Iowa is a "voluntary special interest group organized for education, social, recreational, and service purposes and comprised of its members." Depo. Ex. 14; App. 87.

Response: Admitted.

22. Student organizations are separate legal entities from the University, and are not treated like departments or units. Depo. Ex. 14; App. 87.

Response: Admitted.

23. Student organizations may exist on campus whether or not the University endorses them. Depo. Ex. 14; App. 87.

Response: Admitted that the University’s policy states that “[s]tudent organizations can exist whether or not the University endorses them pursuant to this policy.” Defs.’ App. 87.

COSTS OF REGISTRATION AS A “REGISTERED STUDENT ORGANIZATION”

24. Registered student organizations must adhere to the mission of the University, its supporting strategic plan, policies, and procedures. Depo. Ex. 14; App. 87.

Response: Admitted that the University’s policy states that “[i]t is the responsibility of each registered student organization to adhere to the mission of this University, its supporting strategic plan, policies, and procedures.” Defs.’ App. 87.

25. Organizations must abide by all local, state, and federal laws. Depo. Ex. 14; App. 87.

Response: Admitted that the University’s policy states that “[o]rganizations must abide by all local, state, and federal laws.” Defs.’ App. 87.

26. An organization’s goals, objectives, and activities must not deviate from established University policies and procedures. Depo. Ex. 14; App. 87.

Response: Admitted that the University’s policy states that “[a]n organization’s goals, objectives, and activities must not deviate from established University policies and procedures.” Defs.’ App. 87.

27. Membership and participation in a registered student 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.” Depo. Ex. 14; App. 87.

Response: Admitted that, at the time of the events at issue in the Complaint [Dkt. 1], the quoted language was included in the University’s policy on “Registration of student

organizations.” Defs.’ App. 89. Denied that the University has strictly interpreted or applied the policy as written. *See, e.g.*, BLinC’s SoF ¶¶ 17-19, 24-92, 330. Also, the University has recently amended the policy as applied to student organizations. BLinC’s SoF ¶¶ 9-13.

28. Organizations must “guarantee that equal opportunity and equal access to membership, programming, facilities, and benefits shall be open to all persons.” Depo. Ex. 14; App. 87.

Response: Admitted that the University’s policy states that organizations “will guarantee that equal opportunity and equal access to membership, programming, facilities, and benefits shall be open to all persons.” Defs.’ App. 88. The University has always understood and applied this language only to prohibit status-based discrimination on a limited number of specified bases, not as an all-comer’s policy, and not as a prohibition against restricting leadership or membership based on shared “goals and beliefs.” BLinC’s SoF ¶¶ 1-3, 8, 14, 88-91, 259-60, 272, 303-04, 325-28, 372-73, 416.

29. To be recognized as a registered student group, an organization must include the complete UI Human Rights Clause in its constitution:

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.

Depo. Ex. 17; App. 87.

Response: Admitted that a University policy requires that the identified language be included in all student organizations. Defs.’ App. 96. Denied that the University has consistently or equally enforced this requirement. BLinC SoF ¶¶ 408-09. At the time

this lawsuit commenced, only 32% of student organizations were in compliance with the requirement. BLinC SoF ¶ 419 (BLinC App. 412).

BENEFITS OF REGISTRATION

30. Student groups which chose to register through the University may receive the following benefits: establishment of an account in the Student Organization Business Office (SOBO), Fraternity Business Service, or Recreational Services and appropriate purchasing privileges in accordance with University policies; eligibility to apply for funds from mandatory Student Activity Fees; inclusion in appropriate University publications; utilization of the Center for Student Involvement & Leadership's ("CSIL") OrgSync software; utilization of the University's trademarks; eligibility for use of campus meeting facilities and outdoor spaces; eligibility to utilize UI Fleet Services vehicles; eligibility to utilize University staff and programming resources; eligibility to utilize the University's Mass Mail system once a semester; eligibility to apply for awards and honors presented to registered organizations and members; and eligibility to apply for Student Organization Office Suite ("SOOS") or Student Activity Center office and/or storage space. Depo. Ex. 14; App. 87.

Response: Admitted that these and other benefits are available to registered student organizations. Defs.' App. 88; *see also* BLinC SoF ¶¶ 238-39.

31. Registered student organizations have the opportunity to participate in the Student Organization Fair in August and January of each year. Affidavit of Kristi Finger, filed January 5, 2018, ¶ 5; App. 9.

Response: Admitted.

32. Students enrolled in the University of Iowa pay \$36 per semester per student which goes to support University services, programs, and student organizations. Nelson 273:8–275:7; App. 81-82.

Response: Admitted.

33. Registered student organizations may receive funding from the activity fee collected from students. Depo. Ex. 14; Nelson 275:1–7; App. 82, 89.

Response: Admitted.

34. The University asserts its right to regulate student groups in the interest of providing equal treatment to all of its students under the law. Nelson 292:17–293:2; App. 84.

Response: Admitted that Dr. Nelson claimed that the University has an interest in “provid[ing] equal treatment to all under the law.” BLinC App. 356 [Nelson Dep. 292:25–293:2]. Denied that the University’s actions in this case furthered that interest, or that the University currently or previously has either interpreted or enforced that interest equally to all student groups. *See, e.g.*, BLinC SoF ¶¶ 262–66, 340–43, 395–402.

35. Student organizations at the University “provide opportunities for fellowship . . . [and] learning outside the classroom, opportunities to engage the curriculum with the co-curriculum in a more practical experiential kind of way.” Nelson 290:12–291:2; App. 84.

Response: Admitted. Dr. Nelson also testified that it is the University’s desire “to encourage a broad diversity of student organizations” and to give students “opportunity to confront ideas that they might disagree with and learn how to debate and grapple with positions that maybe they have never grappled with before.” BLinC SoF ¶¶ 379–80.

NON-REGISTERED STUDENT ORGANIZATIONS

36. Non-registered Student Organizations may still organize and meet on the University campus, and groups may reserve space in the Iowa Memorial Union (“IMU”) at the general public event pricing, if space is available. Depo. Ex. 14; Affidavit of William R. Nelson, filed January 17, 2018, ¶ 1; App. 7, 90.

Response: Admitted that nonregistered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. *See also* BLinC SoF ¶ 239.

37. Non-registered Student Organizations may also request meeting space within university residence halls subject to the University Housing & Dining Academic Year Room Reservation Policy for External Groups. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 4; App. 7.

Response: Admitted that nonregistered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. *See also* BLinC SoF ¶ 239.

38. Non-registered Student Organizations may use the bulletin boards located on the Ground Floor of the IMU and the bulletin board in the Student Activities Center located on the IMU 2nd floor. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 3; App. 7

Response: Denied. *See* BLinC SoF ¶ 239 (especially BLinC App. 1189). Nonregistered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. BLinC SoF ¶ 239.

39. Non-registered Student Organizations may request to have flyers displayed on bulletin boards in residence halls, as well as on digital displays subject to University policies. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 5; App. 7.

Response: Denied. *See* BLinC SoF ¶ 239 (especially BLinC App. 1189). Nonregistered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. BLinC SoF ¶ 239.

40. Non-registered Student Organizations may request to distribute communications by mass-mailings. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 5; App. 7.

Response: Admitted that registered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. BLinC SoF ¶ 239.

41. Non-registered Student Organizations may advertise or recruit on campus subject to the University's "Casual Use" policy. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 6; App. 7.

Response: Admitted that nonregistered student groups are denied the benefits granted to registered student organizations and instead are treated like members of the general public, who can only access a limited set of services at the University at both a much higher price and with many more restrictions. BLinC SoF ¶ 239.

REFUSAL OF REGISTRATION, DEREGISTRATION, AND OTHER PENALTIES

42. Between January 1, 2008 and June 8, 2018, thirty-one (31) student organizations have been refused registration, deregistered or otherwise penalized or subjected to official corrective measures by the University (excepting "BLinC"). *See* Defendant, the University of Iowa, Answers to First Set of Interrogatories, No. 6; App. 13-15.

Response: Admitted that the University's interrogatory responses identified thirty-one (31) student organizations that were denied registration or deregistered between January 1, 2008, and June 8, 2018. None of those groups were subjected to these adverse actions for reasons related to the University's Human Rights Policy or for any other reason that demonstrated that the University equally enforced its Policy against other student groups. Defs.' App. 13-15.

43. The UI Feminist Union was also found responsible for violations of the Human Rights Policy, but they were not a registered student organization at the time. Nelson 278:24–279:1; App. 83.

Response: Admitted that the University’s issued a finding against UIowa Feminist Union that there was “a reasonable basis to believe that” it had violated “the university’s *Policy on Human Rights*.” Exhibit 83. Denied that UIowa Feminist Union was not a registered student organization at the time. Exhibit 83.

44. Between January 1, 2008 and June 8, 2018, the University investigated allegations of violations of the Human Rights Policy brought against three student groups: the IU Feminist Union, 24:7, and BLinC. See Defendant, the University of Iowa, Answers to First Set of Interrogatories, No. 8; App. 16.

Response: Admitted that these are the *only* groups that the University has ever identified as being investigated for a violation of the Human Rights Policy.

45. Business Leaders in Christ (“BLinC”) is a student organization which was founded on April 1, 2014. *Exhibit C* to Petition filed December 11, 2017; App. 1.

Response: Admitted that BLinC is a student organization and that it was founded on or around April 1, 2014. BLinC SoF ¶¶ 95-96.

46. At the time of the events at issue in the Petition, BLinC had seven student members. Thompson 15:13–15; App. 36.

Response: Admitted.

47. The group’s purpose, as set forth by BLinC, was as follows at the time it was founded:

As seekers of Christ, Business Leaders in Christ is a student organization within the Tippie College of Business meant to help students learn about how to continually keep Christ first in the fast-paced business world. Using the Bible as a guide, through fellowship and small group discussion, students will network

within the College and with business leaders, who walk with Christ on a day-to-day basis.

Exhibit C, Petition filed December 11, 2017; App. 1.

Response: Admitted.

48. In its original constitution, BLinC set forth the University of Iowa's Human Rights Clause as required under the Registered Student Organization Constitutional Standards and Guidelines policy. *Compare Exhibit C* to Petition filed December 11, 2017 with Depo. Ex. 17; App. 96.

Response: Admitted.

49. Since BLinC had complied with its requirements for recognition, the University recognized BLinC as a Registered Student Organization in the Fall of 2014. Thompson 15:13–16:10; App. 36.

Response: Admitted.

50. On February 3, 2016, Marcus Miller ("Miller"), a student at the University and member of BLinC, reached out to Hannah Thompson ("Thompson") by email, to express his interest in BLinC. Depo. Ex. 96; App. 141.

Response: Admitted.

51. On March 29, 2016, Miller again contacted Thompson, this time to inquire how he might join BLinC's leadership team. Depo. Exs. 88, 96; App. 119, 141.

Response: Admitted.

52. On April 7, 2016, Miller met with Thompson to discuss leadership positions within BLinC. Depo. Ex. 96; App. 141.

Response: Admitted.

53. During the April 7, 2016 meeting, Miller disclosed to Thompson that he is gay. Depo. Exs. 91, 93, 96; App. 123, 124, 141.

Response: Admitted.

54. Thompson told Miller that she would need to discuss his sexual orientation with other members of the leadership team, as she was not sure how Miller's revelation would affect his chances of becoming an officer in BLinC. Depo. Exs. 95, 96; App. 138, 141.

Response: Denied. Thompson told Miller that she would need to discuss his statements that the teachings of the Bible on same-sex relationships were something that he had been struggling with and that he desired to engage in same-sex relationships in violation of those teachings. BLinC SoF ¶¶ 117-34.

55. At some point after her conversation with Miller, Thompson met with other members of BLinC's leadership: Kolton Dames ("Dames") and Nate Wells ("Wells"). Depo. Ex. 95; App. 137.

Response: Admitted.

56. The three discussed Miller's sexual orientation, and continued to discuss the issue over the next couple of weeks. Depo. Ex. 95; App. 137-138.

Response: Denied. The three discussed Miller's suggestions that he didn't share BLinC's view of the Bible as an authoritative guide, including specifically the Bible's teaching on sexual conduct. BLinC SoF ¶¶ 127-33.

57. BLinC's then-executive team members decided that Miller was not a good fit for the organization's leadership team. Depo. Ex. 95; App. 138.

Response: Admitted that BLinC's then-executive team members decided that Miller was not a good fit for the organization's leadership team because of his fundamental theological

disagreement with BLinC's faith and because he could model their faith or lead their members with sound doctrine and interpretation of Scripture. BLinC SoF ¶¶ 130-32.

58. Thompson admits that Miller was otherwise qualified to hold a leadership position with BLinC. Thompson 25:12–15; App. 37.

Response: Admitted.

59. On or about April 27, 2016, Thompson met with Miller again. Depo Exs. 96, 106; App. 141, 144.

Response: Admitted.

60. At the April 27, 2016 meeting, Thompson told Miller that he would not be selected for a position on BLinC's executive leadership team. Depo. Exs. 96, 106; App. 141, 144.

Response: Admitted.

61. On May 17, 2016, Miller emailed Thompson to express that he felt he had been discriminated against by BLinC on the basis of his sexual orientation. Depo. Ex. 90; App. 122.

Response: Denied. Miller expressed concern that "the reason I am not allowed to be on the executive board is due to my sexual orientation, combined with potentially having a revisionist view on the subject of marriage." Defs.' App. 122. Miller further engaged in an extended discussion explaining why he believed that his theological interpretation of the Bible's views on sexual morality was correct, and why that view permitted him to engage in conduct that BLinC sincerely believed was sinful. *Id.*

62. Thompson discussed Miller's email with Dames. Depo. Ex. 95; App. 137.

Response: Admitted.

63. Thompson responded to Miller's email on June 22, 2016, describing her views on homosexuality and reiterating that Miller would not be permitted to have a position on BLinC's leadership team. Depo. Ex. 90; App. 120-121.

Response: Admitted that Thompson responded to Miller's email to state that it was "not because you call yourself a homosexual that you cannot be on leadership, but because your *pursuit* of this sin." Defs.' App. 120-21. Thompson explained BLinC's theological beliefs, how they differed from Miller's, and why Miller's disagreement with BLinC's views on sin and grace made him a poor fit for BLinC's leadership team. Defs.' App. 121.

64. In her June 22, 2016 email, Thompson stated that "Those in an executive position within BLinC are being held to the standard that, although we may struggle, we choose to turn from our sin and receive the grace of Jesus." Depo. Ex. 90; App. 121.

Response: Admitted.

65. At the beginning of the following school year, BLinC decided to clarify its leadership standards by drafting a "Statement of Faith" which it would require leadership-level members to agree to and sign. Petition, filed December 11, 2017, ¶ 63; Depo. Ex. 116; App. 162.

Response: Admitted.

66. BLinC's Statement of Faith set forth various statements of its version of Christianity, including a Doctrine of Personal Integrity, which states as follows:

All Christians are under obligation to seek to follow the example of Christ in their own lives and in human society. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including pornography. 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. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.

Depo. Ex. 116; App. 162.

Response: Denied. The statement drafted at the August 20, 2016 “Vision Meeting” identified core Christian doctrines to which BLinC ascribed, including the following statement concerning its leaders’ obligation to turn from sin:

As I hold an Executive position with Business Leaders in Christ, I commit to live a life in which I turn from my sin and actively choose the biblical principles of Godly sanctification and righteousness. If and when I misstep, I will confess my struggle to God and to a member of the Business Leaders in Christ executive board acknowledging that I choose to receive grace and forgiveness from God and from others, and turn from my sin.

BLinC SoF ¶ 151. The “Doctrine of Personal Integrity” was not added until after the Defendant Officials asked BLinC’s officials to explain their religious beliefs in greater detail. BLinC SoF ¶¶ 213-22.

67. On February 16, 2017, Miller went to the Equal Opportunity and Diversity Office to make a complaint against BLinC and 24:7, another Christian organization on campus with which he had a conflict. Depo. Ex. 93; App. 124.

Response: Admitted.

68. On February 20, 2017, Miller filed a formal complaint against BLinC, stating that his rights had been violated by the group because he is “openly gay.” Depo. Ex. 91; App. 123.

Response: Admitted.

CONSTANCE SCHRIVER CERVANTES’ INVESTIGATION OF MILLER’S HUMAN RIGHTS COMPLAINT

69. Constance Schriver Cervantes (“Schriver Cervantes”) was assigned to investigate Miller’s Human Rights complaint against BLinC. Schriver Cervantes 12:2–6; App. 21.

Response: Admitted.

70. Schriver Cervantes is a Compliance Coordinator in the Office of Equal Opportunity and Diversity. Schriver Cervantes 5:12–14; App. 18.

Response: Admitted.

71. Schriver Cervantes is an attorney who specialized in “employment and labor and discrimination” cases in private practice prior to being hired by the University of Iowa. Schriver Cervantes 5:17–6:13; App. 18-19.

Response: Admitted.

72. During her time with the University, Schriver Cervantes has conducted investigations into Human Rights-related complaints against three student groups: BLinC, the UI Feminist Union, and 24:7. Schriver Cervantes 17:6–17; App. 21.

Response: Admitted.

73. Schriver Cervantes used her discretion and legal training in determining how to apply the Human Rights Policy during her investigation into BLinC’s discriminatory actions. Schriver Cervantes 21:15–16; App. 23

Response: Admitted that Ms. Schriver Cervantes testified that no one with supervisory responsibility “talked to [her] about how [she] should apply or interpret the Human Rights Policy” and that it was “up to [her] discretion how it’s applied.” Defs.’ App. 23. Denied that Schriver Cervantes used her legal training in the process.

74. Schriver Cervantes interprets the Human Rights Policy as not prohibiting discrimination on the basis of belief, but rather, on the basis of protected classification. Schriver Cervantes 22:25–23:2; App. 24-25.

Response: Admitted.

75. As part of her investigation, Schriver Cervantes reviewed the documentation provided by the parties, including Facebook messages and emails between the Miller and Thompson, BLinC’s constitution, University policies governing registered student organizations, a

chronology prepared by Thompson, and minutes of a BLinC meeting provided by Thompson. Depo. Ex. 106; App. 142.

Response: Admitted.

76. She also conducted interviews with both Miller and Thompson. Depo. Exs. 93, 95, 106; Schriver Cervantes 12:2–6; App. 20, 124-125, 137-138, 143-144.

Response: Admitted.

77. Redington asked Thomas Baker, another university attorney, to sit in on the investigation being conducted by Schriver Cervantes. Baker 16:4–11; App. 31.

Response: Admitted that Redington asked Thomas Baker to sit in on the investigation.

Admitted that Mr. Baker is an attorney. Defs.’ App. 27-30.

78. Redington told Baker that she wanted him to serve as a liaison between the EOD and the Center for Student Involvement and Leadership (“CSIL”). Baker 16:4–19; App. 31.

Response: Admitted.

79. During his time with the University, Baker has been responsible for investigating student misconduct cases, student discipline, and “other duties as assigned.” Baker 3:16–6:1; App. 27-30.

Response: Admitted.

80. Baker was not involved in advising student organizations, but did investigate complaints against student organizations. Baker 6:5–21; App. 30.

Response: Admitted.

81. Baker was present at the interviews of both Miller and Thompson. Baker 127:4–11; App. 32.

Response: Admitted.

82. On June 30, 2017, upon completing her investigation, Schriver Cervantes issued a written finding that BLinC had violated the University's Human Rights Policy. Depo. Ex. 106; App. 142.

Response: Admitted.

83. Schriver Cervantes found that the "basis for BLinC's refusal to select Complainant [Miller] for the position of vice-president was his sexual orientation." Depo. Ex. 106; App. 146.

Response: Admitted that this was her finding.

84. In her report, Schriver Cervantes indicated that "[s]tudent organizations may state a set of beliefs with which their members or leaders must comply. . . . However, an organization may not adopt a statement of beliefs that is inconsistent with the *Policy on Human Rights*, and base exclusion on a protected classification." Depo. Ex. 106; App. 146.

Response: Admitted.

85. On July 14, 2017, Jacob Estell ("Estell"), incoming President of BLinC, wrote a letter to Dr. Lyn Redington, Assistant Vice President and Dean of Students, asking her to reverse Schriver Cervantes' finding against BLinC. Depo. Ex. 109; App. 149-150.

Response: Admitted.

DR. WILLIAM NELSON'S INVESTIGATION AND IMPOSITION OF SANCTIONS

86. Per University policy, BLinC representatives met with Dr. William Nelson ("Nelson") on September 1, 2017. Nelson 44:5-7; App. 58.

Response: Admitted. Dean Baker was also at the meeting. BLinC SoF ¶ 194.

87. Nelson was formerly the Executive Director of the Iowa Memorial Union, and is now Associate Dean of Students and Executive Director of the Iowa Memorial Union. Nelson 8:19–9:4; App. 47-48.

Response: Admitted.

88. Nelson is responsible for providing administrative oversight to Fraternity and Sorority Life, campus programs, student activities, and annual events. Nelson 9:5–10:15; App. 48-49.

Response: Admitted.

89. Nelson's responsibilities include, in part, the registration of student organizations through the Center for Student Involvement and Leadership through the Iowa Memorial Union. Nelson 117:3–118:4; App. 79-80.

Response: Admitted.

90. Nelson has the final authority for construing the Human Rights Policy for the University. Nelson 118:1–4; App. 80.

Response: Admitted.

91. As Executive Director of the Iowa Memorial Union, Nelson is responsible for issuing sanctions if a student group is found to be in violation of the Human Rights Policy and sanctions are warranted. Nelson 32:11–33:11; App. 50-51.

Response: Admitted.

92. To resolve cases involving violations of the Human Rights Policy, it is Nelson's responsibility to meet with students and whatever advisors they wish to include in the meeting. Nelson 33:18–25; App. 51.

Response: Admitted.

93. During the course of meetings with students and their advisors, Nelson discusses the facts of the case. Nelson 33:18–25; App. 51.

Response: Admitted that Nelson discussed the facts of the case, although he stated he would not reconsider them.

94. Nelson relies primarily on the finding made by the Office of Equal Opportunity and Diversity investigator in deciding whether to issue sanctions in a particular case. Nelson 37:2–12; App. 54.

Response: Admitted.

95. Nelson has no responsibility to independently confirm the facts included in the official finding. Nelson 37:2–12; App. 54.

Response: Denied. Dr. Nelson’s supervisor, Dean Redington, testified that she expected him to conduct an independent review of the investigator’s findings, as the appeal through Dr. Nelson was the only avenue of appeal available to student organizations like BLinC. BLinC SoF ¶¶ 391-400. Further, Dr. Nelson’s findings against BLinC explicitly stated that they were made based on his view of the “preponderance of the evidence.” BLinC App. 1221.

96. Nelson attends a student meeting with knowledge of whether a violation has occurred, based on the EOD’s findings, but gives the respondent group an opportunity to “provide additional context, to ask additional questions, for me to then share what the process looks like moving forward.” Nelson 40:1–41:14; App. 56-57.

Response: Admitted that Dr. Nelson attended the meeting with BLinC and gave BLinC’s leaders an opportunity to provide additional context and to ask questions. Denied that Dr. Nelson considered anything he learned at the meeting to review the investigator’s findings. BLinC SoF ¶¶ 356-59, 391.

97. Nelson uses his meetings with students to determine whether the violation is severe enough to warrant issuance of a sanction. Nelson 41:7–14; App. 57.

Response: Denied. Dr. Nelson testified that he relied primarily on the investigator’s findings and that his view was that he had no responsibility to independently confirm the facts included in the official finding. Defs.’ App. 54.

98. If an investigation returned a finding of “no probable cause” that discrimination occurred, Nelson would review the investigatory report, but would not move forward with the sanctions process. Nelson 37:13–38:1; App. 54-55.

Response: Admitted.

99. During the course of his career with the University, Nelson could only recall three investigations into violations of the Human Rights Policy by Registered Student Organizations. Nelson 35:23–36:7; App. 52-53.

Response: Admitted.

100. The groups investigated during Nelson’s time with the University were BLinC, 24:7, and the UI Feminist Union. Nelson 36:8–9; App. 53.

Response: Admitted.

101. At the time of the events at issue in the Petition, Nelson understood that the Office of Equal Opportunity and Diversity had found BLinC to be in violation of the Human Rights Policy for denying a student a leadership opportunity because of his status as a gay man. Nelson 38:2–7; App. 55.

Response: Admitted that Nelson understood that to be the finding of the Office of Equal Opportunity and Diversity.

102. In reviewing Thompson’s email to Miller, it was clear to Nelson that Thompson had rescinded an offer for a leadership position in BLinC because Miller told her that he was “openly gay.” Nelson 38:8–20; Depo. Ex. 90; App. 55, 120.

Response: Denied. Dr. Nelson testified that he did not look beyond the investigator’s findings to confirm their accuracy, but simply accepted the findings without making any independent effort to confirm whether they accurately reflected the facts. BLinC SoF ¶¶ 356–57. Dr. Nelson did not testify that he reviewed Thompson’s email to Miller. He drew his conclusions based on how the investigator summarized the email in her findings. Defs.’ App. 55 (“The Findings, I know, referenced [an] email . . .”).

103. In the September 1, 2017 meeting with the students and their counsel, BLinC argued that Miller had not been discriminated against based of his status as a gay man, but rather on the basis of his unwillingness to conform his conduct to the standards of morality set forth by BLinC. Nelson 45:12–49:10; App. 59–63.

Response: Admitted in part. BLinC also explained that its determination was based on the predicate that Miller disagreed with BLinC’s religious beliefs, in addition to his refusal to live consistently with those beliefs.

104. Nelson believed that no distinction could reasonably be made between Miller’s status and his conduct. Nelson 45:12–49:10 (“I believe there was a violation because he [Miller] admitted to the then-president that he was gay, and the offer for the vice president position was retracted after he made the admission.”); Depo. Ex. 109; App. 149.

Response: Denied. There is no testimony from Dr. Nelson that no distinction could reasonably be made between Miller’s status and his conduct. To the contrary, Dr. Nelson and others testified repeatedly and unanimously that the Human Rights Policy itself distinguishes status from conduct, prohibiting status-based discrimination while allowing belief-based and conduct-based restrictions. BLinC SoF ¶¶ 207–09, 212, 260, 272–74, 326–29, 372. Dr. Nelson admitted that it would be permissible to deny a heterosexual individual a leadership position

for disagreeing with BLinC's religious views concerning homosexuality. Defs.' App. 62-63 [Nelson Dep. 48:15-21, 49:4-10]. Dr. Nelson explained that his understanding that BLinC had violated the Policy derived wholly from his accepting the findings of the EOD report on its face, without reviewing the underlying facts. Defs.' App. 65-66.

105. Nelson believed, based upon the findings of the EOD, that violation of the Human Rights Policy had occurred. Nelson 61:5-18; 82:21-83:9; App. 64-66.

Denied: Admitted that Dr. Nelson reached this conclusion without directly reviewing any of the evidence, and despite letters from Hannah Thompson and Jacob Estell explaining that those findings were false and despite Estell's unequivocal statement to him at the September 1 meeting that the findings were false and further did not reflect BLinC's leadership policy either previously or going forward. Defs.' App. 64-66; *see also* BLinC SoF ¶¶ 356-60, 391-402.

106. Nelson issued a letter of sanctions to BLinC on September 13, 2017, in which he acknowledged that a violation of the Human Rights Policy had occurred, and then asked the organization to commit to 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. Nelson 82:21-84:25; Depo. Ex. 114; App. 65-67, 151.

Response: Denied. Dr. Nelson's letter of sanctions did not merely acknowledge a violation, but stated that "I find there is a preponderance of evidence that BLinC violated the University of Iowa Human Rights Policy." BLinC App. 1221. Further, Dr. Nelson instructed BLinC to submit a list of qualifications "to ensure that persons who identify as non-heterosexuals are not categorically eliminated from consideration" and to submit a plan ensuring that leadership applicants would be asked questions "that are not presumptive of candidates based upon their sexual orientation." Defs.' App. 66-67. Dr. Nelson has admitted

that BLinC's constitution and Statement of Faith satisfied these requirements after BLinC altered those documents in response to Dr. Nelson's instructions. BLinC SoF ¶¶ 210-12, 216-17 [Nelson Dep. 65:18-67:4, 70:5-71:8, 72:14-21, 77:25-79:16]; *see also* BLinC App. 0276 [Nelson Dep. 83:10-84:25]; *see also* BLinC SoF ¶¶ 346-47 (Dean Baker conceding that BLinC satisfied the second requirement and would have satisfied the third requirement if its beliefs had only prohibited sexual activity outside of marriage generally, not sexual activity outside of heterosexual marriage).

107. As a result of Nelson's letter, BLinC altered its constitution to include a section on membership that complied with the Human Rights Policy, as well as a statement of faith which outlined the group's beliefs, including its beliefs about sexuality. ("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."). Depo. Ex. 116; App. 162.

Response: Admitted that BLinC altered its constitution in compliance with Dr. Nelson's instructions at the September 1 meeting and the September 13 letter, and that its updated Statement of Faith reflected its sincere religious beliefs on several beliefs, including its beliefs about sexuality.

108. BLinC submitted its revised constitution and Statement of Faith on September 27, 2017. Depo. Ex. 115; App. 153.

Response: Admitted.

109. Nelson believed that the provisions in BLinC's Statement of Faith relating to marriage between a "husband and wife" violated the Human Rights Policy. Nelson 90:4-99:21; App. 68-77.

Response: Admitted that Dr. Nelson deregistered BLinC on the grounds that the provisions in BLinC’s Statement of Faith relating to marriage between a “husband and wife” violated the Human Rights Policy. Dr. Nelson later conceded, however, that his conclusion was wrong, that BLinC’s beliefs about marriage, sexuality, and gender identity did not violate the Human Rights Policy, and that construing the Human Rights Policy otherwise would violate state and federal law. Defs.’ App. 68-77 [Nelson Dep. 90:4-95:12, 96:6-13, 97:11-23, 99:2-21]; *see also* BLinC SoF ¶¶ 199-201, 205-12, 215-17, 366-68, 370-78.

110. Nelson noted that provisions of BLinC’s Statement of Faith were discriminatory as they relate to homosexual or transgender individuals. Nelson 96:14–23; App. 74.

Response: Admitted that Dr. Nelson deregistered BLinC based on his determination that 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 based on sexual orientation or gender identity.” BLinC App. 1233. Dr. Nelson later conceded, however, that his conclusion was wrong, that BLinC’s beliefs about marriage and sexuality did not violate the Human Rights Policy, and that construing the Human Rights Policy otherwise would violate state and federal law. Defs.’ App. 68-77 [Nelson Dep. 90:4-95:12, 96:6-13, 97:11-23, 99:2-21]; *see also* BLinC SoF ¶¶ 199-201, 205-12, 215-17, 366-68, 370-78.

111. On October 19, 2017, Nelson rejected the BLinC’s revisions to its constitution based on the provisions related to sexual orientation and gender identity, and gave BLinC an additional 10 days to comply with the Human Rights Policy. Nelson 100:9–22; Depo. Ex. 118; App. 78, 163.

Response: Admitted that Dr. Nelson rejected BLinC’s constitution based on his determination that it did not meet the “requirements [he] delineated for BLinC to remain as a registered student organization in good standing,” that his rejection was based on his interpretation of the Human Rights Policy, and that he gave BLinC 10 days “to make additional revisions to your Statement of Faith” to comply with the Policy. BLinC App. 1233. Dr. Nelson further stated that failure to submit revisions would result in his finding that BLinC was not in compliance with the Policy and his revocation of BLinC’s registered status. *Id.*

LYN REDINGTON’S REVIEW OF BLINC’S APPEAL

112. Lyn Redington was Assistant Vice-President and Dean of Students at the University of Iowa at the time of the events at issue in the Petition until her retirement on May 1, 2018. Redington 5:23–6:8; App. 39-40.

Response: Admitted.

113. Redington’s major responsibilities with the University included overseeing the student conduct process, as well as overseeing the Iowa Memorial Student Union and Dr. Bill Nelson. Redington 6:9–16; App. 40.

Response: Admitted.

114. Redington is not an attorney and relied extensively on University Counsel for advice regarding student groups and their Constitutional rights. Redington 26:6–28; 31:14–21; 65:13–14; App. 43-45.

Response: Denied that Redington relied extensively on advice of counsel.

115. Redington was not involved in the decision to deregister BLinC. Redington 14:10–14; App. 41.

Response: Denied. Dean Redington was Dean Baker’s supervisor and appointed Dean Baker to participate in the investigation and sanctioning of BLinC because of his extensive experience. BLinC SoF ¶¶ 317-20. Dean Baker played a lead role in the investigation and sanctioning of BLinC. BLinC SoF ¶¶ 333-39. Dean Redington was also Dr. Nelson’s supervisor and both reviewed and affirmed Dr. Nelson’s decision to deregister BLinC. Defs.’ App. 41 [Redington Dep. 14:15-18]; Defs.’ App. 165 (letter from Dean Redington stating “I affirm the decision of Dr. Nelson that BLinC violated the University’s Human Rights Policy” and “I affirm the sanctioning decision of Dr. Nelson to revoke the registration of BLinC”); *see also* SoF ¶¶ 393-402; BLinC App. 570 [Redington Dep. 6:16].

116. However, Redington was involved in BLinC’s appeal of the deregistration. Redington 14:13–18; App. 41.

Response: Admitted that Redington was involved in BLinC’s appeal of the deregistration.

117. Upon receiving the appeal and prior to issuing her decision, Redington consulted with the University’s Office of General Counsel and reviewed the documentation provided to her. Redington 28:21–29:13; App. 43.

Response: Admitted that Dean Redington consulted with the University’s Office of General Counsel, though neither she nor the University submitted evidence of the nature, substance, duration, or comprehensiveness of that consultation. Denied that Dean Redington reviewed the documentation provided to her. BLinC SoF ¶¶ 392-402.

118. On November 16, 2017, Redington wrote a letter to Estell and his counsel, Eric Baxter (“Baxter”), affirming Nelson’s decision to issue sanctions and explaining that BLinC’s Statement of Faith does not comply with the University’s Human Rights Policy. Depo. Ex. 119; App. 165.

Response: Admitted that Redington wrote the letter, affirmed Nelson’s decision, and upheld the determination that BLinC’s Statement of Faith violated the Policy.

119. In her letter, Redington explained that the affirmation of the Statement of Faith “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.” Depo. Ex. 119; App. 165.

Response: Admitted.

120. Redington stressed that although BLinC claimed it was being “kicked off campus,” a “student organization can exist on campus whether or not the University approves its registration pursuant to the Registration of Student Organizations policy.” Depo. Ex. 119; App. 165.

Response: Admitted that Dean Redington made this argument in her letter upholding BLinC’s deregistration.

BLINC FILES ITS COMPLAINT AGAINST THE UNIVERSITY

121. On December 11, 2017, BLinC filed its Petition in the United States District Court for the Southern District of Iowa. *Petition*, filed December 11, 2017.

Response: Admitted.

Respectfully submitted,

/s/ Eric S. Baxter

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**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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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. Schriver 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, Schriver

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 group 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 mission—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’ *Tenaflly*. 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 religious 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>	

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

BUSINESS LEADERS IN CHRIST,

Plaintiff,

v.

THE UNIVERSITY OF IOWA, *et al.*,

Defendants.

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

**DEFENDANTS’ REPLY TO
PLAINTIFF’S RESISTANCE TO
THEIR PARTIAL MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

Plaintiff does not raise any new or unanticipated arguments in its Resistance to Defendants’ Motion for Summary Judgment. However, Defendants believe that a very brief Reply is warranted, given Plaintiff’s record in this case.

ARGUMENT

THE INDIVIDUAL DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY

In its Resistance, Plaintiff accuses Defendants of bigotry and of presenting “make-believe defamatory accusations,” while repeatedly claiming that various pieces of evidence are “undisputed” despite Defendants’ detailed denials of BLinC’s claims in its Response to Plaintiff’s Statement of Material Facts. *See* Plaintiff’s Reply, p. 2, 6–8, 13 (Plaintiff claiming that BLinC was targeted “specifically for its beliefs” with no citation to the record), 15; *see also* Defendants’ Response to Plaintiff’s Statement of Undisputed Material Fact ¶¶ 154 (Defendants denying that “BLinC has always sought to create a welcoming environment; thus, anyone is welcome to join as a member”), 241–50 (Defendants denying that Plaintiff properly

characterized the manner in which the University conducted its investigation into student group 24-7); 127–135 (Defendants denying Plaintiff’s assertion that BLinC “welcomes anyone as a leader”—particularly in regard to the reason why Marcus Miller was not permitted to serve on BLinC’s leadership team); ¶¶ 208–19 (Defendants denying Plaintiff’s contention that Dr. Nelson and Dean Baker told BLinC members that their actions had not violated the University’s Policy). Further, Plaintiff’s contention that “it is undisputed that BLinC does not violate the Policy” is at the very heart of this case and Defendants position is in direct opposition to this statement. *See* DOSUMF ¶ 182, 197–198, 212, 220–221, 226–29, 232–33. This is obviously a disputed issue.

In an attempt to demonstrate the alleged viewpoint discrimination at issue in this case, BLinC compares itself with Love Works, an “LGBTQ+ affirming” Christian group which maintains registered status on campus. Plaintiff’s Resistance, p. 15–16. Plaintiff states that other groups, including Love Works, are being “lauded” by Defendants for providing “safe spaces for minorities which have historically been the victims of discrimination.” Plaintiff’s Resistance p. 1. The obvious difference between BLinC and Love Works is that BLinC’s Statement of Faith *excludes* people who are members of a protected class, while Love Works’ Constitution does not exclude any member of a protected class, and is generally inclusive of all categories of people. P. App. 239–43. People who disapprove of homosexual behavior are not a protected class, and Love Works, as a Christian group, does not exclude Christians. *See id.*¹

¹ Under “Core Beliefs” the Love Works Constitution states:

1. Jesus-Centered: Jesus will be at the center of everything we do. His life and teachings provide a model worthy of limitation, and we believe through the life, death, and resurrection of Jesus, we can experience great joy and freedom.
2. Inclusivity: We believe that Jesus was the ultimate example of someone who reaches out to the marginalized. We stand in full support of those who are victims of systematic oppression. We welcome full participation in our organization, regardless of race, gender, sexual orientation, gender identity, or

Similarly, BLinC compares itself to the House of Lorde, a student group which restricts membership and leadership pending an interview by the Membership Recruitment Chair, and seeks to maintain a “space on campus . . . where intersectional feminism/womanism specifically includes the support of Black Queer individuals who’ve experienced trauma in the arena of domestic violence, HIV/AIDs/STD awareness, legal support, and Housing.” P. App. 1143. Again, the language included in House of Lorde’s constitution does not exclude any student on the basis of a protected characteristic. *See id.* People who dislike black students, queer students, or feminist students, or want to disrupt a group meant to support black, queer, and feminist students, are not members of a protected class on that basis. *See* Iowa Code Chapter 216. And unlike Marcus Miller, who actually held conservative Christian beliefs which were mostly in-line with BLinC’s and earnestly sought to be a leader in the group, someone who dislikes minorities, feminists, or LGBTQ+ individuals would have no pure motives for joining the House of Lorde. *See* D. Supp. App. 168–76 (Miller outlining some of his Christian beliefs in his 24:7 leadership application); P. App. 590–91 (Miller expressing his pain at having been rejected by BLinC despite his desire to “follow Jesus with all of [his] heart.”).

Plaintiff points to *Obergefell and Masterpiece Cakeshop* to illustrate its point that government officials must “proceed in a manner neutral toward and tolerant of . . . religious beliefs’ they may personally find abhorrent.” Plaintiff’s Resistance, p. 3, citing 138 S. Ct. 1719, 1729 (2018). Defendants generally agree with the above premise, however, must point out that the baker in *Masterpiece Cakeshop* was an employee in a private business—not a student group

ability, and affirm those in the LGBTQ+ community who have been pushed aside from many other faith communities.

...

P. App. 240–41.

in a limited public forum receiving state benefits. *Id.* at 1724. While Defendants must apply their Policy in a viewpoint neutral way, they are not required to look the other way when a group openly contravenes civil rights laws which have been adopted at both the state and federal level. *See* Iowa Code Ch. 216; 42 U.S.C. 2000e–2000e-17.

CONCLUSION

The individual Defendants are entitled to qualified immunity as a matter of law.

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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 9, 2018:	
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Signature: <u>/s/Betty Christensen</u>	