

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. X

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

BUSINESS LEADERS IN CHRIST, <i>Plaintiff,</i> v. THE UNIVERSITY OF IOWA, <i>et al.</i> , <i>Defendants.</i>	Case No.: 3:17-cv-00080-SMR-SBJ PLAINTIFF’S REPLY TO DEFENDANTS’ RESPONSES TO PLAINTIFF’S STATEMENT OF MATERIAL FACT
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1. The University of Iowa does not have an “all-comers policy” that requires all registered student groups to accept all students as members and leaders of the groups. App. 0358 [Nelson Dep. 299:21-300:17]; App. 0102, 0122 [Cervantes Dep. 19:9-11, 99:7-14]; App. 0038 [Baker Dep. 146:8-21].

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

Policy.”); Cervantes 19:9–13; P. App. 102 (testifying that she does not understand the University’s Human Rights policy to be an “all-comers” policy); Redington 20:23–21:4; P. App. 573 (testifying that she does not know the legal definition of an “all-comers” policy, and that she did not know at the time whether the University maintained an “all-comers” policy).

2. Following the Supreme Court’s decision in *Christian Legal Soc’y v. Martinez*, 561 U.S. 661 (2010), the University expressly considered and rejected changing its policy to an all-comers policy. App. 0038 [Baker Dep. 147:7-148:4]; App. 1334 ¶ 2; App. 1342.

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

BLinC REPLY: Dean Baker testified that, as of the time of the *Christian Legal Society v. Martinez* decision in 2010, “the University of Iowa did not have an ‘All Comers’ Policy,” such as the policy at issue in *Martinez*. BLinC App. 38 [Baker Dep. 146:8-21]. He further testified that the University held “meeting after the Supreme Court issued its decision in 2010” where “the issue of ‘All Comers’ policy did come up,” and “the decision was that we would not make any changes in the Human Rights Policy.” BLinC App. 38 [Baker Dep. 147:7-17]. The University did not have an all-comers policy at the time of its decision to deregister BLinC. BLinC App. 0358 [Nelson Dep. 300:14-17]. The University has admitted that it “does not currently have an ‘all-comers’ policy.” Univ. Resp. BLinC SoF ¶ 1, Dkt. 82-2 at 1.

3. University officials are unaware of “any effort by the University to adopt an ‘All Comers’ Policy” since that time. App. 0038 [Baker Dep. 148:8-10]; *see also* App. 0102, 0122 [Cervantes Dep. 19:9-13, 99:7-14]; App. 0573 [Redington Dep. 20:7-21:12]; App. 0592.

RESPONSE: Admit that Baker is not aware of any efforts to adopt an “all-comers” policy at the University since the decision in *Christian Legal Soc’y v. Martinez*, 561 U.S. 661 (2010), was issued. Baker 148:8–10; P. App. 38. Deny that the citations to testimony by Schriver Cervantes or Redington support the remainder of Plaintiff’s assertions as set forth in ¶ 3.

BLinC REPLY: Cervantes testified in her capacity as a Rule 30(b)(6) witness and someone who trained other University officials on the interpretation of the Policy that the University did not have an all-comers policy, BLinC App. 0102 [Cervantes Dep. 19:9-23], and that “[n]obody” at the University “opined to me that we had an all-comers policy.” BLinC App. 0122 [Cervantes Dep. 99:7-14]. Redington testified that she received an email from Tom Baker in 2017 stating that “the University of Iowa Human Rights Policy does not mandate an ‘all-comers’ policy,” as discussed in a 2009 memo on the Policy, and that she was unaware of any change in the Policy since the 2009 memo. BLinC App. 0573-574 [Redington Dep. 21:13-23:3].

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

RESPONSE: Admit, with the qualification that the deposition testimony cited merely states that the policy is “one of the three sections of the Code of Student Life that references student organizations” and that the purpose of the document is “[t]o talk about the

registration of student organizations.” Nelson 125:10–22; P. App. 287. Nelson does not advise as to the length of time the policy has been in place or whether the RSO Policy is the only document which “governs” in this area. *Id.*

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

RESPONSE: Admit.

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

RESPONSE: Admit, with the qualification that the Policy also states that “[s]tudent organizations can exist whether or not the University endorses them pursuant to this policy.” Depo. Ex. 14; P. App. 366.

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

RESPONSE: Admit.

8. The Policy expressly anticipates that students will form groups “to organize and associate with like-minded students” and that they will limit membership in these groups to “any individual who subscribes to the goals and beliefs” of the organization. App. 0367. And the University

“guarantee[s] an equal opportunity” for all student organizations to access University funds and resources “without differentiation for reasons that violate the University Policy on Human Rights or inhibit the group’s exercise of First Amendment rights of free expression and association.” App. 0367.

RESPONSE: Admit that the University “acknowledges the interests of students to organize and associate with like-minded students,” and that “any individual who subscribes to the goal and beliefs of a student organization may participate in and become a member of the organization,” with the qualification that “[m]embership and participation in the organization must be open to all students without regard to race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual.” Depo. Ex. 14; P. App. 366. Deny that the University guarantees an equal opportunity “to access” University funds and resources. The University merely guarantees an equal opportunity for RSOs *to apply* for funds. Depo. Ex. 14; P. App. 366 (noting that “[n]othing in this section shall be construed to create or guarantee any expectation of the receipt of funding or other benefits from UISG and/or GPSG and/or Recreational Services by any student organization . . .”).

9. The University also has a Human Rights Policy (the “Policy”) that broadly “prohibits discrimination” by the University in “employment, educational programs, and activities.” App. 0376; App. 0383.

RESPONSE: Admit that the University maintains and implements a Human Rights Policy which prohibits discrimination, with the qualification that the language cited by Plaintiff is part of the University's Nondiscrimination Statement. Depo. Ex. 21; P. App. 384.

10. The RSO Policy incorporates the University's Policy. App. 0367.

RESPONSE: Admit. RSO constitutions are reviewed to ensure that they comply with the Human Rights Policy and other University Policies. P. App. 372.

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

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

App. 0367.

RESPONSE: Admit.

12. In July or August 2018, the University amended the language in its RSO Policy to insert a parenthetical after the word "sex" to state an explicit exemption for fraternities and sororities. The RSO policy now reads as follows:

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

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

RESPONSE: Admit.

13. No similar change has been made to other versions of the Policy.

RESPONSE: Deny for lack of knowledge. Defendants are not certain what Plaintiff means by "other versions of the Policy" and Plaintiff's assertion lacks citation to the record.

BLinC REPLY: As one example, the so-called “Title IX” exemption has not been added to the University’s nondiscrimination statement on its website here: <https://opsmanual.uiowa.edu/community-policies/nondiscrimination-statement>.

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

RESPONSE: Admit that the University, through implementation of its RSO Policy, “acknowledges the interests of students to organize and associate with like-minded students.” Depo. Ex. 14; P. App. 366. Deny that student organizations have the right to restrict leadership and membership to individuals who embrace the organizations “goals and beliefs” without qualification, as the University’s RSO Policy explicitly states that an organization should “be able to exercise free choice of members on the basis of their merits as individuals without restriction *in accordance with the University Policy on Human Rights*.” Depo. Ex. 14; P. App. 366 (emphasis added). Deny that the appendix pages cited by Plaintiff support its contentions regarding the University’s historic understanding of its RSO policy or its implementation in regard to members and leaders of student groups. Depo. Ex. 14; P. App. 366.

15. Before its actions against Plaintiff Business Leaders in Christ (“BLinC”), the University had never deregistered or refused registration to a student group for requiring its leaders or its members to agree to its mission, purpose, or faith. App. 0353 [Nelson Dep. 278:12-279:5]; App. 1911-13, 1916.

RESPONSE: Admit, with the qualification that the University officials involved in evaluating civil rights complaints against student groups had only received complaints

against three groups: **BLinC**, the **UI Feminist Union**, and **24:7**. **Nelson 35:23–36:9; P. App. 264; Schriver Cervantes 16:20–17:17; P. App. 101-102.**

16. Further, the University had reviewed and approved numerous constitutions for registered student organizations that required leaders or members to agree with the group’s mission, purpose, or faith.

RESPONSE: Admit.

17. For instance, the University approved the constitutions of numerous religious groups, including an actual church, that explicitly require their leaders to sign a statement of faith or satisfy other religious criteria. *See, e.g.*, App. 0789-91 (**Love Works**, requiring leaders to sign a gay-affirming statement of Christian faith); App. 0788 (**24-7**, requiring leaders to “sign and affirm the Statement of Faith” and “live their lives in a manner consistent with the Code of Conduct,” including by “abstain[ing] from all forms of sexual conduct and sexual relations outside the confines of traditional marriage”); App. 0816 (**Athletes in Action**, requiring leaders to “follow Jesus’ example of leadership, teaching by word and by example” and “live in a manner that is consistent with the Biblical teachings,” including teachings on sexual conduct); App. 0717 (**Christian Legal Society**, requiring “[a]ll officers” to “subscribe to the Christian Legal Society Statement of Faith”); App. 0738 (**Campus Bible Fellowship**, limiting voting membership to individuals “who bear clear testimony of conversion to Jesus Christ”); App. 0864 (**Chi Alpha**, 2012 constitution, requiring leaders to “be in sincere agreement with the Articles of Faith” and to “conform to the Christian standards of conduct of Chi Alpha”); App. 0795 (**Geneva Campus Ministry**, construing Policy as “not preclud[ing] additional religious and moral qualifications for certain leadership positions”); App. 0703, 705-06 (**Imam Mahdi Organization**, Islamic group requiring its leaders to “refrain from major sins (*kaba’ir*)” and requiring both leaders and voting

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

RESPONSE: Admit.

18. The University has approved the constitutions of many organizations that limit their leadership or membership based on non-religious creeds or missions as well. *See, e.g.*, App. 0969 (**Feminist Majority Leadership Alliance**, requiring members to submit “written agreement” with “the Feminist Majority Foundation’s purposes and principles”); App. 1334, App. 1360 (**Feminist Union**, same); App. 1334, App. 1367 (**Iowa National Lawyers Guild**, requiring members to agree with effort to bring about “basic change in the structure of our political and economic system” “to the end that human rights shall be regarded as more sacred than property interests”); App. 0686 (**Korean American Student Association**, requiring members to “exhibit an optimistic attitude towards Korean culture” and stating that any member with a “negative attitude” will have their membership “revoked”); App. 1104 (**Latina/o Graduate Student Association**, limiting membership to “[a]nyone who supports the purpose of the organization, and is willing to commit to its objectives”); App. 1334 ¶ 6, 1376 (**National Society of Black Engineers**, requiring leaders to “put forth the effort to accomplish the goals” to “assist,” “promote,” and “[i]nform African-American engineers”); App. 1150 (**Organization of Women Law Students and Staff**, open to all “who subscribe to the purposes for the organization” including to “recommend and implement

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

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

19. And while not explicitly limiting membership, dozens of University-approved constitutions send the same message by adopting a mission or purpose to suggest a preference for one particular creed (secular or religious) over another. *See, e.g.*, App. 0732 (**Cru**, purpose to “introduce students to Christ, help them to grow in faith, encourage them to passionately live life in a manner consistent with belief in the God of the Bible, and inspire commitment to advancing the purposes of God in the world.”); App. 1335 ¶ 8, 1383 (**Hawks for Choice**, purpose “to unite pro-choice students and educate the University of Iowa community on issues related to all peoples’ reproductive freedom”); App. 1061 (**Hindus Against Casteism**, purpose to “raise awareness of the injustice of caste discrimination as well as build a group to help support [their] cause”); App. 1143-46 (**House of Lorde**, purpose “to advocate for the political interests of Black Lesbian et al GBTQPA+ students,” membership can be revoked for actions that “go against the support of Black

Queer individuals and our Mission”); App. 0692 (**Students for Life**, purpose “to provide representation for members of the student body who hold pro-life views and to be a voice for the voiceless”); App. 1335 ¶ 9, App. 1389 (**UDems**, purpose “to promote the Democratic Party”); App. 1334 ¶ 10, 1393 (**University of Iowa College of Law Federalist Society**, purpose to “preserve the natural law of human freedom” and “[t]he separation of governmental powers”); *see also generally* App. 0773-1165 [Exhibits B-1, B-2, & B-3].

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

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

RESPONSE: Admit, despite lack of citation.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

25. And even without explicitly restricting membership based on protected characteristics, many organizations express preference for individuals of a certain characteristic through their chosen name and/or their mission to promote the interest of one particular group. *See, e.g.*, App. 1129 (**American Association of Women Dentists**, purpose to promote “the advancement and recognition of women in dentistry”); App. 1118 (**Reaching OUT in Business**, promoting “professional development opportunities to LGBTQ+ people and allies”); App. 1141 (**Women in Science and Engineering Ambassadors**, “encourag[ing]” its members to be “a woman, a student

in a science or engineering field, or interested in science” and expressing purpose to “expand and improve educational and professional opportunities for women in all fields of science, technology, engineering and math”); *see also generally* App. 0774-1165 (**African Student Association, Agape Chinese Student Fellowship, American Indian Student Association, Arab Student Association, Asian American Coalition, Asian Fitness Association, Black Law Student Association, Chabad Jewish Student Association, Chinese Dance Club, Hispanic Dental Association, Hispanic/Latino Law Student Association, Hong Kong Student Association, Indian Student Association, Indonesian Student Organization, Iowa Men’s Hockey, Korean U Iowa Students Association, Latina/o Graduate Student Association, Latino Medical Student Association, Latter-day Saint Student Association, Lutheran Campus Ministry, Malaysian Student Society, Middle Eastern Law Students Association, Newman Catholic Student Center, National Association of Black Journalists, National Organization for the Professional Advancement of Black Chemists & Chemical Engineers, National Society of Black Engineers, Nepalese Student Association, Organization of Women Law Students & Staff, Outlaws, Pakistani Student Association, Persian Student Association, Reaching OUT in Business, Saudi Students Club, Society of Black Graduate & Professional Students, Society of Hispanic Professional Engineers, South Asian Student Alliance, Sri Lankan Students’ Association, Taiwanese Student Association, Thai Student Association, Turkish Student Association, Vietnamese Student Association, Women in Business, Young Women for America at Iowa**).

RESPONSE: Admit.

26. There are also many groups that are designed for certain categories of individuals who are not protected by the Policy. *See, e.g.*, App. 1335 ¶ 11, 1399 (**First Generation Iowa**, organization

“designed for students who are considered first generation college students,” *i.e.*, those “whose parents or guardians did not graduate from a four-year college or university”); *see generally* App. 0655 ¶ 3; App. 0773-86.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

BLinC REPLY: Title IX does not require that the University make an exception for or otherwise not enforce its Policy against sports clubs. The University admits that chooses not to enforce its Policy against sex-segregated student sports clubs for “historical reasons”

even though it is a “potential violation of the Human Rights Policy,” and further admitted that it has “no intention” of changing this non-enforcement policy. Univ. Resp. BLinC SoF ¶¶ 426-27.

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

RESPONSE: Admit. Deny that this is a fact material to this case.

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

RESPONSE: Admit. Deny that this is a fact material to this case.

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

RESPONSE: Admit. Deny that this is a fact material to this case.

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

RESPONSE: Admit. Deny that this is a fact material to this case.

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

RESPONSE: Admit. Deny that these are facts material to this case.

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

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

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

RESPONSE: Admit each subpart. Deny that these are facts material to this case.

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

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

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

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

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

- c. *Scholarships that discriminate on the basis of sexual orientation and gender identity.* App. 0466 [Petty Dep. 39:1-40:20]; App. 0481 (**Rainbow Scholarship**, annual scholarship limited to “undergraduate student who is gay, lesbian, bisexual, or transgender”); *see also* App. 0465 [Petty Dep. 37:2-38:25]; App. 0479 (**Robert D. Dockendorff Scholarship**, with “preference given to” students “who are active in the Gay, Lesbian, Bisexual, Transgender community”).
- d. *Funds that discriminate based upon disability.* App. 0462 [Petty Dep. 24:7-26:25]; App. 0484, 0486 (**Handicapped Projects Program Fund** and the **Learning Disability Assistant Fund**).
- e. *Awards that discriminate based upon national origin.* *See* App. 1338 ¶ 17, App. 1835-39 (**Iowa MBA India and China Awards**, which offer full or partial tuition to MBA students who have citizenship in India or China).
- f. *Scholarships and awards that discriminate based on sex.* *See* App. 1338 ¶ 17; App. 1809, 1820-21, 1837-38, 1848 (**Iowa MBA Women’s Award**; the **Kathleen Dore Women’s MBA Scholarship**; the **Henry Tippie Women’s MBA Scholarship**; the **M. Gladys Scott Scholarship**, available to “women majoring in Sports Studies”; **C. Pauline Spencer Scholarship** (same); **Lloyd and Gladys Burr Cunningham Nursing Scholarship Fund**, with “preference given to women from Iowa”; the **Margaret P. Benson Memorial Scholarship**, awarded to “[w]omen who are committed to women’s issues”).

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

RESPONSE: Admit each subpart. Deny that these are facts material to this case.

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

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

RESPONSE: Admit.

37. In an accompanying letter to the then-Dean of Students, Phillip Jones, CLS noted that the chapter would require members to embrace its Christian beliefs. App. 0752-53.

RESPONSE: Admit.

38. CLS explained that those beliefs included a moral code forbidding conduct such as “adultery, premarital sex, stealing, and homosexual conduct.” App. 0754.

RESPONSE: Admit.

39. CLS stated that “the degree of an individual’s compliance with that moral code (and his or her attitude towards that code) may affect that individual’s ‘standing’ within the [chapter].” App. 0754.

RESPONSE: Admit.

40. Regarding homosexual conduct, CLS emphasized that a person’s sexual orientation does not “disqualify someone from participating in the life of [the] chapter”; rather, it was the “person’s attitude towards those inclinations, their willingness to submit to Biblical authority, and the degree of their success in trying to live a life pleasing to God that really matters.” App. 0755.

RESPONSE: Admit.

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

RESPONSE: Admit.

42. CLS was informed by the University that the Policy language was required to be inserted in every University student group’s constitution. App. 0752.

RESPONSE: Admit.

43. CLS stated that it had “modified the nondiscrimination provision of [its] constitution,” apparently by omitting “creed,” “religion,” “sexual orientation,” and “gender identity” as protected categories. App. 0752; *see also* App. 0753, 0755.

RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

RESPONSE: Admit.

47. In 2004, the University again affirmed the right of religious groups to require that their leaders and members embraced and lived by the groups’ sincere religious beliefs.

RESPONSE: Defendants are unable to answer due to lack of citation.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

51. CLS asserted its First Amendment rights and asked the University to "give written assurance that: (1) the University's . . . violation the CLS chapter's First Amendment rights will cease; and (2) the University has created a formal, written exemption for religious groups from the religion, creed, sexual orientation, and gender identity language of the University's required Membership Clause." App. 0010 [Baker Dep. 37:2-8]; App. 0076.

RESPONSE: Admit.

52. On a subsequent phone call with CLS's attorney, Dean Baker jotted down personal notes suggesting that the University's Policy "doesn't preclude you from asking prospective officers to subscribe to a statement of faith," and that it "doesn't preclude your group from establishing reasonable leadership qualifications consistent with the purpose of your org." App. 0011-13 [Baker Dep. 40:21-47:3]; App. 0077.

RESPONSE: Deny. Baker testified that he did not recall when he took the notes outlined in Depo Ex. 45; P. App. 78, did not recall who he was speaking with at the time or even the time frame during which the notes were made, and did not recall what the

conversation was about or what the notes meant. Baker 40:21–47:3; P. App. 11-13 (Q: “So you know roughly it would have taken place in early 2004, correct?” A: “I don’t know for certain.”). Baker specifically indicated that the notes were “not [his] conclusions. [T]hese notes that I took were thoughts that I—in a rough draft. I was not transcribing what somebody else was telling me . . . I was writing down ideas about ways to explain how the Human Rights Policy applied, but . . . these do not necessarily reflect my conclusions at the time.”). Baker 47:9–16; P. App. 13.

53. Baker sent a formal letter on February 20, 2004, confirming these principles. App. 0014-15 [Baker Dep. 51:20-52:6, 53:18-54:24]; App. 0078-80.

RESPONSE: Admit that Baker responded to Mr. Nierman’s letter on February 20, 2004. Admit that Baker’s letter explained that “the Human Rights policy does not prohibit student groups from establishing membership criteria” with the qualification that Baker also clarified that the right to establish membership rules does not “extend to permit CLS or any other student group to reject prospective student members solely on the basis of race, gender, or sexual orientation.” Depo. Ex. 46; P. App. 78. Baker also pointed out that CLS had not “cite[d] any judicial ruling on point that would nullify a viewpoint-neutral application of the Human Rights Policy to student religious groups with respect to membership discrimination on the basis of sexual orientation.” *Id.* Interestingly, Baker noted that “no complaint from the community has ever been filed with the UI Committee on Human Rights against a religious student organization alleging a violation of the Human Rights Policy.” *Id.*

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

RESPONSE: Admit.

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

RESPONSE: Admit. Baker explained the University's responsibility to require that all groups include the Human Rights Policy in their constitutions, without exception. Depo. Ex. 46; P. App. 78. Baker stressed that "viewpoint neutrality must be the guiding principle in the application of the Human Rights Policy. A decision to treat religious groups differently would invite a constitutional challenge by non-religious groups, who have the same right as religious groups to equal treatment." *Id.*

BLinC REPLY: Baker's 2004 letter stated that "[e]very University of Iowa student organization is required to include in its group constitution the Human Rights Policy in its entirety in order to be eligible for University recognition, and your clients were treated the same as every other religious group has been treated." BLinC App. 0080. But the University admitted to this Court that, following its review of 513 RSO constitutions in January and February of 2018, "356 RSOs did not have the full and correct Human Rights Clause in their constitution." Dkt. 52-1, Shivers Aff. at 3. The University further admitted that *none* of the 54 recognized social fraternity and sorority chapters had constitutions at all, and were not requested to begin adopting constitutions until June 1, 2018. *Id.*

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

RESPONSE: Admit.

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

RESPONSE: Admit.

58. Dean Baker noted that although a religious group could not “reject prospective student members solely on the basis of race, gender, or sexual orientation,” it “would not be required, and will not be required, to condone the behavior of student members—after they join your group—that is contrary to the purpose of your organization and its statement of faith.” App. 0016-17 [Baker Dep. 61:19-62:15]; App. 0079; App. 0017 [Baker Dep. 65:17-20].

RESPONSE: Admit.

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

RESPONSE: Admit.

60. Dean Baker reiterated that CLS was restricted by the Human Rights Policy only in that it could not “refuse to accept as a member a homosexual law student who professes to be a Christian and is prepared to sign your organization’s statement of faith and observe the CLS group rules for member behavior.” App. 0017 [Baker Dep. 62:4-15]; App. 0079.

RESPONSE: Deny. Baker does not indicate in his letter or in the cited deposition testimony that CLS’s refusal to accept a gay Christian law student as a member is the “only” restriction imposed on the group by inclusion of the Human Rights Policy. Depo. Ex. 46; P. App. 78. As indicated above, “[w]hile student groups have a right to establish membership rules and require prospective members to adhere to group rules, that right does not extend

to permit CLS or any other student group to reject prospective student members solely on the basis of race, gender, or sexual orientation.” *Id.*

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

RESPONSE: Admit.

62. The University’s April 2004 approval letter reiterated that “[a]s long as prospective members are treated as individuals and not categorically barred from applying for membership, organizational leaders may require members to accept the CLS statement of faith as a condition for participation.” App. 0018 [Baker Dep. 66:11-67:4]; App. 0081.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

68. Dr. Nelson was copied on Dean Jones’s memo. App. 0765.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

RESPONSE: Admit.

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

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

BLinC REPLY: Dean Baker testified that the Rocklin memorandum went to the student officers for the purpose of “clarifying that CLS should be treated as any other student group and that their request for funding should be processed in a content neutral manner,” and that the memorandum came in response to an effort by “some of the Student Government leaders who wanted CLS to be deregistered or defunded” because of CLS’s “constitution about sexual relationships outside of marriage.” BLinC App. 0018-19 [Baker Dep. 69:2-71:16].

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

Ex. 59; P. App. 89. Rocklin went on to indicate that “CLS did agree in 2004 to observe this requirement of the Policy on Human Rights, and it is currently observing this requirement.”
Id.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit, with the qualification that Ms. Lukas also informed CLS that the University “decline[d] to provide an exemption from religious discrimination rules for religious student groups” as CLS had proposed. Depo. Ex. 64; D. Supp App. 167.

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

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

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

RESPONSE: Admit.

90. The letter identified why the *Martinez* decision would not support reconsideration, and expressed “trust that the University will maintain the status quo and continue to abide by its past practices and customs regarding CLS-Iowa.” App. 1340; App. 1889.

RESPONSE: Admit that CLS laid out its position in its June 29, 2010 letter. Deny any implication that its legal analysis was correct or that the University accepted CLS’s reasoning regarding “why the *Martinez* decision would not support reconsideration.”

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

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

did not know at the time whether the University maintained an “all-comers” policy). Admit that the University did not implement an all-comer’s policy.

BLinC REPLY: It is unclear what the Defendants mean by “the Petition.” Dean Baker testified that, after the University’s meeting about the *Martinez* case in 2010, it decided not to have an all-comers policy. All Defendants testified that the University did not have an all-comers policy at the time of their actions to derecognize BLinC. BLinC App. 0358 [Nelson Dep. 300:14-17]; BLinC App. 0573-574 [Redington Dep. 21:13-23:3]; BLinC App. 0104 [Baker Dep. 27:5-28:2].

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

RESPONSE: Admit.

The Investigation of BLinC

93. Hannah Thompson is a graduate of the University of Iowa, Tippie College of Business. App. 1290.

RESPONSE: Admit.

94. While at the University, she helped found the student group Business Leaders in Christ or “BLinC.” App. 1290; App. 0601.

RESPONSE: Admit.

95. BLinC was formed the spring semester of 2014 and was officially registered by the University in the fall of that same year. App. 1290; App. 0599.

RESPONSE: Admit.

96. A copy of the organization’s constitution was submitted to the University. App. 1290; App. 1299-303.

RESPONSE: Admit.

97. Hannah served as BLinC's first Secretary and then became the President the following year. App. 1290.

RESPONSE: Admit.

98. She was President for the entire 2016-2017 school year. App. 1290.

RESPONSE: Admit.

99. BLinC was founded as a religious organization to help "seekers of Christ" learn "how to continually keep Christ first in the fast-paced business world." Its ministry was founded "[u]sing the Bible as a guide." App. 1291; App. 0604 [Thompson Dep. 26:7-15]; App. 1201.

RESPONSE: Admit that the above statement accurately reflects the goals set forth by BLinC and its leaders.

100. BLinC seeks to help students learn how to live in the workplace in a way th[at] reflects positively on the Gospel of Jesus Christ by being men and women who have integrity, a strong work ethic, a desire to serve their community, and to help their businesses succeed. App. 1202.

RESPONSE: Admit that the above statement accurately reflects the goals set forth by BLinC and its leaders.

101. As the President of BLinC, Hannah conducted weekly meetings, including leading members in prayer, Bible discussion, and spiritual reflection. App. 1291.

RESPONSE: Admit.

102. These meetings were intended to help students be strengthened spiritually, find religious encouragement to get through the challenges of the week, and learn ways to better live their faith at school and at work. App. 1291.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

103. As part of her role as President, Hannah also helped identify and then invite local Christian business leaders to campus where they would speak about how they lived out their faith in their careers. BLinC's leaders took care to invite individuals who they believed would teach in a manner consistent with their faith. App. 1291; App. 0604.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

104. Once BLinC was registered with the University, it was eligible—like all other student organizations—to receive funding from the mandatory activity fees paid by all students, to meet on campus, and to participate in student recruitment fairs. App. 1291.

RESPONSE: Admit.

105. Hannah deemed these resources critical to helping BLinC succeed and grow as a campus organization. App. 1291.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

106. As a registered student organization, BLinC could hold meetings on campus free of charge, providing a continuity on campus that was important for BLinC's members. App. 1291.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

107. Registered status also allowed BLinC to interact with a greater number of students, which was very important for recruitment. App. 1291.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

108. Access to student-organization funding allowed BLinC members to take a professional trip to a conference that wouldn't have been a possibility otherwise. The conference was the Faith at Work Conference, hosted by Dallas Theological Seminary at Wheaton College. App. 1291.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

109. In March 2016, Hannah was approached by one of BLinC's members, Marcus Miller, who expressed an interest in serving on BLinC's executive board. App. 1292.

RESPONSE: Admit, though Hannah does not name Marcus in her affidavit.

110. BLinC was (and remains) a very small organization of only about seven members, and Hannah had appreciated Marcus's participation that year—he had first started coming just over a month previously, on February 6, 2016. App. 1292; App. 1305; App. 0601 [Thompson Dep. 15:13-17].

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

111. Hannah first met with Marcus about the possibility of his taking on a leadership role around April 7, 2016. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

112. Their meeting lasted about two hours. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

113. The purpose of the meeting was to find out if Marcus was ready to provide spiritual leadership. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

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

RESPONSE: Admit.

115. Thus, the most important qualification for a BLinC officer is that she or he aligns with BLinC’s faith. App. 1293.

RESPONSE: Deny for vagueness regarding “align[ment] with BLinC’s faith.” In the cited testimony, Hannah Thompson states that “[a]s an executive board, we agreed that the most important qualities for BLinC’s leaders were to believe in the Bible as our ultimate authority on how to live our lives to please God, and to accept Jesus Christ as our savior.” P. App. 1293. Hannah also mentions that the willingness to “repent of our sin when we fall, accept Christ’s sacrifice and forgiveness of our sins, and strive to live in agreement with God’s word” are very important qualities. *Id.* Hannah makes no mention of homosexuality or sex outside of heterosexual marriage in describing the ideal candidate for a leadership position. *Id.*

BLinC REPLY: Hannah further testified that “what matters” for leaders of BLinC “is that we are willing to submit ourselves to God’s will as revealed in the Bible, repent of

our sin when we fall, accept Christ's sacrifice and forgiveness for our sins, and strive to live in agreement with God's word." BLinC App. 1293. Further, BLinC's leadership concluded that:

Based on [Hannah's] discussion with [Marcus], we were concerned about the fact that he didn't share our view of the Bible's guiding authority for our lives or of its teaching on sexual conduct. We came to the consensus that the situation was actually indicative of the student's fundamental spiritual disagreement with BLinC's faith. That caused us to believe that he did not appear to be in a place where he shared our faith or could lead our group with sound doctrine and interpretation of Scripture.

BLinC App. 1294.

116. Accordingly, individuals who want to stand for election as BLinC officers are screened by BLinC's leadership to ensure that they agree with and can represent the group's religious beliefs. App. 0619-20 [Thompson Dep. 88:19-89:11]; App. 0648 [Estell Dep. 52:8-24].

RESPONSE: Admit, with the qualification that it is unclear from the cited testimony the extent to which Jacob Estell was "screened" or the extent to which all other individuals who have expressed an interest in being on BLinC's leadership team were "screened." Thompson Dep. 88:19-89:11; P. App. 619-620.

BLinC REPLY: Jacob (Jake) Estell testified that "the screening process" for "all individuals who run for offices" within BLinC includes the following: "we talk about the belief about the Bible, pray with them, and then present a statement of faith and that they'll sign that just affirming what they believe." BLinC App. 0648 [Estell Dep. 52:8-24]. Anyone who "refuses to sign that statement of faith" cannot stand for election. *Id.* Hannah testified that Jake and other officer candidates before Jake's tenure went through a similar screening process: "there was often a meeting to sit down and explain the position, to talk through where they're at in their faith walk." BLinC App. 0619-20 [Thompson Dep. 88:19-89:14].

For Jake’s screening, he affirmed that he “agreed with the mission statement, was on board with what we were doing, [and] agreed with our interpretation of the Bible.” *Id.* This process was “typical” for “everyone who was elected as a leader.” *Id.*

117. Hannah took her Bible to the meeting and asked Marcus questions about his faith walk to learn about his relationship with Jesus. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

118. When she started talking about him taking on the role of vice president, he asked if he would have to sign anything. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

119. When Hannah asked what he meant, Marcus told her that he thought he was gay. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

120. They talked for a long time about that. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

121. Hannah opened up her Bible, and they talked about their understandings of what the Bible says about sexual morality. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

122. They talked through a lot of things, and Marcus was very open in sharing with Hannah that—considering his desire to engage in same-sex relationships—the teachings of the Bible on this topic were something he had been struggling with. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

123. This was the first time Hannah understood that Marcus was interested in pursuing romantic same-sex relationships. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

124. Hannah told Marcus that she appreciated his sharing his perspective with her, and they ended their meeting by praying for each other. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

125. Since BLinC was such a new organization, this was the first time this issue had come up, and Hannah told Marcus that she would have to discuss it with the other members of the executive board. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

126. BLinC is a Bible-based group that believes the Bible is the unerring Word of God. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

127. The executive board affirmed that the most important qualities for BLinC's leaders were to believe in the Bible as their ultimate authority on how to live in a manner pleasing to God and to accept Jesus Christ as their Savior. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

128. They agreed that leaders were not expected or required to be free from temptation or sin, because everyone experiences temptation and gives in to sin at times. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

129. But they also agreed that BLinC leaders had to be willing to submit themselves to God's will as revealed in the Bible, to repent of any sins they committed, to accept Christ's sacrifice and forgiveness for their sins, and to strive to live in agreement with God's Word. App. 1293.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

130. Based on Hannah's discussion with Marcus, the members of the executive board were concerned that he didn't share their view of the Bible's guiding authority or of its teaching on sexual conduct. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

131. They came to the consensus that the situation was indicative of Marcus's fundamental spiritual disagreement with BLinC's faith. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

132. They concluded he was not in a place where he could model their faith or lead their members with sound doctrine and interpretation of Scripture. App. 1294; App. 0599, 0605 [Thompson Dep. 8:2-13, 32:21-25].

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

133. The decision not to invite Marcus to serve on the executive board was "based on his religious beliefs" and not "on the basis of his sexual orientation." App. 0600-03, 0607 [Thompson Dep. 9:8-21, 14:3-15:12, 17:2-19, 22:21-23:9].

RESPONSE: Deny. Depo. Ex. 91; D. App. 123 ("I [Marcus Miller] was denied leadership . . . for being openly gay."); Depo. Ex. 106; D. App. 142 ("Student B [Hannah Thompson] stated that because Complainant was gay and might pursue a relationship as a gay person, he could not be a leader in BLinC."); Cervantes 69:24-70:4; P. App. 115 (Q: "Okay. And in his interviews with you, Marcus Miller told you that he was not allowed to be a leader of BLinC because he did not ascribe to their view of the Bible. Is that correct?" A: "He told me that he told them he was gay and they rescinded his offer."), Cervantes 73:3-4; P. App. 116 ("My recollection is . . . She [Hannah Thompson] told me he could not be a leader because he was gay."), Cervantes 79:24-80:3; P. App. 117 (Q: "So Hannah told you it wasn't because he was gay, correct?" A: "No, Hannah told me it was because he was gay."), Cervantes 80:18-24; P. App. 117 (Q: "Did you have any reason to disbelieve that that's . . . the reason Hannah did not allow him to become a leader?" A: "All I know is what she told me and that was because he was a homosexual, because he was openly admitting or acknowledging he was homosexual."), Cervantes 89:13-19; P. App. 120 (Q: "So why did you choose to seize on . . . the statement that Mr. Miller was excluded because he was gay and

not all of the statements from Hannah that he was excluded because of his religious beliefs?”

A: “Because Hannah told me he was excluded because he was gay.”), Cervantes 91:5–10; P.

App. 120 (Q: “And was there any reason why you discounted those parts of her statements?”

A: “Because she told me she’d eliminate him because he was gay. She was pretty firm about that. There was no discussion of religious beliefs. She just said because he was gay, that’s it.”), Cervantes 91:21–92:8, 94:6–17; P. App. 120–121; Baker 148:19–25; P. App. 38 (Q: “Okay. And what do you recall Hannah saying during that interview?” A: “What I recall Hannah saying off the top of my head was that Marcus Miller without being prompted told her that he was openly gay and that because he said he was openly gay, that he was—according to Hannah, that they decided he was not eligible to be a leader.”).

134. BLinC would have reached the same conclusion if a leadership applicant were “sleeping with a boyfriend or a girlfriend,” because they would be “not a right fit in terms of [BLinC’s] moral understanding of what God’s word says.” App. 0600 [Thompson Dep. 11:3–12].

RESPONSE: Admit that Hannah Thompson testified that a person who is “sleeping with a boyfriend or a girlfriend . . . [is] not a right fit [for BLinC] in terms of our moral understanding of what God’s word says.” Deny that there is any evidence in the record which indicates that BLinC would question a heterosexual person about his or her sexual practices as a matter of course. It appears that Marcus Miller raised the issue of sexual conduct, and had he not brought it up it might never have been discussed during his “screening” meeting. *See* P. App. 1293–94.

BLinC REPLY: BLinC’s Statement of Faith expressly requires leaders to agree with its religious beliefs on a variety of issues, including its beliefs on sexual conduct. BLinC App. 0648 [Estell Dep. 52:8–24]; BLinC App. 1224–25, 1230.

135. In fact, a student could “publicly acknowledge” or identify as being gay and still be leader with BLinC so long as the student agreed with, and “agreed to live by, BLinC’s statement of faith.” App. 0621 [Thompson Dep. 95:20-96:10]; App. 0640, 0645 [J. Estell Dep. 22:12-21, 42:4-24].

RESPONSE: Admit, with the qualification that according to Thompson and Estell, the “openly gay” individual would have to regard his or her innate attraction to members of the same sex as “sinful” in order to participate as a member of BLinC’s leadership team. Thompson 96:5–10; P. App. 621.

BLinC REPLY: Hannah’s testimony is that if a student who “was gay or had same-sex attraction but agreed that that was sinful and agreed to live by BLinC’s statement of faith,” then the student would be “eligible to serve as a leader of BLinC[.]” BLinC App. 0621 [Thompson Dep. 96:5-10].

136. Hannah’s next conversation with Marcus took place on April 27, 2016. She explained to him that she had been praying about this decision, reading the Bible, and consulting the executive members and some spiritual mentors. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

137. It was difficult for Hannah to have to make this decision and to tell Marcus. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

138. It wasn’t something she wanted to do, so she tried to be very clear and to fully understand his position. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

139. She restated BLinC's view on the Bible's authority and what it taught about sexual morality and asked him if he would be willing to follow the Bible's teaching by not engaging in romantic same-sex relationships. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

140. Marcus told Hannah something along the lines that "no, that's not an option really; that is something I want to do." App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

141. He made clear that he wanted to actively engage in same-sex romantic relationships. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

142. Hannah then concluded that, based on BLinC's faith and foundation in the Bible as their guiding authority, Marcus could not be in the executive leadership with BLinC because he explicitly rejected BLinC's beliefs and planned to live in a way that was inconsistent with what BLinC believed that the Bible teaches. App. 1294; App. 0601-02 [Thompson Dep. 14:3-15:12; 17:2-19].

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

143. Hannah and Marcus continued their conversation for about an hour, prayed together, and read more scripture. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

144. Hannah explained to Marcus that she wanted to continue to walk closely with him and would love for him to continue as a member of BLinC. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

145. They ended by again praying for one another. App. 1294.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

146. On May 17, 2016, Marcus sent an email explaining why he was disappointed in, and disagreed theologically with, BLinC’s decision. App. 1295; App. 1306.

RESPONSE: Admit, with the qualification that Marcus also wrote to express his concern that he was “not allowed to be on the executive board due to [his] sexual orientation . . .” in combination with his revisionist view of Scripture. P. App. 1307–10.

BLinC REPLY: Marcus went on to explain his objection was that “I was told that if I end up having the revisionist interpretation” that the Bible condones homosexual conduct “and acting on that, I wouldn’t be . . . seeking to follow Jesus with all of my heart,” which was “the reason I was not allowed to be on the executive board.” BLinC App. 1309. Marcus explained that “[i]t seems wrong, and unbiblical to have another believer tell me that even though I am relying on the Holy Spirit to guide me, I am failing to follow Jesus fully. . . . To me, when I was told that I am not following Jesus, it felt like it was both a mischaracterization and a personal attack on my journey of finding God’s will for my life. I felt invalidated, and Jesus spoke against this during His sermon on the Mount[.]” *Id.* Marcus had started by

praising “[t]he work you are doing in advancing God’s Kingdom” through BLinC, saying that “God is using you all in amazing ways,” so “keep up what you are doing.” *Id.* He concluded by “pray[ing] that God would soften all of our hearts as we seek the truth, and what God’s will actually is,” explaining that he was “in no way trying to discourage BLinC,” and rather was “simply raising some potential concerns as we all seek to become more like Jesus every day.” *Id.* at 1309-10.

147. Hannah responded with an email dated June 22, 2016, explaining their theological differences and expressing her love for Marcus as a person. App. 1295; App. 1306.

RESPONSE: Admit.

148. On August 20, 2016, at the start of the 2016 school year, BLinC’s new leadership team held a “Vision Meeting” where Hannah presented a written statement of belief or vision statement for BLinC. App. 1295; App. 1311.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

149. After her interactions with Marcus, she thought it would be a good idea for BLinC to more clearly state BLinC’s leadership standards. App. 1295.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

150. The focus of the statement was to affirm the Bible as the Word of God and the fundamental doctrine of turning from sin to receive the grace of Jesus Christ. App. 1295.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony.

151. The statement was based on the Statement of Faith adopted by the Christian Business Fellowship, but Hannah added the following language for affirmation by BLinC's leaders:

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.

App. 1295; *see also* App. 1296; App. 1311.

RESPONSE: Admit.

152. For Hannah, the Biblical model of confession and repentance was at the heart of the issue with Marcus: all people sin, but to receive God's grace, they must agree with God that what they have done is sinful, and then confess to other believers and turn from the sin. App. 1295.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony.

153. Moreover, Marcus did not accept BLinC's view of the Bible and so BLinC believed that he would not have been able to lead other BLinC members in striving to follow its beliefs. App. 1296.

RESPONSE: Admit that BLinC's leadership believed that Marcus would not be able to lead other BLinC members in striving to follow its beliefs. Deny that BLinC's rejection of Marcus was based on Marcus's view of the Bible. *See* Defendants' response to Plaintiff's SUMF ¶ 133. There is some evidence in the record that Marcus shared many of BLinC's theological views. *See* Depo. Ex. 72; D. Supp. App. 168.

BLinC REPLY: Both BLinC and Marcus understood that they disagreed theologically about "the revisionist interpretation" over whether the Bible condones homosexual conduct, which was "the reason that [Marcus] was not allowed to be on the

executive board.” BLinC App. 1309; *see also* BLinC App. 0620 [Thompson Dep. 89:2-14] (testifying that Marcus “did not pass the [BLinC leadership] screen because of his beliefs.”). That Marcus may share many of BLinC’s theological beliefs is not dispositive. Many other religious individuals on campus may also share many of BLinC’s beliefs—such as that “God is the creator of everything”; that “[e]veryone, regardless of race, gender, social class, or intellectual ability, is created in God’s image”; that people should “provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick”; and that people should “oppose racism [and] every form of greed.” BLinC App. 1273. But those individuals would not be eligible for a religious leadership position within BLinC unless they could also affirm the rest of BLinC’s faith—such as that the Bible is “the inspired, infallible Word of God”; that God “exists eternally as three persons—Father, Son, and Holy Spirit”; that “Jesus Christ is the Way, the Truth, and the Life”; that he was “conceived by the Holy Spirit, born of the Virgin Mary, . . . lived a sinless human life,” died for humanity’s sins, and was resurrected. *Id.*

154. BLinC has always sought to cultivate a welcoming environment; thus, anyone is welcome to join as a member. App. 1297; App. 0645 [Estell Dep. 43:9-20].

RESPONSE: Deny. BLinC’s Statement of Faith, which indicates that “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.” P. App. 1230. This statement inherently excludes gay, lesbian, bisexual, and transgender individuals and is not “welcoming” to those segments of the population.

BLinC REPLY: Defendants’ denial is non-responsive to the Statement of Fact, which is that anyone—regardless of their views on BLinC’s beliefs—is welcome to join as a member. Moreover, the undisputed facts show that anyone *is* welcome to join as a member, including Marcus and including individuals who actively oppose BLinC’s religious beliefs. *See Univ. Resp. BLinC SoF ¶ 155* (failing to contest those facts). Defendants here object to the viewpoint expressed in BLinC’s statement of its beliefs, not to its actual membership policies.

155. Marcus, for example, was “more than welcome to be a member” of BLinC. He was “more than welcome to come to [BLinC] meetings, more than welcome to engage in relationships with others during the meetings, welcome to state [his] opinions and beliefs,” even to the point of challenging BLinC’s mission statement and expressing that BLinC leaders were the ones sinning by excluding him. Hannah and the other leaders would have “had no problem with that.” App. 0607, 0612-13, 0620 [Thompson Dep. 38:12-39:7; 60:11-61:3; 92:13-24]; App. 0637, 0646 [J. Estell Dep. 10:12-23, 44:7-12]; App. 0593.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson and Jacob Estell’s testimony.

156. Only leaders are asked to embrace and strive to follow BLinC’s religious beliefs. App. 1297.

RESPONSE: Admit.

157. Leaders were held to a different standard because if an organization doesn’t “have leaders who uphold [its] beliefs and want to accomplish [its] mission, there’s no purpose [to the] organization if nobody is in place to accomplish that mission.” App. 0613 [Thompson Dep. 61:4-15]; App. 0645-46 [J. Estell Dep. 43:20-44:6].

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson and Jacob Estell’s testimony.

158. On February 20, 2017, Marcus filed a complaint with the University alleging that BLinC denied him a leadership position because he was “openly gay,” and demanding that the University “[e]ither force BLinC to . . . allow openly LGBTQ members to be leaders or take away their status of being a student organization.” App. 1296, 1317.

RESPONSE: Admit.

159. The University then opened an investigation against BLinC. App. 1296.

RESPONSE: Admit.

160. As part of the investigation, Hannah was formally told in writing by Constance Cervantes from the University’s Office of Equal Opportunity and Diversity that Ms. Cervantes needed to meet with her for an interview. App. 1296, App. 0602 [Thompson Dep. 20:7-16].

RESPONSE: Admit. P. App. 1319–20.

161. Ms. Cervantes is a lawyer. App. 1296.

RESPONSE: Admit.

162. Ms. Cervantes’s letter told Hannah that she should not talk to anyone outside of BLinC about the complaint, because that could be considered retaliation against the student who complained. App. 1297; App. 1318.

RESPONSE: Deny. Ms. Cervantes’ letter instructed Hannah that she should not discuss the complaint with “Mr. Miller, non-officer members of the organization, or others who are members of the university community.” P. App. 1319–20. The plain language of the letter seems to permit Hannah to speak with all people who are not “members of the university community.” To the University’s knowledge, Hannah did not follow up with any

University staff regarding questions about who she may or may not speak with under the University's policy.

BLinC REPLY: Ms. Cervantes' letter further stated that "complaints are to be processed in a confidential manner; as a result, all information received in connection with the filing, investigation, and resolution of complaints is to be treated confidentially by all those involved in the process, including the parties." BLinC App. 1319. Her letter warned that "[f]ailure to maintain confidentiality may be regarded as a form of retaliation in violation of university policy." *Id.* It also said that Ms. Cervantes would "need to meet with you to discuss the allegations of the complaint on a confidential basis." *Id.* Nothing in the letter stated that Hannah could speak with anyone without violating its confidentiality requirement, nor did it indicate that Hannah could bring anyone to come to the "confidential" meeting with Ms. Cervantes. *Id.*

163. Because of the University's letter, it had never occurred to Hannah that she could bring a lawyer with her to the interview; in fact, she feared that if she talked about the matter to a lawyer or anyone else, she could be disciplined by the University. App. 1297; App. 0603, 0605 [Thompson Dep. 21:6-18; 31:14-32:4].

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson's testimony. Deny that her misunderstanding was the University's fault. *See* Defendants' response to Plaintiff's SUMF ¶ 162.

164. Dean Baker was also at the interview. App. 1296; App. 0603 [Thompson Dep. 20:7-16]; App. 0115 [Cervantes Dep. 72:17-21]; App. 0213.

RESPONSE: Admit.

165. At the interview, Hannah gave Ms. Cervantes a chronology of the relevant events. App. 1297; App. 1322; App. 0618 [Thompson Dep. 83:23-84:18].

RESPONSE: Admit that Hannah gave Ms. Cervantes a chronology. She may have provided it the day of the interview, or she may have provided it prior to the interview by email. Shriver Cervantes 86:1–10; P. App. 119.

166. The chronology included an explanation of the conflict in religious beliefs that led to BLinC's decision not to offer a leadership position to Marcus. App. 1297; App. 1322.

RESPONSE: Admit.

167. Throughout the interview, Hannah felt that the University's lawyers were bullying her because of her religious beliefs. App. 1297; App. 0605 [Thompson Dep. 30:23-31:10].

RESPONSE: Admit, with the qualification that although Hannah testified that though she felt "pressure" and "a little bit bullied" in the meeting, she was given the opportunity to explain her position during the interview. Thompson 30:23–31:7; P. App. 605. She also testified that Ms. Cervantes' handwritten notes "square[d] with her memory" of the March 2, 2017 meeting. Thompson 23:16–24:13; P. App. 603.

BLinC REPLY: Hannah's cited testimony regarding Ms. Cervantes' notes merely reflected that Ms. Cervantes' notes "appear[ed]" to be from Hannah's "meeting with Miss Cervantes." BLinC App. 0603 [Thompson Dep. 23:16-24:1]. Nothing in her cited testimony affirmed the content of Ms. Cervantes' notes, and Hannah testified that she disagreed with Ms. Cervantes recollection of the meeting. BLinC App. 0603 [Thompson Dep. 23:5-9].

168. She repeatedly told them that Marcus was not selected as a leader because he theologically disagreed with, and would not agree to live by their religious beliefs, but they would

not accept her statements. App. 1297; App. 0604 [Thompson Dep. 25:24-25]. They kept accusing her of discriminating against Marcus because of his sexual orientation. App. 1297.

RESPONSE: Admit that the above statement accurately reflects Hannah Thompson’s testimony. Deny that Hannah was actually bullied by University attorneys.

169. As part of her investigation, Ms. Cervantes met with Dean Baker and Dr. Nelson to discuss their views of how best to proceed. Notes from her conversation with Dean Baker suggest that he would have liked the Policy “to be all-comers policy,” “but not in pure sense” because of “fraternities and sororities.” App. 0231; App. 0123 [Cervantes 103:13-104:13]. Notes from her conversation with Dr. Nelson and one of his subordinates reflect that they discussed a “historical and long standing” philosophy to “allow groups to discrim[inate] at leadership level – not membership level”; that it was “imp[ortant]” to “have men’s glee club,” “women in engineering,” and “black student union”; the Policy only applied to “membership & participation” and did “not include leadership”; that if “a woman wants to be on men’s baseball team or men’s glee club” they “would be required to let them join but org could prohibit from being a leader.” App. 0384; *see also* App. 0122-23 [Cervantes 99:15-101:21].

RESPONSE: Admit that Ms. Cervantes met with Dean Baker and Dr. Nelson separately to discuss the complaint against BLinC. Deny for lack of knowledge what the notes “suggest” Dean Baker thought about an all-comers policy. Ms. Cervantes indicated in her deposition that she did not remember the nature of the discussion, and that she could not infer intent or meaning from the notes. Cervantes 103:13–104:13; P. App. 123. Baker did not recall telling Cervantes that he wanted an all-comers policy, or that he wanted an all-comers policy with an exception for fraternities and sororities. Baker 159:20–160:12; P. App.41. Admit that Plaintiff has accurately quoted text from the meeting notes taken by

Cervantes at her meeting with Bill Nelson and Kristi Finger. Deny any further assertions regarding the meaning of the notes, insofar as Ms. Cervantes was unable to recall the substance of the conversation or any conclusions reached during the meeting at her deposition. Cervantes 99:15–102:2; P. App. 122.

170. In April 2017, shortly after the interview, Hannah wrote Ms. Cervantes a letter urging her to dismiss the investigation, emphasizing once again that BLinC's decision was based on a fundamental religious disagreement with Marcus over the correct interpretation of the Bible. App. 1297; App. 1324-26.

RESPONSE: Admit.

171. In April, Jacob (Jake) Estell had taken over as the President of BLinC, as Hannah was graduating that May. App. 1201; App. 0636 [J. Estell Dep. 6:25-7:4]; App. 1297.

RESPONSE: Admit.

172. Before being elected president, Jake was interviewed by Hannah the same way Marcus had been. App. 0619, 0620, 0622 [Thompson Dep. 86:4-12, 89:2-14, 98:1-11]; App. 0646 [J. Estell Dep. 46:23-47:1].

RESPONSE: Admit, with the qualification that there is no indication in the cited testimony that Mr. Estell was specifically questioned about his sexual orientation, past sexual conduct, or intended future sexual conduct.

173. This was standard practice: every potential leader was interviewed or asked to sign BLinC's statement of faith to confirm they shared BLinC's religious beliefs. App. 0619, 0622 [Thompson Dep. 86:16-19, 88:13-25; 98:12-15]; App. 0648 [J. Estell Dep. 52:8-53:8].

RESPONSE: Admit, with the qualification that the Statement of Faith had only been in existence since August 20, 2016, and as such, BLinC's leadership prior to that date

would not have been required to sign it. (P. App. 1312). The meeting where the “Statement of Faith” or “Vision Statement” was developed and adopted was prompted by Thompson’s “interactions with the student.” (P. App. 1296, ¶¶ 26–27).

174. Jake became the President of BLinC in April 2017. App. 1201.

RESPONSE: Admit.

175. He first joined BLinC because he was growing in his faith and wanted to associate with other students who shared his beliefs and understood the challenges of living them at the University and in the workplace. App. 1202.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell’s testimony.

176. As an officer of BLinC, his responsibilities include planning and leading the weekly meetings. App. 1202.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell’s testimony.

177. Each week, he or another member of the executive board would lead members in prayer and spiritual discussion. App. 1202.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell’s testimony.

178. He was also responsible for finding business leaders willing to come speak to BLinC about how their Christian faith had helped them in their careers. App. 1202.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell’s testimony.

179. He helped organize service activities each semester to mentor children in local programs for disadvantaged youth. App. 1202.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

180. When Jake was elected, he knew that BLinC was being investigated by the University, but he had not been involved in the decision regarding Marcus. App. 1202; App. 0638 [Estell Dep. 12:6-15].

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

181. His understanding from Hannah was that Marcus had been found ineligible for leadership because of his disagreement with, and decision not to live by, BLinC's religious beliefs—not because of his sexual orientation. App. 1202; App. 0638 [Estell Dep. 15:4-18].

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

182. On June 30, 2017, BLinC received a letter from Ms. Cervantes concluding that BLinC had discriminated against Marcus because of his sexual orientation. App. 1202; App. 0126 [Cervantes Dep. 114:1-8]; App. 0232-38.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

183. The findings cited Hannah's June 22, 2017 email to Marcus from before he filed the complaint, where she explained that her decision was based on their religious disagreement about sexual conduct, not his sexual orientation per se. The findings also cited Hannah's chronology that she prepared for the interview, which provided the same explanation. And it cited BLinC's

statement from its August 20, 2016 “Vision Meeting,” which detailed BLinC’s Christian beliefs. App. 0232; *see also supra* ¶¶ 147-48, 168.

RESPONSE: Admit that Ms. Cervantes noted in her finding that she had reviewed the documents described above. (“The following documents were reviewed: . . .”). (P. App. 232–34).

184. The findings noted that Hannah had confirmed in the interview that the decision was based on Marcus’s “desire to pursue a homosexual lifestyle/relationship.” App. 0232-38.

RESPONSE: Admit, with the qualification that Cervantes also found that “[i]n her interview in this investigation, Student B [Hannah Thompson] stated Complainant would have become vice-president at the April 27, 2016, meeting if he had not told her he was gay.” (P. App. 238–38). Cervantes’ findings also indicate that “[P]ursuing a relationship with the opposite sex is acceptable within the organization.” (P. App. 0234).

185. Yet the findings ultimately concluded that Marcus “was denied . . . a position of leadership within BLinC because of his sexual orientation,” without citing any other evidence or addressing the difference between Marcus’s status and his beliefs or conduct. App. 0232-38.

RESPONSE: Deny that Cervantes failed to cite evidence. *See* P. App. 0232–38, citing the University of Iowa’s Policy on Human Rights, a copy of Facebook Messenger notes of meeting dates between Complainant and B; May 17, 2016 e-mail from Complainant to Student B; June 22, 2017 e-mail from Student B to Complainant; Constitution of BLinC; Center of Student Involvement & Leadership Registered Student Organization Constitutional Standards and Guidelines; “Nature of Complaints,” notes from Complainant; “Chronology” prepared by Student B; “Vision Meeting August 26, 2016” notes from Student B; and interviews with both students. Depo. Exs. 93, 95; P. App. 199, 213. The standard

utilized by Cervantes in her analysis is as follows: “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.” (P. App. 0236). The legal standard utilized in cases involving violations of the University’s Human Rights Policy does not require an analysis of a student’s belief versus a student’s conduct. *See id.* Indeed, legal precedent exists which indicates that penalizing a gay student on the basis of homosexual *conduct* could merely be an invitation to discriminate against homosexual *persons*. *See Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. 661, 689 (2012), citing *Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (“When homosexual *conduct* is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual *persons* to discrimination.”; *id.*, at 583 (O’ Connor, J., concurring in judgment) (“While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons as a class.”); cf. *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993) (“A tax on wearing yarmulkes is a tax on Jews.”).

BLinC REPLY: It is undisputed that it is “‘important’ under the Policy to distinguish status discrimination from selection based on beliefs or conduct.” Univ. Resp. to BLinC SoF ¶ 326. It is undisputed that “the Policy ‘only prohibits status-based discrimination.’” *Id.* at ¶ 372. And it is further undisputed that Defendants repeatedly stated and testified that the University’s policy prohibits discrimination based on status and not on belief or conduct. *See, e.g.*, Univ. Resp. to BLinC SoF ¶¶ 199-201, 207-210, 260, 272, 322-326.

186. Jake responded on July 14, 2017, reiterating that Marcus was denied a leadership position “only because he stated that he disagrees with, and would not try to live by, BLinC’s Christian principles, which means he could not effectively lead our group.” App. 1202-03; App. 1218-19.

RESPONSE: Admit.

187. Around that time, Associate Dean Tom Baker wrote a memo to Dr. Nelson, instructing him on how to properly review Ms. Cervantes’s findings. App. 0042 [Baker Dep. 164:17-165:12]; App. 0090-91.

RESPONSE: Admit.

188. In the memo, Dean Baker stated that “it will be important to clarify how the University Human Rights Policy operates.” App. 0090-91.

RESPONSE: Admit, with the qualification that the document cited is merely a draft memo which was never finalized or dated. Baker 164:17–165:12; P. App. 0042.

189. He emphasized that “[t]he Human Rights Policy does not require that their creed be modified.” App. 0090-91.

RESPONSE: Admit.

190. Dean Baker also carefully delineated for Dr. Nelson the difference between requiring leaders to comply with standards of “sexual conduct,” which “is permitted under the Human Rights Policy” and discriminating on the basis of “sexual orientation,” which “is not” permitted:

As you know, an applicant's sexual activity may be the subject of conversation during the process of evaluating a leadership application. Engaging in sexual activity outside of marriage is one legitimate ground for denying a leadership position if that principle is one of the tenets of the student organization. A number of UI student organizations implement such a practice. In doing so, group leaders must be careful not to equate an individual's sexual orientation with the individual's actual sexual conduct. A number of self-avowed gay men are sexually abstinent even though they maintain a relationship with a same-sex romantic partner. Consequently, denying a leadership application on the basis of a student's homosexuality is not the same as denying a student's leadership

application for refusing to abide by the expectation that all members remain sexually abstinent regardless of their sexual orientation. While the latter is permitted under the Human Rights Policy, the former is not.

App. 0042 [Baker Dep. 164:17-25]; App. 0090-91.

RESPONSE: Admit.

191. A little later, Jake was asked to meet about the investigation with Dr. Nelson, who was responsible for registering student groups on campus. App. 1203; App. 0643 [J. Estell Dep. 34:18-35:4].

RESPONSE: Admit.

192. The meeting was held on September 1, 2017. App. 1203; App. 0271 [Nelson Dep. 62:8-13].

RESPONSE: Admit.

193. Jake attended along with his vice-president, Brett Eikenberry, and two of BLinC's lawyers. App. 1203; App. 0271 [Nelson Dep. 62:8-13].

RESPONSE: Admit.

194. Dean Baker was also there to represent the University along with Dr. Nelson. App. 1203; App. 0271 [Nelson Dep. 62:8-13].

RESPONSE: Admit.

195. Dean Baker did most of the talking at the meeting. App. 1203.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

196. He started by noting the investigation's finding that BLinC had denied Marcus a leadership position because he was gay. App. 1203.

RESPONSE: Admit.

197. Dean Baker stated that this violated the University's HR Policy. App. 1203.

RESPONSE: Admit.

198. But he also stated that if BLinC understood the Policy and was willing to comply with it going forward, BLinC could remain a registered organization in good standing. App. 1203.

RESPONSE: Admit, with the qualification that Baker’s takeaway from the meeting was that “BLinC would not discriminate on the basis of status and that if BLinC wanted to set conduct expectations for—I don’t recall if it was members or leaders that we were talking about, but the idea of having conduct expectations with regard to sexual conduct outside of marriage, that that’s [sic] what I recall us coming to agreement on.” Baker 170:12–21; P. App. 44.

199. Dean Baker explained that he had faced a similar situation with CLS in 2004, and that CLS had been allowed to stay on campus after it clarified that its religious beliefs required all members and leaders to abstain from sexual activity outside of marriage. App. 1203; App. 0271 [Nelson Dep. 62:16-63:6]; App. 0043 [Baker Dep. 168:12-17].

RESPONSE: Admit.

200. Dean Baker and Dr. Nelson both agreed that “it would be okay for a student group to require its leaders to abstain from sexual relationships outside of marriage” as long as it “applied to both heterosexuals and non-heterosexuals.” App. 0271 [Nelson Dep. 63:14-18]; App. 0043 [Baker Dep. 168:18-21].

RESPONSE: Admit.

201. This was true even if the requirement were to “abstain from homosexual sexual relationships” as long as “it was applicable to all.” App. 0271 [Nelson Dep. 63:24-64:6].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

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

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

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

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

BLinC REPLY: Baker did not testify that “discrimination on the basis of a protected class or characteristic” was “illegal activity” or that the University categorically banned it for student groups. To the contrary, it is undisputed that he testified that it was “acceptable” for groups to engage in “forms of status-based discrimination—such as having sex-segregated fraternities, sororities, and sports teams[.]” Univ. Resp. to BLinC SoF ¶ 330; *see also* ¶¶ 16-35 (admitting further forms of permitted “discrimination” in University RSOs, programs, scholarships, grants, and activities).

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

RESPONSE: Admit.

207. At the meeting, there was also significant discussion about the difference between discriminating on the basis of “status” and choosing leaders based on “beliefs” and “conduct.” App. 1203; App. 0043 [Baker Dep. 169:12-20].

RESPONSE: Admit.

208. BLinC repeatedly emphasized that it does not discriminate on status, but only seeks to choose leaders based on “belief” and “conduct.” App. 1203; App. 0272 [Nelson Dep.65:18-25].

RESPONSE: Admit.

209. Dean Baker and Dr. Nelson explicitly stated that it was permissible to choose leaders based on their beliefs and conduct, as long as BLinC did not discriminate on status alone. App. 1204; App. 0044 [Baker Dep. 170:12-171:5].

RESPONSE: Admit that Baker stated that it was permissible for BLinC to put standards governing the conduct of its leadership team in place. Admit that the statement

above accurately reflects Jacob Estell’s testimony. Deny that the testimony cited supports any such statement by Dr. Nelson.

210. In his later deposition, Dr. Nelson confirmed that he would not “have issued sanctions against BLinC” if he had understood that, in fact, BLinC had “denied Mr. Miller a leadership position because he disagreed with [BLinC’s] religious philosophy” and that BLinC “would have allowed anybody who as gay to be a leader if they accepted [BLinC’s] religious philosophy.” App. 0272 [Nelson Dep. 65:18-66:14].

RESPONSE: Admit that Dr. Nelson provided the answer above to Plaintiff’s counsel’s hypothetical question.

211. At the meeting, Jake and Brett confirmed that this accurately described BLinC’s position: it screened leaders based on their beliefs and conduct, not their status. App. 1204; App. 0273 [Nelson Dep. 70:18-71:5].

RESPONSE: Admit that by the September 1, 2017 meeting with Baker and Nelson, BLinC’s leadership had adopted the above-stated position.

212. After Jake and Brett reiterated that Marcus had been turned down for a leadership position because he disagreed with BLinC’s beliefs and not because he was gay, Dean Baker and Dr. Nelson expressed agreement that this would not violate the Policy and that BLinC could retain its status as a registered student organization. App. 0644 [Estell Dep. 37:11-25]; App. 0272 [Nelson Dep. 65:18-66:14]; App. 1203-04. Dr. Baker indicated, however, that the University’s investigation finding would remain in BLinC’s official file, but that BLinC could submit a letter for the file explaining why BLinC thought the finding was wrong. App. 1204; App. 0273-74 [Nelson Dep. 72:22-73:13].

RESPONSE: Deny. Dr. Nelson and Baker did not agree that BLinC had complied with the Human Rights Policy in its actions against Marcus Miller, but rather indicated that *if* BLinC had operated consistent with its oft-repeated hypothetical in which it does not discriminate based on protected status, it *would not have* violated the Human Rights Policy. The cited deposition testimony by Dr. Nelson does not support Plaintiff's assertion. Admit that Baker explained to the students that Cervantes' finding would not be reversed, but that BLinC could appeal and could place a statement in its record contesting the factual findings of the original investigation. Nelson 72:22–73:13; P. App. 273-274; Baker 166:9–167:3; P. App. 43. This is further evidenced by Dr. Nelson's September 12, 2017 letter, in which he indicates that he finds "there is a preponderance of evidence that BLinC violated the University of Iowa Human Rights Policy" and issued sanctions accordingly. Depo. Ex. 114; P. App. 388.

213. Dr. Nelson inquired whether BLinC's beliefs were written down anywhere and said it would be better if students knew BLinC's beliefs before they joined so they wouldn't be offended later. App. 1204; App. 0644 [J. Estell Dep. 37:11-21]; App. 0272 [Nelson Dep. 66:15-67:8]; App. 0043-44 [Baker Dep. 169:25-170:11].

RESPONSE: Admit.

214. No other student groups have ever been required to detail their beliefs in their constitutions, even when their names or missions plainly suggest that they restrict membership or leadership on the basis of categories listed in the Policy. App. 0272, App. 0273 [Nelson Dep. 67:9-12, 69:18-72:7].

RESPONSE: Admit, with the qualification that BLinC was required to outline its beliefs because “they had committed a Human Rights violation . . .” and as such were subject to sanctions. Nelson 67:13–21; P. App. 272.

BLinC REPLY: Dr. Nelson testified that his requirement that BLinC articulate its religious expectations for leaders was not contingent on the complaint or the University’s findings against BLinC, but rather that he “think[s] it’s just good practice that if you’re going to be a leader or a member of an organization that you be fully aware of what is expected of you,” and that requiring BLinC to adopt this practice “would be useful, moving forward[.]” BLinC App. 0272-273 [Nelson Dep. 68:23—71:11]. Dr. Nelson further admitted that he had never required this practice “of any other group on campus.” *Id.*

215. Jake and Brett, however, indicated that they would be willing to comply with his request to detail BLinC’s beliefs in its constitution. App. 1204; App. 0273 [Nelson Dep. 72:14-21].

RESPONSE: Admit.

216. Dr. Nelson indicated that, once they did so, “that would resolve [his] concerns about any ongoing violation of the Human Rights Policy.” App. 0273 [Nelson Dep. 72:14-21].

RESPONSE: Admit.

217. He specifically indicated that “a statement that all students had to abstain from . . . sexual relationships outside of marriage between a man and a woman . . . would be acceptable.” App. 0275 [Nelson Dep. 77:25-78:15].

RESPONSE: Admit, with the qualification that Baker found the “man and a woman” language problematic, because it potentially excluded gay individuals who were involved in a same-sex marriage. *See Baker* 172:5–20; P. App. 44.

218. Based on what happened at the meeting, Jake and Brett believed that the University would cease investigating BLinC once its constitution had been amended to specify BLinC's religious beliefs. App. 1204; App. 0644 [J. Estell Dep. 37:22-25].

RESPONSE: Admit.

219. When the meeting ended, as Dr. Nelson was leaving the room, he stopped, turned around, and said something along the lines that the University had a lot of great students but "some of the best" were "sitting right here." App. 1204; App. 0647 [J. Estell Dep. 50:12-16]; App. 0276 [Nelson Dep. 81:11-19]; App. 0580 [Redington Dep. 46:22-47:3].

RESPONSE: Admit that Dr. Nelson complimented the students. Deny that this is a material fact.

220. Two weeks later, on September 13, 2017, BLinC received a letter from Dr. Nelson. App. 1204, 1220; App. 0276; [Nelson Dep. 81:20-25]; App. 0388-89.

RESPONSE: Admit.

221. The letter affirmed that BLinC would be permitted "to function as a registered student organization in good standing" if it complied with the following three criteria:

1. Commit to ongoing compliance with the University of Iowa Human Rights Policy at all times in the future;
2. Submit a basic list of qualifications for leaders of your organization designed to prevent future disqualifications based on protected categories and to ensure that persons who identify as non-heterosexuals are not categorically eliminated from consideration; and
3. Submit an acceptable plan for ensuring that group officers who interview leaders will ask questions relevant to the vision statement that are not presumptive of candidates based upon their sexual orientation.

App. 0276 [Nelson Dep. 81:20-25]; App. 0388-89; App. 1204; App. 1221-22.

RESPONSE: Admit, with the qualification that Dr. Nelson intended these “criteria” to be sanctions on BLinC for its failure to comply with the Human Rights Policy. Nelson 67:13–21; P. App. 272.

BLinC REPLY: See BLinC Reply at ¶ 214, *supra*.

222. In response to Dr. Nelson’s letter, BLinC updated its constitution, including by renaming its “Vision Statement” as a “Statement of Faith” and adding a paragraph to the Statement of Faith under the heading “Doctrine of Personal Integrity.” That paragraph detailed BLinC’s religious beliefs on a variety of issues, including by adding the following three sentences:

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.

App. 1204, 1224-28; App. 0277 [Nelson Dep. 86:14-87:5].

RESPONSE: Admit.

223. The constitution also memorialized the existing obligation of BLinC’s leaders to “accept and seek to live BLinC’s religious beliefs” and “provide spiritual leadership for the organization, including leading prayer and Bible study, explaining the content of BLinC’s religious beliefs, and ministering to others.” App. 1204, 1224-28; App. 0277 [Nelson Dep. 86:6-22].

RESPONSE: Admit.

224. Another provision of the revised constitution likewise formalized the existing process that all nominees for a leadership position “must be interviewed by the President” and “sign a copy of BLinC’s Statement of Faith.” App. 1204, 1224-28; App. 0277-78 [Nelson Dep. 88:8-89:10].

RESPONSE: Admit.

225. The updated constitution was sent to Dr. Nelson on September 27, 2017. App. 1204, 1224-28; App. 0277 [Nelson Dep. 85:1-9]; App. 0390-93.

RESPONSE: Admit.

226. Dr. Nelson responded on October 19, 2017 via letter. App. 1204-05; App. 1233-34; App. 0280 [Nelson Dep. 99:22-100:1]; App. 0400-01.

RESPONSE: Admit.

227. His letter claimed that BLinC's revised constitution "does not satisfy the requirements" delineated in Dr. Nelson's earlier letter "for BLinC to remain as a registered student organization in good standing." Further it stated that BLinC's "Statement of Faith, on its face, does not comply with the University's Human Right's policy since its affirmation, as required by the Constitution for leadership positions, would have the effect of disqualifying certain individuals from leadership positions based on sexual orientation or gender identity, both of which are protected classifications." App. 0280 [Nelson Dep. 100:9-18]; App. 0400-01.

RESPONSE: Admit. Nelson 100:9–20; P. App. 280.

228. The letter further stated that, to remain a registered student organization, BLinC had "to make additional revisions to [its] Statement of Faith" to "compl[y] with the University of Iowa Human Rights Policy." App. 0280 [Nelson Dep. 100:16-22]; App. 0400-01.

RESPONSE: Admit.

229. BLinC was stunned that the University would tell it to revise its beliefs and "submit an acceptable plan" for selecting leaders. App. 1204-05; App. 1233-34; App. 0644 [J. Estell Dep. 38:6-39:4].

RESPONSE: Admit, with the qualification that Jacob Estell testified that Dr. Nelson's letter, while not "stunning" was "somewhat of a surprise." Estell 38:19–39:4; P. App. 644.

230. BLinC's beliefs are based on its sincere religious interpretation of the Bible, and are not something it can "change" simply because the University disagrees with them. App. 1205.

RESPONSE: Admit.

231. BLinC appealed Dr. Nelson's decision to the Dean of Students, Lyn Redington. App. 1205; App. 1236-45.

RESPONSE: Admit.

232. On November 16, Dean Redington rejected BLinC's appeal and revoked its status as a registered student organization. App. 1205; App. 1288-89; App. 0281 [Nelson Dep. 104:8-14]; App. 402-03; App. 0585 [Redington Dep. 67:14-17]; App. 402-03.

RESPONSE: Admit, with the qualification that Dean Redington did not "reject" BLinC's appeal. The appeal was considered and Dr. Nelson's decision was affirmed. P. App. 1288-89.

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

RESPONSE: Admit.

234. Dean Redington also claimed that "upon appeal, you now claim for the first time that the Complainant [Marcus Miller] was not allowed to hold a leadership position because he 'confirmed that he intended to be sexually active in same-sex relationships.'" App. 0586 [Redington Dep. 72:19-73:6]; App. 402-03.

RESPONSE: Admit.

235. Both Dean Redington and Dr. Nelson later admitted under oath that they had not reviewed the evidence submitted by BLinC during the investigation by Ms. Cervantes or the many previous letters from BLinC, all of which repeatedly reaffirmed that BLinC's decision was based on Marcus's theological disagreement with BLinC's faith and not his sexual orientation. *See* ¶¶ 356-60, 391-402, *infra*.

RESPONSE: Deny. See Responses to ¶¶ 356–60; 391–401, *infra*.

236. Being investigated and punished by the University was stressful and time-consuming for BLinC's leaders, who had to spend dozens of hours defending themselves and their faith from University officials, distracting them from their studies and making them feel like outsiders at the University. App. 1205.

RESPONSE: Admit.

237. Maintaining registered status was important for their survival, especially as a small group with fewer than ten members. App. 1205.

RESPONSE: Admit that the statement above accurately reflects BLinC's testimony. Deny that the group could not have "survived" without official recognition. Depo. Ex. 14; P. App. 366 ("Student organizations can exist whether or not the University endorses them pursuant to this policy."). Further, non-registered groups 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; P. App. 366; Affidavit of William R. Nelson, filed January 17, 2018, ¶1; D. App. 6. 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; D. App. 7. 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, ¶ 2; D. App. 6. 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; D. App. 7. Non-registered Student Organizations may request to distribute communications by mass-mailings. Affidavit of William R. Nelson, filed January 17, 2018, ¶ 5; D. App. 7. 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; D. App. 7.

BLinC REPLY: While student organizations can exist independently of registered status, being denied registered status denies a student group equal access to many important benefits that are uniquely available to registered groups, including access to recruit fellow students for recruitment and access to speak to fellow students. *See Univ. Resp. to BLinC SoF ¶¶ 237-240; see also BLinC App. 1188-93 (listing examples).*

238. Without being registered, BLinC could not participate in the student fair or be included on the University’s website featuring and encouraging students to join registered student groups, which are the best ways to find interested new students and to grow the group. App. 1205.

RESPONSE: Admit.

239. And there are numerous other important benefits for registered student groups that BLinC would lose upon deregistration, including access to certain speech forums and ability to engage in

certain types of speech on campus. App. 1205-06; App. 0366; App. 0301 [Nelson Dep. 184:8-24]; App. 0404-06; App. 1327-29; App. 1188-93.

RESPONSE: Admit.

240. Being derecognized would also make it much harder for BLinC to grow its membership because students might be scared off by the University's message that there is something wrong with BLinC. App. 1206.

RESPONSE: Admit that the above statement accurately reflects Jacob Estell's testimony.

The 24-7 Investigation

241. At the same time Marcus Miller filed his complaint against BLinC, he filed a separate complaint against another Christian student group on campus—24-7—after he applied to lead their freshman bible study group. App. 0114-15 [Cervantes Dep. 67:12-68:4, 69:24-70:3]; App. 0199-211.

RESPONSE: Admit.

242. Marcus's complaint against 24-7 was also investigated by Ms. Cervantes. App. 0102, 0124 [Cervantes Dep. 17:7-9, 107:25-108:2]; App. 0199-211.

RESPONSE: Admit.

243. Unlike BLinC's original constitution, 24-7's constitution included "a Statement of Faith" and explicitly "differentiate[d] who [was] eligible to vote or hold office in their organization." App. 0172-78; *see also* App. 0179-82.

RESPONSE: Admit.

244. All leaders and voting members were required to sign the Statement of Faith. App. 0179-82.

RESPONSE: Admit.

245. 24-7 also requires applicants for leadership positions to confess any sins involving sexual immorality, including “inappropriate relations with the opposite sex” and “homosexuality.” App. 1340; App. 1892-1900.

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

246. Marcus told the investigator that 24-7 “was not ok with him being actively gay” and that he “would not be acceptable as a leader” if he were “openly gay.” App. 0114 [Cervantes Dep. 67:12-15]; App. 0199-201.

RESPONSE: Admit.

247. Ms. Cervantes interviewed 24-7’s lead pastor, Scott Gaskill. App. 0125-26 [Cervantes Dep. 112:17-25-113:1-11]; App. 0183-98.

RESPONSE: Admit.

248. Gaskill confirmed that he believed the Bible to be “clear on the fact that homosexuality is a sin.” App. 0125 [Cervantes Dep. 112:17-21]; App. 0184.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit, with the qualification that the overriding reason behind Cervantes’ finding was that there was “insufficient evidence to show the decision was based on Complainant’s membership in a protected class . . .” Depo. Ex. 81; D. Supp. App. 177. In her finding, Cervantes unequivocally stated that “treating [Complainant] differently than other members due to his sexual orientation would violate the university’s *Policy on Human Rights*.” Depo. Ex. 81; D. Supp. App. 177.

Constance Cervantes

251. Ms. Cervantes was designated as a 30(b)(6) witness to testify about the Human Rights Policy. App. 1340; App. 1902.

RESPONSE: Admit.

252. She was never informed, however, that she was a 30(b)(6) witness. App. 0099-100 [Cervantes Dep. 8:8-9:16]; App. 0361-65.

RESPONSE: Admit.

253. She was not familiar with the topics on which she was designated to testify. App. 0100 [Cervantes Dep. 9:11-12].

RESPONSE: Admit.

254. Besides her lawyers, Ms. Cervantes did not speak to anyone from the University to prepare for her deposition. App. 0100 [Cervantes Dep. 9:20-10:3].

RESPONSE: Admit.

255. She did not review any documents to prepare for her deposition. App. 0100 [Cervantes Dep. 10:7-10].

RESPONSE: Admit.

256. No one with supervisory responsibility talked to her about how she should apply or interpret the Human Rights Policy. App. 0103 [Cervantes Dep. 21:11-16].

RESPONSE: Admit, though she later stated that her supervisor advised her on how to interpret university policies. Cervantes 19:25–20:4; P. App. 102.

257. Rather, it was “up to [her] discretion how it’s applied.” App. 0103 [Cervantes Dep. 21:15-16].

RESPONSE: Admit.

258. She explicitly denied being at her deposition “to speak on behalf of the [U]niversity,” saying she was there “as a fact witness who investigated this case” and to “answer any . . . questions about that.” App. 112 [Cervantes Dep. 58:3-59:10].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

261. Yet Cervantes exhibited significant confusion as to what that meant in practice.

RESPONSE: Defendants are unable to respond due to lack of citation to the record.

262. After BLinC declined to offer Marcus Miller a leadership position, he founded an on-campus “LGBTQ-inclusive” Christian ministry called Love Works. App. 0103 [Cervantes Dep. 23:7-22]; App. 0239-43; App. 1205; App. 1283-86.

RESPONSE: Admit.

263. The constitution of Love Works requires its leaders to sign and agree to the group’s mission statement of core religious beliefs. App. 0103 [Cervantes Dep. 23:22-24:5]; App. 0238-40.

RESPONSE: Admit.

264. Specifically, leaders are required to certify that “Jesus will be at the center of everything [they] do,” that “His life and teachings provide a model worthy of imitation,” and that they “can experience great joy and freedom” through his “life, death, and resurrection.” App. 0103-04 [Cervantes Dep. 24:6-25:6]; App. 0240-41.

RESPONSE: Admit.

265. They are also required to certify that they will “affirm those in the LGBTQ+ community.” App. 0103-04 [Cervantes Dep. 24:6-25:6]; App. 0240-41.

RESPONSE: Admit.

266. Love Works, however, was not one of the organizations deregistered by the University. ¶¶ 442, 447, *infra*.

RESPONSE: Admit.

267. Ms. Cervantes’s application of the Human Rights Policy was internally inconsistent in other ways as well.

RESPONSE: Defendants are unable to respond due to lack of citation to the record.

268. She also suggested that it would be “a violation of the human rights policy if . . . the University Democrats required their leaders to be Democrats,” because that could violate the Policy’s prohibition against discrimination based on “creed.” App. 0104-05 [Cervantes Dep. 30:10-25, 31:17-22, 28:13-30:5]; App. 0144-68; App. 0110 [Cervantes Dep. 51:13-52:10].

RESPONSE: Admit.

269. On the other hand, she testified that a pro-life group could require even its members “to hold pro-life beliefs.” App. 0105-06 [Cervantes Dep. 32:2-33:11]; App. 0244-46.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

272. Yet she acknowledged that the Policy only prohibited status-based discrimination, and not belief-based restrictions. App. 0107-08 [Cervantes Dep. 40:18-41:8].

RESPONSE: Admit.

273. Thus, for example, she agreed that the Policy would be violated if a group excluded students “because they were a woman” or “because they were a man,” but not if it “excluded them because of their beliefs about the relationships between men and women.” App. 0107 [Cervantes Dep. 38:10-39:7].

RESPONSE: Admit, with the qualification that Cervantes stated she would “have to see the facts” in order to determine the correct answer. Cervantes 39:3–7; P. App. 107.

274. Similarly, the Policy would be violated if a group excluded a student because of their sexual orientation, but not if it excluded a student because of “their religious beliefs about sexual orientation[.]” App. 0107-08 [Cervantes Dep. 39:12-40:7, 43:17-44:5].

RESPONSE: Admit.

275. With regard to religious status and belief, Ms. Cervantes testified that the Human Rights Policy prohibits discrimination on the basis of “religion,” which is a protected classification, but that it does not prohibit discrimination on the basis of “religious belief,” which is not a protected classification. App. 0108-09 [Cervantes Dep. 42:4-15, 42:24-45:7].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

278. In both scenarios, Ms. Cervantes hedged that she would have to look at “all the facts and the circumstances of the case” and “see how everyone else looked at [the difference between religion and religious beliefs] and what they talked about and what they had said to each other and

how they defined it.” Cervantes Dep. App. 0104, 0109 [Cervantes Dep. 25:23-26:6, 45:14-20, 47:8-14].

RESPONSE: Admit.

279. But she maintained that “there’s a distinction between religion and religious beliefs” in the Policy. App. 0109 [Cervantes Dep. 47:15-25].

RESPONSE: Admit.

280. She had no explanation for why the University would try to make such a distinction. App. 0109-10 [Cervantes Dep. 48:1-49:19].

RESPONSE: Deny. Cervantes stated that Plaintiff’s counsel was asking her to speculate, she would say that the policy was drafted to be “based on the law.” Cervantes 48:8–11; P. App. 109.

BLinC REPLY: Ms. Cervantes testified that no one at the University had ever explained to her why the University would make the distinction between “religion and religious beliefs” for purposes of the Policy, or that it in fact did make that distinction, and her understanding was based on her reading of the Policy’s language. BLinC App. 0109-0110 [Cervantes Dep. 47:9—49:2].

281. Ms. Cervantes claimed to be uncertain as to whether the Policy allows fraternities to exclude women “because I think that has questions about international fraternities, and I don’t know that I can answer that. I’d have to look at all the facts and circumstances of a case if it was brought before me.” App. 0113 [Cervantes Dep. 61:5-19].

RESPONSE: Admit.

282. She conceded that allowing fraternities to exclude women would violate the Policy “on its face,” but insisted she would have to “look at all the facts and circumstances” to see “[i]f there’s

other matters that would over—you know, overrule this. I don’t know what the . . . fraternities’ relationships are with their internationals and how that falls in play with the university. I’m just not familiar with that.” App. 0113 [Cervantes Dep. 61:14-62:12].

RESPONSE: Admit.

283. She did allow that religious organizations could exclude members who engaged in sexual activity outside of marriage without violating the Policy. App. 0113-14 [Cervantes Dep. 64:11-66:9].

RESPONSE: Admit.

284. And a group could define its sexual conduct policy any way it wanted, including by only excluding members who engaged in sexual activity outside of marriage between a man and a woman: “[a]s long as they didn’t exclude someone because they were gay or because they were straight, it’s not a violation of the human rights policy.” App. 0114, 0123-24 [Cervantes Dep. 66:10-25, 104:14-106:13]; App. 0090-91.

RESPONSE: Admit.

285. Ms. Cervantes admitted there was extensive, undisputed evidence that BLinC denied Marcus Miller a leadership position because of his religious beliefs. App. 0120-21 [Cervantes Dep. 89:20-94:5].

RESPONSE: Admit that other evidence exists in which BLinC claims to have denied Miller a leadership position because of his religious beliefs. Deny that it was undisputed, as evidenced by Cervantes’ conversation with Hannah Thompson. Cervantes 90:11–15; P. App. 120.

286. Her own notes record that Marcus Miller himself told her that “[h]e was not allowed because he did not ascribe to what the bible says” and that “[i]t would be okay if he accepted being

gay as wrong, and did not act on it.” App. 0114-15 [Cervantes Dep. 67:12-68:4, 69:24-70:19]; App. 0199.

RESPONSE: Admit, with the qualification that Miller also told Cervantes that “[h]e then asked Hanna if he was straight and felt gay marriage was ok, would that be ok, and she said yes,” indicating that his sexual orientation, rather than his belief system, was really at issue.

BLinC REPLY: While the quote accurately reflects a portion of Ms. Cervantes’s notes, the very next sentence of what Mr. Miller told her reads, “It would be ok if he accepted being gay as wrong, and did not act on it. If you are gay, you cannot be pursuing a relationship.”

287. Similarly, Ms. Cervantes’s notes from her interview with Hannah Thompson confirm that Hannah told Ms. Cervantes that BLinC declined to give Marcus a leadership position because “his lifestyle was inconsistent with the Bible,” that “pursuing a relationship with a person of the same sex was inconsistent with the Bible,” and that “Marcus Miller said he had intentions to pursue relationships with other men.” App. 0115-16 [Cervantes Dep. 72:11-21, 73:24-74:10]; App. 0213-14.

RESPONSE: Admit.

288. The notes further disclose that Hannah said she would encourage someone who is gay to participate as a member, but that Marcus could not be a leader because he “considered himself to be gay and wanted to live openly as gay” and that “his desire to pursue a [gay] relationship” would “demonstrat[e] behaviors inconsistent with the Bible.” App. 0116 [Cervantes Dep. 74:22-75:16]; App. 0213-14.

RESPONSE: Admit.

289. Ms. Cervantes admitted that, during the interview, Hannah told her Marcus didn't get the leadership position "because he didn't accept [BLinC's] view about being gay—the Bible's view of what it means to be gay." App. 0116 [Cervantes Dep. 75:17-76:2].

RESPONSE: Admit.

290. Hannah "reiterated it was not her intention to prohibit a gay person . . . , but she seeks leaders using Christ as a foundation" and "if there is something they are struggling with, and if they confess and repent, then it is okay." App. 0116 [Cervantes Dep. 76:3-13].

RESPONSE: Admit.

291. Ms. Cervantes acknowledged that Hannah "raised religious objections to homosexuality" and that BLinC "ascribed to religious beliefs that homosexuality is a sin." App. 0117 [Cervantes Dep. 77:3-15].

RESPONSE: Admit.

292. Ms. Cervantes further acknowledged that Hannah sent Marcus an email after her decision, but before he filed his complaint, in which Hannah emphasized that "[f]irst and foremost, the reason why I made the decision" was "because of your desire to *pursue* a homosexual lifestyle/relationship." App. 0117 [Cervantes Dep.77:21-79:11]; App. 0169-71 (emphasis in original).

RESPONSE: Admit. Depo. Ex. 90; P. App. 589.

293. Hannah's email went on to say that "struggling with homosexuality, yet not acting on it, is a different story" and that "it is not because you call yourself a homosexual that you cannot be on leadership, but your pursuit of this sin is how I came to such conclusions." App. 0117 [Cervantes Dep. 79:12-23].

RESPONSE: Admit. Depo. Ex. 90; P. App. 589.

294. Ms. Cervantes admitted that the chronology of events that Hannah prepared for her interview stated that Marcus could not be a leader with BLinC “because his lifestyle is . . . inconsistent with what the Bible says about sin.” App. 0119 [Cervantes Dep. 85:18-86:24]; App. 0215-17.

RESPONSE: Admit.

295. She admitted that she had reviewed a subsequent letter from Hannah that repeated that BLinC does not “discriminate against students because of who they are” but merely asks “that our leaders support and uphold our . . . ‘goals and beliefs,’” noting that Marcus “expressly stated that he rejected important parts of our Christian beliefs, would not support them, and would openly oppose them in public.” App. 0119-20 [Cervantes Dep. 87:5-89:12].

RESPONSE: Admit. When asked why she chose to “seize on, in [her] notes, the statement that Mr. Miller was excluded because he was gay and not all of the statements from Hannah that he was excluded because of his religious beliefs,” Cervantes responded “Because Hannah told me he was excluded because he was gay.” Cervantes 89:13–19; P. App. 120.

296. Ms. Cervantes admitted that she “had no reason to believe Hannah was lying . . . at any time.” App. 0120 [Cervantes Dep. 90:6-10].

RESPONSE: Admit.

297. Yet Ms. Cervantes dismissed all this evidence as merely “what Hannah wrote to Marcus” or “what [Hannah] said” or “what it says in this email,” but that Hannah had specifically told her that the real reason was “because he was gay.” *See* App. 0117 [Cervantes Dep. 79:18-80:3, 80:8-10, 80:14-17, 80:18-24].

RESPONSE: Admit.

298. When Ms. Cervantes was reminded of all the contrary evidence, she claimed “I’ll have to look at my notes again.” App. 0117-18 [Cervantes Dep. 80:25-81:3].

RESPONSE: Admit. Plaintiff’s counsel repeatedly refused to show the witness any documents.

BLinC REPLY: Twenty-eight exhibits were introduced during Ms. Cervantes’ deposition. BLinC App. 0097-98. Ms. Cervantes was generally given the opportunity to review documents before answering questions. *See, e.g.*, BLinC App. 0118-19 [Cervantes Dep. 81:4-9, 87:5-11], 0121 [Cervantes Dep. 95:8-13]. BLinC’s counsel occasionally asked for her recollection first.

299. As she was being walked through the evidence a second time, App. 0118 [Cervantes Dep. 81:4-82:13], Ms. Cervantes seized upon a statement in her own notes that “MM would have been eligible but for being gay” and that “MM would have become the VP . . . by acclimation . . . if he had not told them he was gay,” App. 0118 [Cervantes Dep. 82:14-19].

RESPONSE: Admit that Cervantes discussed the above statements in her testimony, as they were relevant to the question she was asked.

300. Relying on these statements from her own notes, Ms. Cervantes claimed that Hannah said “she’d eliminate [Marcus] because he was gay. She was pretty firm about that. There was no discussion of religious beliefs. She just said because he was gay, that’s it.” App. 0120 [Cervantes Dep. 91:7-10].

RESPONSE: Admit that Cervantes stated that Hannah told her she had refused to give Marcus Miller a leadership position in BLinC because he was gay. Deny that her basis for this testimony was the sentences she “seized on” from the notes she took during her

interview with Hannah Thompson. The testimony cited does not support Plaintiff's assertion.

301. Yet in the very next breath, Ms. Cervantes admitted that she was ignoring immediately adjacent statements in her notes and extensive other evidence that Hannah was always referring to the religious conflict, not Marcus's sexual orientation: "Yes, the emails say that. Yes, the letter signed by Hannah Thompson says that. Yes, there are notes where she said other things, but that is specifically what she told me with no—nothing else." App. 0120 [Cervantes Dep. 91:11-92:25]; *see also* App. 0118 [Cervantes Dep. 82:14-95:7].

RESPONSE: Deny. Cervantes' acknowledgement of the other evidence cited above can hardly be construed as "ignoring" it. The cited testimony suggests that Cervantes found Hannah's statement that she had excluded Marcus because he was gay, without further explanation, to be more credible than the other evidence available.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

306. During the course of her investigation, Ms. Cervantes went online and found articles about "the Bible saying black people are inferior" and one "ha[ving] to do with the Bible supporting that women are inferior." App. 0121-22 [Cervantes Dep. 95:8-97:11]; App. 0218-28.

RESPONSE: Admit.

307. Ms. Cervantes printed and highlighted the articles, and put them in her file regarding the investigation. App. 0121-22 [Cervantes Dep. 95:8-97:11]; App. 0218-28.

RESPONSE: Admit.

308. She claims having no memory of why she had been looking for articles suggesting that the Bible promotes invidious discrimination based on race and sex. App. 0121-22 [Cervantes Dep. 95:8-97:11].

RESPONSE: Admit.

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

RESPONSE: Deny. There is no indication in the cited testimony that Cervantes "feigned ignorance." Cervantes 102:8–25; P. App. 123.

310. With respect to 24-7, Ms. Cervantes admitted that she was aware there was a conflict between Marcus's and 24-7's religious beliefs concerning homosexuality. App. 0127 [Cervantes Dep. 117:20-23].

RESPONSE: Admit.

311. And she knew that "if [Marcus] would have affirmed his desire to pursue a same-sex relationship that he would not have been eligible to be a leader in 24-7." App. 0127 [Cervantes Dep. 117:24-118:8].

RESPONSE: Deny. The question was limited to whether Marcus would have been admitted as a leader had he pursued a sexual relationship. Cervantes 117:24-118:8; P. App. 127. Cervantes indicated that he would not have been eligible because "they [24:7] didn't believe in sex before marriage." Cervantes 117:24-118:8; P. App. 127.

312. But she concluded that would not have been a violation of the Policy because "I don't believe our policy covers sexual activity." App. 0127 [Cervantes Dep. 118:9-12].

RESPONSE: Admit.

313. Ms. Cervantes was aware that, "as an employee" of a state university, she had "an obligation to respect the First Amendment rights of students" and student groups, including their

freedom of speech, freedom of religion, and right to assemble. App. 0101-02 [Cervantes Dep. 16:8-19, 17:13-18:2].

RESPONSE: Admit.

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

RESPONSE: Admit.

315. Nevertheless, she insisted that the University could tell a student group “who to let in to the leadership of [such] a religious organization.” App. 0128 [Cervantes Dep. 123:24-124:9].

RESPONSE: Admit, with the qualification that the question was limited to “a religious student group on campus”—presumably an RSO, but the question is ambiguous. Cervantes 123:15–124:3; P. App. 128.

316. She stated it was “the place of a judge” to decide whether “the First Amendment trumps the human rights policy.” App. 0128 [Cervantes Dep. 124:10-15].

RESPONSE: Admit.

Thomas Baker

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

RESPONSE: Admit.

318. Lyn Redington—the then-Dean of Students—asked him to help serve a “liaison role” between the investigator and Dr. Nelson. App. 0005 [Baker Dep. 16:4-19].

RESPONSE: Admit.

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

RESPONSE: Admit.

320. He was well aware from that experience what the Policy did and did not require.

RESPONSE: Admit that he was aware of what the Policy required at that time of the CLS issue, but over 10 years had passed since CLS had made repeated threats of legal action against the University. *See, e.g.* Depo. Ex. 44; P. App. 70.

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

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

322. Likewise, it was his understanding that “a religious student organization could require that members agree to the group’s tenets as long as the group’s tenets did not categorically prohibit gay students from becoming members.” App. 0023 [Baker Dep. 86:14-21].

RESPONSE: Admit.

323. It would even be permissible to deny someone membership if they “lived actively as a gay individual,” if doing so conflicted with the organization’s statement of faith. App. 0018 [Baker Dep. 66:11-67:4].

RESPONSE: Admit.

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

RESPONSE: Admit.

325. Dean Baker understood that “the core principle” of the Policy is to protect against “differential treatment” based on “immutable characteristics”—*i.e.*, “what your eye color is, what your skin color is, things like that.” App. 0009, App. 0035 [Baker Dep. 33:14-22, 134:8-25]

RESPONSE: Admit.

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

RESPONSE: Admit.

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

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

BLinC REPLY: Baker’s testimony is that “*by* the time that the CLS issue surfaced in 2004 – by that time I was certainly under the belief that groups could have membership standards.” BLinC App. 0041 [Baker Dep. 160:8-12] (emphasis supplied). The testimony came in response to questions about a conversation he had with Ms. Cervantes in 2017

regarding the BLinC investigation and the Policy. BLinC App. 0039-40 [Baker Dep. 150:9-160:12]. Baker also testified that he did not know of any changes since 2004 that barred student groups from setting membership standards. BLinC App. 0018 [Baker Dep. 66:11-67:4]; *see also* BLinC App. 0021 [Baker Dep. 79:5-14].

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

RESPONSE: Admit.

329. Thus, he agreed it was not a problem if a religious group had “a standard that required leaders to agree that homosexuality is a sin.” App. 0050 [Baker Dep. 197:18-25].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

332. Dean Baker stated it was not his job “to tell EOD how to do their investigation”; rather, his “responsibility was to make sure that the post-investigation process—that it followed from the EOD investigation.” App. 0035-36 [Baker Dep. 137:19-138:1].

RESPONSE: Admit, with the qualification that Baker also stated that if he felt Ms. Cervantes was making a mistake or “violating the Fourteenth Amendment, due process, then

I might have expressed some concerns.” Baker 138:6–10; P. App. 36. Baker also stated that he “might have asked Connie [Cervantes] a question if [he] did believe that there was a free speech issue at stake.” Baker 142:15–17; P. App. 37.

333. But even at the investigation stage, Ms. Cervantes relied upon Dean Baker to provide the guiding standards for the investigation, and he sat in on key interviews as well. App. 0032-33 [Baker Dep. 125:9-126:13]; App. 0033 [Baker Dep. 127:4-11].

RESPONSE: Admit that Baker sat in on key interviews. Deny the assertion that “Ms. Cervantes relied upon Dean Baker to provide the guiding standards for the investigations” generally and as unsupported by the record citations.

334. After Ms. Cervantes made her findings, Dean Baker initiated the post-investigation process, writing a memo to Dr. Nelson with instructions on how to proceed. App. 0042 [Baker Dep. 164:17-165:12]; App. 0090-91.

RESPONSE: Admit.

335. He also led the post-investigation meeting with BLinC’s leaders and made the final determinations at the meeting. ¶¶ 192-212, *supra*.

RESPONSE: Admit.

336. He helped draft Dr. Nelson’s September 13, 2017 letter with the three requirements BLinC’s constitution needed to meet for BLinC to be re-registered. App. 0045-46 [Baker Dep. 176:22-177:12, 178:6-15]; App. 0388-89.

RESPONSE: Admit.

337. After BLinC submitted its renewed constitution, Dean Baker personally compared how the new constitution differed from the old and drew his own conclusions about why the conditions

in the September 13, 2017 letter had not been met. App. 0047-49, 0092, 0213 [Baker Dep. 183:20-184:5, 186:4-7, 189:3-191:15]; App. 0092; App. 0213-14.

RESPONSE: Admit.

338. He then participated in the discussion with Dr. Nelson about how to respond. App. 0047-48 [Baker Dep. 183:20-186:3].

RESPONSE: Admit.

339. According to Dr. Nelson, Dean Baker “played a larger role than anyone other than [him] and Lyn Redington” in the decision to deregister BLinC. App. 0356 [Nelson Dep. 291:24-292:2].

RESPONSE: Admit.

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

RESPONSE: Admit.

341. Yet he concluded that whether a religious student group could require its leaders “to affirm they accept and live [the group’s] religious beliefs” depended upon “what’s in the [group’s] Statement of Faith.” App. 0048 [Baker Dep. 186:15-187:4]; App. 0393-97; *see also* App. 0034, 0044-45 [Baker Dep. 130:21-133:6, 171:6-175:16] (stating that a requirement prohibiting sex “outside of marriage” would be okay, but not a requirement prohibiting sex “outside of marriage between a man and a woman” because “gay marriages are not considered”); *see also* App. 0030-46 [Baker Dep. 117:19-180:20] (same).

RESPONSE: Admit.

342. Thus, he objected to BLinC’s statements of belief that “God’s intention for a sexual relationship is to be between a husband and a wife,” that every other sexual relationship . . . “is not

in keeping with God’s original plan for humanity,” and that “every person should embrace, not reject, their God-given sex.” App. 0048 [Baker Dep. 187:5-188:13]; App. 0393-97.

RESPONSE: Admit.

343. He admitted that if BLinC had just deleted those three statements of belief, “[i]t would have reduced [his] concern about the constitution” and he “may have” at that point deemed the updated constitution “acceptable.” App. 0048 [Baker Dep. 188:14-21].

RESPONSE: Admit.

344. He thus proposed to the University counsel that BLinC be required to modify the Statement of Faith in its constitution “in a way that would be acceptable,” meaning to “reconcile the [Policy language] with [BLinC’s] Doctrine of Personal Integrity.” App. 0302 [Nelson Dep. 187:5-188:24].

RESPONSE: Admit.

345. That requirement was then conveyed to BLinC in Dr. Nelson’s October 19, 2017 letter, which gave BLinC the “opportunity to make additional revisions to [its] Statement of Faith.” App. 0048 [Baker Dep. 188:4-24]; App. 0400-01.

RESPONSE: Admit.

346. Dean Baker later admitted that the revised Constitution had satisfied the second requirement of the initial September 13, 2017 letter. App. 0045-46 [Baker Dep. 176:22-181:25]; App. 0388-89.

RESPONSE: Admit.

347. He believed the third requirement about “not [being] presumptive of candidates based on their sexual orientation” was not met, however, because his “intention” was for BLinC, in selecting leaders, to adopt a process to ask questions about candidates’ sexual activity only, and that it was

impermissible to express or require leaders to adhere to the religious view that sexual conduct out of opposite-sex marriage was immoral. App. 0044, 0047 [Baker Dep. 171:6-173:20, 182:1-183:10].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

350. He agreed that students may engage in all kinds of religious exercise, including activities such as praying, worshiping, preaching, and administering sacraments, which could make them the “functional equivalent” of a church. App. 0051-52 [Baker Dep. 201:9-20, 202:1-24]; *see also* App. 0824-26 (constitution of The Salt Company, an on-campus church organization).

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

353. He noted specifically that the situation between BLinC and Marcus Miller did “raise First Amendment concerns in my mind” but he chose to defer to Ms. Cervantes because she was “responsible for the investigation” so he was unconcerned that his involvement would “invite allegations that I violated someone’s free speech rights.” App. 0037, 0041 [Baker Dep. 142:22-143:21, 158:4-13].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

William Nelson

356. William Nelson testified that he believed that he had no “obligation to look beyond the Finding [from the investigation] to confirm its accuracy.” App. 0264 [Nelson Dep. 34:1-7].

RESPONSE: Admit, with the qualification that he did review some of the documents referenced by the finding. Nelson 34:21–35:7; P. App. 264.

357. Instead, he simply “accepted the Findings from the Office of Equal Opportunity and Diversity,” making “no independent effort to confirm whether [they] accurately reflected the facts[.]” App. 0265 [Nelson Dep. 37:2-9].

RESPONSE: Admit, with the qualification that he did review some of the documents referenced by the finding. Nelson 34:21–35:7; P. App. 264. Nelson testified that he accepts the findings from the Office of Equal Opportunity and “respect[s] their work.” Nelson 37:6–12; P. App. 265.

358. He believed there might have been a different “process to challenge the finding” through the “EOD process,” but that once the issue got to him, as far as he knew, “no one looks beyond the findings.” App. 0268, 0274 [Nelson Dep. 51:6-17, 74:14-75:5].

RESPONSE: Admit, with the qualification that part of the purpose of Dr. Nelson’s meeting with students after a finding that there is a reasonable basis to believe that a policy violation has occurred is to “give the students the opportunity to provide additional context, to ask additional questions, [and] for [Nelson] to then share what the process looks like moving forward.” Nelson 40:23–41:2; P. App. 265-266.

BLinC REPLY: The meeting was not meant to provide a forum for fact-finding to contest Ms. Cervantes’ findings. Dr. Nelson testified that the purpose of the meeting with the students is “not to dispute the facts” of the finding, but rather to determine “what is appropriate for a sanction.” BLinC App. 0265-266 [Nelson Dep. 40:21—41:14].

359. He agreed that it would be “problematic” if the students had no opportunity to appeal the investigator’s factual findings before they were sanctioned, but assumed there must be a separate appeal process than the appeal BLinC took to him under the rules governing student organizations. App. 0274 [Nelson Dep. 76:4-23].

RESPONSE: Admit.

360. Nevertheless, in his September 13, 2017 sanctions letter, Dr. Nelson wrote, “I find there is a preponderance of the evidence that BLinC violated the University of Iowa Human Rights Policy”—without independently reviewing the underlying evidence. App. 0276 [Nelson Dep. 82:21-83:9]; App. 0388-89.

RESPONSE: Admit, with the qualification that Nelson did review some of the documents referenced by the finding. Nelson 34:21–35:7; P. App. 264.

361. Dr. Nelson was designated under Federal Rule of Civil Procedure 30(b)(6) to speak on behalf of the University concerning its “policies and/or procedures regarding registered student organizations,” including its Human Rights Policy. App. 0258 [Nelson Dep. 12:14-23]; App. 0361; App. 0284-85 [Nelson Dep. 115:16-116:7, 118:1-7] (acknowledging designation to testify for University regarding its “policies and/or procedures regarding Registered Student Organizations”).

RESPONSE: Admit.

362. Dr. Nelson’s explanation of the Human Rights Policy was internally inconsistent.

RESPONSE: Defendants are unable to admit or deny due to lack of citation.

363. He testified that denying Marcus Miller a leadership position “only because he refused to live by BLinC’s Christian principles” would have “violated the Human Rights Policy . . . because it would be discriminatory based on his sexual orientation.” App. 0267 [Nelson Dep. 47:6-13].

RESPONSE: Admit.

364. But he testified that “if Marcus Miller were not gay but indicated that he did not agree with BLinC’s Christian principles and was denied a leadership position for that reason,” the Policy would not have been violated. App. 0267-68 [Nelson Dep. 48:15-21, 49:4-9].

RESPONSE: Admit.

365. Dr. Nelson also stated that, if BLinC would have deleted the three statements of religious belief in its constitution about marriage, sexual activity outside of heterosexual marriage, and gender identity, he would have accepted their constitution. App. 0281 [Nelson Dep. 102:16-103:25]; *supra* ¶ 222a.

RESPONSE: Admit.

366. But he ultimately admitted that none of these additions made to BLinC's constitution were problematic under the Policy. App. 0277 [Nelson Dep. 87:23-25] (clarification of religious duties), [Nelson Dep. 88:15-19:13] (signature requirement).

RESPONSE: Admit.

367. At first he protested that it was a violation of the Policy to include in BLinC's constitution the statement "We believe God's intention for a sexual relationship is to be between a husband and a wife in a lifelong covenant of marriage," but ultimately conceded that the University would violate federal and state law if it tried to suppress that speech. App. 0278-79 [Nelson Dep. 90:4-95:12].

RESPONSE: Admit.

368. Similarly, he ultimately agreed there was nothing wrong with BLinC stating in its constitution its belief that sexual activity outside of marriage between a man and a woman is sinful and its belief that "every person should embrace, not reject, their God-given sex." App. 0279-81 [Nelson Dep. 96:6-99:21, 100:23-101:23].

RESPONSE: Admit, with the qualification that Nelson struggled to answer questions about Constitutional principles which are clearly in conflict and thus

demonstrated the essence of the University administrators' difficulties with this particular case.

BLinC REPLY: The University has not identified any "Constitutional principles" which are in conflict, and there are none. The University's Policy is not required by the Constitution and is not violated by BLinC's practice of welcoming all as members, regardless of status, and welcoming all as potential leaders, as long as they share BLinC's religious beliefs. Nor is there any Constitutional principle that would require BLinC to admit Mr. Miller as a leader.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

371. Political groups, for example, could require students to sign a statement affirming the group's political values, including values about marriage and sexuality. App. 0297-98 [Nelson Dep. 168:25-170:1].

RESPONSE: Admit.

372. Dr. Nelson testified that—throughout the BLinC investigation and currently—the Policy "only prohibits status-based discrimination." App. 0303-04 [Nelson Dep. 191:23-192:2, 193:6-11, 193:21-194:6, 196:21-23].

RESPONSE: Admit, with the qualification that Nelson repeatedly attempts to focus the discussion on the University’s refusal to allow violations of its Human Rights Policy. *See, e.g., Nelson 192:6–13, 250:4–23; P. App. 303, 318.*

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

RESPONSE: Admit.

374. Dr. Nelson thus held discussions with Dean Redington and her supervisor, Melissa Shivers, about whether what they were doing to BLinC was right. App. 0306 [Nelson Dep. 203:24-204:18].

RESPONSE: Admit, with the qualification that they discussed whether they were taking the right “course of action” rather than whether their conduct was morally “right.”

375. There was no question that they were taking “a different approach” to BLinC than had been taken in “the past.” App. 0306-07 [Nelson Dep. 204:14-205:14].

RESPONSE: Admit.

376. Dr. Nelson admitted that “currently,” the “official interpretation of the Policy by the University” allows a student group to require both leaders and members to share the group’s “beliefs and purposes.” App. 0305 [Nelson Dep. 197:19-198:9].

RESPONSE: Admit.

377. Dr. Nelson, however, anticipated that this might be changing, and stated that he was expecting guidance from counsel about how the Human Rights Policy might be interpreted differently going forward. App. 0304, 0359 [Nelson Dep. 193:6-20, 194:7-11, 303:6-304:25].

RESPONSE: Admit.

378. Ultimately, Dr. Nelson admitted that BLinC was just trying to have its leaders support its religious beliefs, which was “okay” under the Human Rights Policy, “[e]ven if those beliefs concerned homosexuality or other sexual conduct.” App. 0306 [Nelson Dep. 203:12-23].

RESPONSE: Admit.

379. Dr. Nelson acknowledged that student organizations are “very important” to the University and that it is the University’s desire “to encourage a broad diversity of student organizations” because they “add[] a richness to the educational experience and campus environment” and “provide . . . fellowship opportunities for very important learning outside of the classroom, opportunities to engage the curriculum with the co-curriculum in a more practical experiential way.” App. 0356 [Nelson Dep. 290:12-291:2].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Deny. The University publicly sets forth its goals in regard to the regulation of student groups in its policies and procedures governing those groups. In its “Registration of Student Organizations” document, the University states that “Student

organizations are an important link in the co-curricular activities of the University of Iowa. They play an important role in developing student leadership and providing a quality campus environment. As such, the University encourages the formation of student organizations around the areas of interests of its students, *within the limits necessary to accommodate academic needs and ensure public safety.*” Depo. Ex. 14; P. App. 366 (emphasis added). The University also requires each student organization to abide by the mission of the University, its supporting strategic plan, policies, and procedures. Depo. Ex. 14; P. App. 366. The RSO document specifically incorporates the Human Rights Policy, which strives to ensure that all students are granted equal access to educational opportunities. Depo. Ex. 14; P. App. 366. The University expects that participation in student organizations will “enhance a student’s educational experience and the University deems this important to our students’ success” Depo. Ex. 14; P. App. 366.

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

RESPONSE: Admit.

Lyn Redington

383. Dean Redington did not know if the University had an all-comers policy. App. 0573 [Redington Dep. 20:19-21:12].

RESPONSE: Admit.

384. As far as she was aware, the University’s Policy still allowed student groups to establish membership criteria. App. 0573-74 [Redington Dep. 21:13-22:14]; App. 0093-94.

RESPONSE: Admit.

385. Dean Redington conceded that University student groups had the right to form around common interests, including interests concerning religion, gender identity, politics, sports, music, drama, and art, and so forth. App. 0575 [Redington Dep. 26:25-27:13].

RESPONSE: Admit.

386. She assumed that the University Democrats could form a student group and require their leader to be a Democrat and that the University Republicans could form a student group and require their leader to be a Republican, even requiring that leader to support a party platform that endorsed “marriage as an institution between a man and a woman.” App. 0575 [Redington Dep. 27:14-28:1].

RESPONSE: Admit.

387. It was her understanding that, while the University’s Human Rights Policy prohibited discrimination on the basis of sexual orientation, the University was “obliged to protect the First Amendment right” of students to “espouse [a] group’s basic tenets.” App. 0574 [Redington Dep. 22:15-23:3].

RESPONSE: Admit.

388. Dean Redington agreed it would not “ever be okay for the University of Iowa to tell a religious student group that it cannot consider religion in selecting its leaders,” because “that’s their belief,” which is “protected by the First Amendment.” App. 0576 [Redington Dep. 30:20-31:4].

RESPONSE: Admit.

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

RESPONSE: Admit.

390. Dean Redington deregistered BLinC because she assumed Marcus Miller had been denied a leadership position “because he was gay.” App. 0576 [Redington Dep. 30:2-9].

RESPONSE: Deny. Redington did not “assume” that Miller had been denied a leadership position because he was gay. She relied on a finding made by an experienced attorney with the Office of Equal Opportunity and Diversity, in which that attorney determined that Miller had been discriminated against based on his status as a gay man. See Depo. Ex. 106; P. App. 232; Redington 36:13–41:4; P. App. 577-578.

391. Dean Redington admitted that the appeal process failed with respect to BLinC. App. 0586-87 [Redington Dep. 72:19-75:3].

RESPONSE: Deny. Redington admitted that “if everything [Plaintiff’s counsel] told you today is true, BLinC never should have been deregistered.” Redington 75:1–7; P. App. 587 (Q: “So it’s fair to say that this entire process was just screwed up; is that correct?” A: “That sounds like a student affairs term, not a legal term.”).

BLinC REPLY: Dean Redington’s testimony speaks for itself:

Q: It’s correct then, isn’t it, that the decision to deregister BLinC was not supported by the factual evidence?

A: The reason I’m hesitating is looking at all of the – Never mind. Correct.

392. **BLinC App. 0587.** She agreed that it was “important in that process . . . for students to be fully heard and for their views to be considered.” App. 0577 [Redington Dep. 35:22-25].

RESPONSE: Admit.

393. The appeal through Dr. Nelson and Dean Redington was the only appeal process available to the students. App. 0576-77 [Redington Dep. 33:25-34:4]; App. 0090-91; App. 0577 [Redington Dep. 35:2-21].

RESPONSE: Admit.

394. Dean Redington “didn’t ask to see any of the underlying documents that [the investigator had] considered,” even though she knew that she would essentially have the “final word” on the appeal, knew that it was important to understand what actually happened between Hannah Thompson and Marcus Miller, and “knew this implicated religious liberty concerns . . . that could potentially expose the University to liability.” App. 0578 [Redington Dep. 38:19-39:12].

RESPONSE: Admit.

395. Dean Redington agreed that a religious student group would not violate the Policy if it “allow[ed] everybody to join as a member,” only screened its leaders for “affirmation of the organization’s religious beliefs,” and welcomed “persons who identified as gay or lesbian . . . to be leaders in the organization as long as they ascribe[d] to the organization’s religious beliefs.” App. 0579-80 [Redington Dep. 44:13-45:9, 46:4-13].

RESPONSE: Admit.

396. Dean Redington agreed that it would have been important and helpful for her to know that kind of information in making her decision concerning BLinC. App. 0579-80, 0582, 0584 [Redington Dep. 44:2-45:19, 46:14-17, 54:20-23, 62:13-19].

RESPONSE: Admit, with the qualification that Redington testified that she did not recall whether nor not she had received the information discussed in the citations above or not.

397. She agreed that if BLinC accepted anyone who was interested as a member and would let anyone be a leader as long as they affirmed BLinC’s statement of faith, that would have satisfied the conditions in Dr. Nelson’s September 13, 2017 letter. App. 0580-81 [Redington Dep. 48:6-50:2].

RESPONSE: Admit.

398. She further agreed that BLinC should have retained its status as a registered student organization. App. 0580-81 [Redington Dep. 48:6-50:2].

RESPONSE: Deny. Redington testified that if BLinC had fulfilled its obligations as required by Nelson’s September 13, 2017 letter, they should not have been deregistered. P. App. 580–81.

BLinC REPLY: Dean Redington’s testimony speaks for itself. App. 0580-81 [Redington Dep. 48:6-50:2].

399. Dean Redington made no effort to understand the underlying facts, choosing instead to rely almost exclusively on the investigator’s findings. App. 0577 [Redington Dep. 36:1-9]; App. 0594-94; App. 0577 [Redington Dep. 36:10-39:12]; App. 0232-38; App. 0578 [Redington Dep. 39:13-40:11]; App. 0589-91; App. 0579-80 [Redington Dep. 44:2-45:19].

RESPONSE: Deny. The testimony cited above seems only to indicate that Redington could not recall whether or not she saw several of the documents identified in the finding, but she states that she looked at evidence alongside the finding made by Connie Cervantes—she “tried to look at the whole picture.” Redington 37:1–10; P. App. 577.

BLinC REPLY: Dean Redington testified that, far from looking at “the whole picture,” she did not even *ask* to review “any” of the underlying documents Ms. Cervantes “relied on in making her decisions,” such as the communications between Marcus and Hannah, even though she recognized that “it would have been important” to understand those communications. BLinC App. 0577-78 [Redington Dep. 37:13—40:11].

400. She assumed that Dr. Nelson would have reviewed the evidence the investigator had relied on in making her findings. App. 0580 [Redington Dep. 47:25-48:5].

RESPONSE: Admit.

401. Dean Redington agreed that there was nothing in BLinC’s constitution or in its leadership selection practices that violated the Policy. App. 0581-83 [Redington Dep. 53:24-54:2, 54:15-19, 54:24-58:18].

RESPONSE: Deny. Redington indicated that she was “not well-versed in the human rights policy” at the time of her deposition and that she “didn’t know” if BLinC’s statement regarding a person’s “God-given sex” would violate the University’s policy as it relates to gender identity. Redington 56:19–57:4; P. App. 582. She also repeatedly indicated that she did rely and would have needed to rely on general counsel to answer many of these questions. *See* Redington 58:19–25; 65:18–66:4; 67:7–68:24; P. App. 583-585.

BLinC REPLY: Dean Redington’s testimony was that, at the time of BLinC’s derecognition, she was “the person who was responsible to apply the human rights policy with respect to BLinC,” and so was “expected to have an understanding of what the human rights policy meant.” BLinC App. 0582 [Redington Dep. 57:15-23]. She further testified that none of the statements in BLinC’s Statement of Faith violated the Policy, as she interpreted it. BLinC App. 0582-83 [Redington Dep. 55:10—58:7].

402. She agreed that her decision to uphold BLinC’s deregistration was wrong and without evidentiary support, and that the statements she made in her decision letter were factually false. App. 0583-84; 0586-87 [Redington Dep. 59:21-62:7, 72:19-75:3]. She admitted that by telling a student group “what kind of beliefs [it] could put in [its] constitution” the University of Iowa had “violate[d] the First Amendment.” App. 0584 [Redington Dep. 62:8-12]. She agreed it was especially problematic to tell a religious group it couldn’t use religion as a factor for selecting its leaders, while allowing an environmental group to use its environmental creed as a factor in

selecting its leaders. App. 0585 [Redington Dep 66:5-14]. And she conceded that, under the University's Policy, it was permissible for any group to restrict its leadership to individuals who shared that group's philosophy or beliefs. App. 0581-82 [Redington Dep. 53:24-54:2].

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

BLinC REPLY: Dean Redington's testimony speaks for itself. *See also* ¶ 401, *supra*.

403. Dean Redington agreed that part of learning in the university setting is "to be exposed to new ideas, different ways of thinking," "[e]ven if those ideas might be offensive," and that student groups were "absolutely" were part of the process of helping "students to engage with difficult ideas and grapple with them and expand their intellectual horizon while at the University." App. 0572 [Redington Dep. 16:18-17:19].

RESPONSE: Admit.

404. Dean Redington also acknowledged that "general" student organizations like BLinC have "almost no connection" to the University and that the University has structured them to distance itself their individual messages or purposes. App. 0585-86 [Redington Dep. 69:15-72:18]; 0402, 0388.

RESPONSE: Admit.

The Student Org Clean-Up Effort

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

415. Reviewers were instructed that while registered student organizations could “still have purposes/mission statements related to specific classes or characteristics of the HR Clause,” “membership or leadership” could not “be contingent on the agreement, disagreement, subscription to, etc., of stated beliefs/purposes which are covered in the HR Clause.” App. 0302 [Nelson Dep. 186:1-6]; App. 0408.

RESPONSE: Admit.

BLinC REPLY: BLinC notes that its citation to “App. 0408” is incorrect, and should have been to BLinC App. 0410.

416. Dr. Nelson admitted that this guidance was inappropriate and inconsistent with the Policy itself, and that the review was based on a false premise, because the Policy only prohibits status-based discrimination, not belief-based requirements. App. 0303-05 [Nelson Dep. 189:23-199:16].

RESPONSE: Admit.

417. There was no procedure for vetting a reviewer’s conclusion that a particular constitution did not have contradictory language—a constitution would only get passed on if the initial reviewer found something problematic. App. 0297 [Nelson Dep. 165:15-166:14].

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

423. Ultimately, the constitutions of fraternities and sororities were also reviewed, but only after the University formalized its existing *de facto* exemption from the Policy that allowed them to exclude members and leaders based on sex. App. 0312; 0307-08 [Nelson Dep. 126:2-127:20, 208:18-210:17]; App. 0411 (noting that social fraternities/sororities "maintain a legally protected single gender status"); App. 1330; App. 1334; App. 1345.

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

428. The University’s review of student constitutions continued to reflect the inconsistent, ever-changing, and chaotic manner in which the University has applied its Policy since investigating BLinC.

RESPONSE: This is not a statement of fact, is inappropriate for inclusion in a Statement of Undisputed Material Fact, and requires no response.

429. In June 2018, a member of Dr. Nelson’s staff contacted the InterVarsity Graduate Christian Fellowship (IVGCF) to inform IVGCF that language in “Articles II, III, IV and VII” of its constitution that allegedly contradicted the Policy. App. 0317 [Nelson Dep. 246:25-248:24]; App. 0422.

RESPONSE: Admit.

430. The cited provisions in IVGCF's constitution simply require IVGCF's leaders to be Christian. App. 1334 at ¶ 26; App. 1932-35.

RESPONSE: Admit.

431. IVGCF's president, Katrina Schrock, responded that it is "important to have Christian leadership in a Christian organization. We do not in any way discourage those who may not subscribe to the basis of faith in Article II from participating in IVGCF as members, but we do recognize that having Christian leadership is important to the fulfillment of our purpose." App. 0256; App. 0422-27.

RESPONSE: Admit.

432. Dr. Nelson's staff member responded as follows:

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

App. 0256; App. 0422-27.

RESPONSE: Admit.

433. Katrina asked if rather than stating that leaders "must subscribe" to the group's Christian beliefs the constitution could say "something like 'are requested to subscribe . . . ' or 'are strongly encouraged to subscribe . . . '" App. 0256; App. 0422-27.

RESPONSE: Admit.

434. The staff member responded that, no, the University "would not approve the change in language you proposed. Student orgs are free to express whatever language they desire in their mission/purpose, but the University and the Center for Student Involvement and Leadership must enforce our Human Rights Clause when it comes to leadership and membership." App. 0256; App. 0422-27.

RESPONSE: Admit.

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

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

BLinC REPLY: Dr. Nelson was the one of the witnesses designated by the University under Federal Rule of Civil Procedure 30(b)(6) to testify on behalf of the University regarding "[t]he University of Iowa's policies and/or procedures regarding student organizations." BLinC App. 0363; *see also* SoF ¶ 361, *supra*.

436. When confronted with the IVGCF email, he repeated that "again, having a belief is not" contradictory with the HR Policy. App. 0318 [Nelson Dep. 249:15-250:3].

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

BLinC REPLY: Dr. Nelson was the one of the witnesses designated by the University under Federal Rule of Civil Procedure 30(b)(6) to testify on behalf of the University regarding "[t]he University of Iowa's policies and/or procedures regarding student organizations." BLinC App. 0363; *see also* SoF ¶ 361, *supra*.

437. But when questioned about the language in the email, he stated that he was "getting so tired and confused," and then reversed course entirely, stating that the email must reflect the University's "official position" because the University officer writing it "said that he received

word from the General Counsel's Office that the language they proposed was not acceptable."

App. 0318-19 [Nelson Dep. 250:14-253:9].

RESPONSE: Admit.

438. Dr. Nelson acknowledged that the email was from "a month or so ago" but complained that the situation was "very dynamic" and that it "appears that the -- the General Counsel has given [my staff member] the direction." App. 0319 [Nelson Dep. 255:13-24]; *see also* App. 0319 [256:5-16] (stating that it was *not* the official position of the University that "a religious organization can't even encourage its leaders to be a certain religion," but then after trying to "regroup here," concluding that what IVGCF was told must be "the position of the University").

RESPONSE: Admit.

439. As a result of the University's review of student groups, over thirty groups were deregistered, although many of them were defunct or simply failed to timely resubmit their constitutions with a complete version of the Human Rights Policy included. Many of them have since complied by adding the required language and been re-registered. App. 0314-15 [Nelson Dep. 236:25-237:25] (noting that 39 groups were initially deregistered but 9 had since come into compliance); App. 0422 (University email identifying the 38 "[n]on compl[ia]nt" groups besides BLinC that were initially deregistered).

RESPONSE: Admit.

440. Other groups are still being permitted to have statements "encouraging" their leaders and members to be part of a class protected under the Policy. *Supra* ¶ 271; App. 0106 [Cervantes Dep. 35:8-23]; App. 0247.

RESPONSE: Admit.

441. Other groups, such as feminist or pro-life groups, are permitted to require their leaders and members to sign statements affirming the group’s ideological beliefs. ¶¶ 269-70, *supra*; App. 0105-06 [Cervantes Dep. 32:2-34:17]; App. 0244.

RESPONSE: Admit.

442. The group Iowa National Lawyers Guild is still a registered student group, and can “exclude people who don’t agree” with its political beliefs, even though Dr. Nelson agreed that would technically constitute discrimination on the basis of creed in violation of the Policy. App. 0319 [Nelson Dep. 253:10-16].

RESPONSE: Admit.

443. Most of the other groups identified that limit their leadership or membership based on non-religious creeds or missions are still registered student groups. *Compare* App. 0421, *with* ¶ 18, *supra*.

RESPONSE: Admit.

444. Even most of the identified the religious groups with explicit religious requirements for their leaders, including CLS, 24-7, and Love Works, are still registered student groups. *Compare* App. 0421, *with* ¶ 17, *supra*.

RESPONSE: Admit.

445. And all of the other groups identified that, while not explicitly limiting membership send the same message by adopting a mission or purpose to suggest a preference for one protected class over another or one particular creed (secular or religious) favoring a protected class over another, are still registered student groups. *Compare* App. 0421, *with* ¶ 19, *supra*.

RESPONSE: Admit.

446. The University's own programs that differentiate in recipients and beneficiaries based on protected categories remain in place. *See* ¶¶ 29-35, *supra*.

RESPONSE: Admit.

Respectfully submitted,

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**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.*,

Defendant,

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

**PLAINTIFF’S RESPONSE TO
DEFENDANTS’ STATEMENT OF
ADDITIONAL MATERIAL FACTS**

ORIGINS OF THE HUMAN RIGHTS POLICY

122. Individuals at the University of Iowa first began discussing the idea of adopting a Human Rights Policy in the 1950s. Baker 159:6–13; P. App. 41. The Human Rights Policy was enacted in 1963. P. App. 78–80.

RESPONSE: Admit that Dean Baker testified that some version of the Human Rights Policy was enacted in 1963, with the qualification that he did not testify as to the content of that Policy, that it was the same version that the University of Iowa employs now, or how the University applied the Policy to a Registered Student Organization (RSO). *See, e.g.*, BLinC’s SoF ¶ 12 (citing undisputed evidence that the University recently updated its Policy in Summer 2018). Deny that Dean Baker’s cited testimony addressed when discussion of “the idea of adopting a Human Rights Policy” was initiated.

REVIEW OF RSO CONSTITUTIONS

123. Organizations seeking official recognition by the University must submit an application to the Student Organization Review Committee (“SORC”). P. App. 0274. SORC “shall review all student organization registration applications.” P. App. 0274.

RESPONSE: Admit that the applications of student organizations to be RSOs must be submitted to SORC, with the qualification the organizations must submit the applications to a University staff member for review, and that staff member in turn submits the applications to SORC. See BLinC App. 0367-68.

124. Applications from organizations seeking recognition must include “an approved constitution and bylaws.” P. App. 0274.

RESPONSE: Admit, with the qualification that the relevant cite is to BLinC App. 0368. Further, new organizations must, in addition to submitting a written constitution for SORC review, “hold a Pre-registration meeting with the appropriate [University] staff.” BLinC App. 0367. Further, University staff must “review” the organization’s proposed constitution and application for registered status before submitting it to SORC for consideration. *Id.*

125. Student organizations “are required to include mandatory clauses within their organization constitutions.[”] SORC “shall review all student organization registration applications.” P. App. 0274. Mandatory clauses include the University’s Human Rights Policy. P. App. 0273.

RESPONSE: Admit the first two sentences, with the qualification that the relevant cites are to BLinC App. 0367-68. Deny that the citation for the third sentence supports the assertion that “Mandatory clauses include the University’s Human Rights Policy.” Admit that the citation supports the claim that University policy states that “all registered student organizations” are “able to exercise free choice of members on the basis of their merits as individuals . . . in accordance with the University Policy on Human Rights,” *id.*, and that the

University has interpreted its RSO Policy as requiring the Human Rights Policy to be written into RSO constitutions. BLinC SOF ¶ 42.

126. Upon its evaluation of a group's application, SORC may 1) "register the student organization and forward the organization's application to the appropriate student governance organization or college/department/unit for confirmation; 2) register the organization subject to specific conditions on activities the organization is permitted to sponsor; or 4) reject the application." P. App. 0274.

RESPONSE: Admit that the RSO Policy at BLinC App. 0368 states that "[u]pon its evaluation, [SORC] will register the student organization and forward the organization's application to the appropriate student governance organization or college/department/unit for confirmation; 2) register the organization subject to specific conditions on activities the organization is permitted to sponsor; or 3) reject the application."

127. If an organization's application is rejected, the organization may appeal within 30 days to the Director of the Center for Student Involvement & Leadership (for student organizations) or the Director of Recreational Services (for sports clubs). P. App. 0274.

RESPONSE: Admit, with the qualification that the relevant cite is to BLinC App. 0368.

128. If the organization is not satisfied with the results of the first level appeal, then it may submit a final appeal to the Dean of Students in writing. P. App. 0274.

RESPONSE: Admit, with the qualification that the relevant cite is to BLinC App. 0368.

UNIVERSITY OFFICIALS HAVE NOT DEMONSTRATED ANIMUS TOWARD PLAINTIFF'S VIEWPOINT

129. Content-neutrality was both the prevailing principle and the goal when analyzing issues that arose with student organizations. Baker 42:6–14, 69:6–23, 83:2–9, 173:1–23; P. App. 12, 18, 44, 78–80, 169–171;174–178.

RESPONSE: Deny. The citations to the record do not support this assertion of fact, nor is it clear what the University means by “the prevailing principle and the goal.” Further, the University has admitted that both on its face and as interpreted and applied, the Human Rights Policy is not content-neutral. *See* Univ. Resp. BLinC’s SoF ¶ 12 (admitting existence of express written exemption for certain organizations from sex discrimination provision); *id.* at ¶¶ 16–35, 263–266, 440–446 (admitting substantial differences in University enforcement and interpretation of the Human Rights Policy); *see also* Univ. Opp. MSJ, Dkt. 81-1 at 6 (stating that “the University has both the right and the heavy responsibility to regulate BLinC’s speech . . . to protect the rights of minority students”) *and* Univ. Resp. BLinC’s SoF ¶ 154 (disapproving of the content of “BLinC’s Statement of Faith” regarding “God’s intention” for sexual morality because the University believes it “inherently excludes gay, lesbian, bisexual, and transgender individuals and is not ‘welcoming’ to those segments of the population”). Moreover, demonstrating subjective-intent such as animus or hostility is not required to demonstrate a lack of content neutrality. *See, e.g., Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015) (“A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification”); *Shrum v. City of Coweta, Okla.*, 449 F.3d 1132, 1144–45 (10th Cir. 2006) (“the Free Exercise Clause is not confined to actions based on animus”); *Hassan v. City of New York*, 804 F.3d 277, 309 (3d Cir. 2015) (same).

PURPOSES OF THE FORUM

130. The purposes of the limited-public forum created by the University of Iowa are laid out in its “Registration of Student Organizations” document. P. App. 0366–73.

RESPONSE: Admit that the RSO Policy at BLinC App. 366-373 describes purposes of the RSO forum.

131. That document states:

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.

P. App. 0366–73.

RESPONSE: Admit that the RSO Policy at BLinC App. 0366 states:

Student organizations are an important link in the co-curricular activities of the University of Iowa. They play an important role in developing student leadership and providing a quality campus environment. As such, the University encourages the formation of student organizations around the areas of interests of its students, within the limits necessary to accommodate academic needs and ensure public safety.

132. The University requires each student organization to abide by its mission, supporting strategic plan, policies, and procedures. P. App. 0366–73.

RESPONSE: Admit that the RSO Policy at BLinC App. 0366 states that it is the responsibility of RSOs to adhere to the mission of the University and its supporting strategic plan, policies, and procedures.

133. The RSO document specifically incorporates the Human Rights Policy. P. App. 0366–73.

RESPONSE: Admit that the RSO Policy at BLinC App. 0367 incorporates the University Policy on Human Rights as it relates to membership in RSOs.

134. The University anticipates that participation in student organizations will “enhance a student’s educational experience” P. App. 0366–73.

RESPONSE: Deny. The RSO Policy at BLinC App. 0366 states that “participation in student organizations *may* enhance a student’s education experience.” BLinC App. 0366 (emphasis added). Notably, the RSO Policy explains that this expectation is the reason the University grants student organizations “certain privileges and benefits,” and is not a condition of obtaining registered status. *See id.* (“Because participation in student organizations may enhance a student’s education experience and the University deems this important to our students’ success, registered organizations are entitled to certain privileges and benefits.”).

THE COMPLAINT, INVESTIGATION, AND SANCTION OF UI FEMINIST UNION

135. In addition to her investigation of BLinC, Constance Shriver Cervantes also investigated an organization called the UI Feminist Union. Shriver Cervantes 17:10–12; P. App. 102.

RESPONSE: Admit.

136. Upon a review of the evidence, Shriver Cervantes found that the UI Feminist Union had violated the Human Rights Policy. Depo. Exs. 83–85; D. Supp. App. 189-197.

RESPONSE: Admit, with the qualification that the UI Feminist Union was not found to have violated the Policy due to its leadership policies and was not deregistered, but rather that it was found to have improperly removed a man from a chat group for his comments and was required to restore the man to the chat group. BLinC App. 0353 [Nelson Dep. 278:18—279:20].

BLINC'S FORMER PRESIDENT IS NOT CONCERNED WITH SEGREGATION OF THE UNIVERSITY OF IOWA SPORTS TEAMS BY SEX

137. In her deposition, former BLinC President Hannah Thompson stated that it is appropriate for the University of Iowa to have separate sports teams for men and women. Thompson 65:17– 68:1; P. App. 614 (Q: “You don’t see a problem with the University of Iowa separating those teams by sex, do you?” A: “I do not.”).

RESPONSE: Admit that the parenthetical accurately quotes Hannah Thompson’s testimony. BLinC’s objection as it relates to University sports programs is not to the University making reasonable accommodations for different types of groups and programs from the Human Rights Policy, but rather to the University’s discriminatory interpretation and application of its Human Rights Policy to prohibit BLinC’s *beliefs* concerning marriage and sexuality and the University’s discriminatory refusal to provide a modest accommodation for BLinC’s religious leadership selection. *See, e.g.*, BLinC App. 0621-0622 [Thompson Decl. 96:18-97:25].

Respectfully submitted,

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