

No. 19-1696

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

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BUSINESS LEADERS IN CHRIST,

*Plaintiff-Appellant,*

v.

THE UNIVERSITY OF IOWA, ET AL.

*Defendants-Appellees.*

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

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**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  <b>PLAINTIFF’S REPLY TO DEFENDANTS’ RESPONSES TO PLAINTIFF’S STATEMENT OF MATERIAL FACT</b>
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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,

/s/ Eric S. Baxter

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

BUSINESS LEADERS IN CHRIST,	)	
an unincorporated association,	)	Civil No. 3:17-cv-00080-SMR-SBJ
	)	
<i>Plaintiff,</i>	)	UNITED STATES’ STATEMENT OF
	)	INTEREST IN SUPPORT
v.	)	OF PLAINTIFF’S MOTION FOR
	)	SUMMARY JUDGMENT
THE UNIVERISTY OF IOWA, et al.,	)	
	)	
<i>Defendants.</i>	)	

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## INTRODUCTION

“For millions of people, the university is their first and perhaps most important exposure to the free and open marketplace of ideas which is at the core of our First Amendment rights.” *Chess v. Widmar*, 635 F.2d 1310, 1318 (8th Cir. 1980), *aff’d sub nom. Widmar v. Vincent*, 454 U.S. 261 (1981). Accordingly, the “vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Healy v. James*, 408 U.S. 169, 180 (1972). Indeed, “[t]he essentiality of freedom in the community of American universities is almost self-evident.” *Sweezy v. State of New Hampshire by Wyman*, 354 U.S. 234, 250 (1957). “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Id.*

Unfortunately, the University of Iowa (“University”) has failed to uphold these fundamental First Amendment freedoms on its campus. Plaintiff Business Leaders In Christ (“BLinC”) complied with the University’s policy for registering as a student organization, including its Human Rights Policy prohibiting discrimination. Nonetheless, the University deregistered BLinC—and denied it full participation in the campus community—because the University decreed that BLinC’s Statement of Faith might be “unwelcoming” to certain students. Defs.’ Resp. to Pl.’s Statement of Material Facts (“Defs.’ Resp.”) ¶ 154. The University’s deregistration of BLinC because its message failed to conform to University orthodoxy not only stymied the free and open discourse “vital . . . in the community of American schools,” *Healy*, 408 U.S. at 180, but also violated BLinC’s First Amendment rights of free association, free speech, and free exercise. The Court should grant summary judgment for BLinC.

The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517, which authorizes the Attorney General “to attend to the interests of the United States in a suit

pending in a court of the United States.” The United States is resolutely committed to protecting First Amendment freedoms and to ensuring, as Congress has directed, that public “institutions of higher education . . . facilitate the free and open exchange of ideas.” 20 U.S.C. § 1101a(a)(2). In the United States’ view, the Court should grant summary judgment for BLinC because the University’s deregistration of BLinC “without justification” violated BLinC’s constitutional rights. *Healy*, 408 U.S. at 181.

Where a public university creates a limited public forum for student organizations to register for and receive university recognition and benefits, the right to free association prohibits the university from “restrict[ing] speech or association simply because it finds the views expressed by [the] group to be abhorrent.” *Id.* at 187. Nor may a public university, in a limited public forum or elsewhere, “discriminate against speech on the basis of its viewpoint” because such discrimination violates the Free Speech Clause. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). And a public university violates the Free Exercise Clause where it applies university policy to “discriminate[ ] against some or all religious beliefs.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993).

The University’s deregistration of BLinC violates all three of these bedrock First Amendment rules. The University’s Human Rights Policy prohibits student organizations from restricting membership or access to leadership positions on any protected status such as race, national origin, sex, sexual orientation, or gender identity. *See* Defs.’ Resp. ¶¶ 11-12. The University acknowledges that BLinC has adopted the Human Rights Policy, and offers membership and access to leadership positions to all qualified students regardless of their sexual orientation or gender identity. *Id.* ¶ 135. Thus, the University’s deregistration of BLinC did not rest upon any actual violation of the Human Rights Policy. Rather, it rested upon the



University’s disagreement with BLinC’s Statement of Faith, which BLinC requires all of its leaders to affirm. The Statement of Faith requires BLinC’s leaders to affirm various religious principles—including opposition to “racism,” “greed,” and “selfishness” and a commitment to serve the underprivileged—among which are the beliefs that “sexual relationship[s]” should exist only “between a man and a wife in the lifelong covenant of marriage” and that “every person should embrace, not reject, their God-given sex.” *Id.* ¶ 222; Appendix to Pl.’s Statement of Materials Fact (“App.”) 1230. According to the University, this Statement of Faith “inherently excludes” and is “unwelcoming” to “gay, lesbian, bisexual, and transgender individuals.” Defs.’ Resp. ¶ 154.

The University’s censoring of BLinC’s message because it finds that message “abhorrent,” *Healy*, 408 U.S. at 187, “offensive,” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018), or “unwelcoming,” Defs.’ Resp. ¶ 154, is a textbook violation of BLinC’s First Amendment rights to free association and free speech. That violation alone warrants summary judgment for BLinC—but the University’s violation of BLinC’s First Amendment rights does not end there. The University freely admits that it allows registered student organizations to express viewpoints on sexual relationships and gender identity that differ from BLinC’s viewpoint—and sometimes even allows registered student organizations to *explicitly* violate the Human Rights Policy—when the University unilaterally determines that, in its view, those viewpoints and organizations “support the University’s educational mission.” Defs.’ Resistance to Pl.’s Motion for Sum. Judg. (“Defs.’ Br.”) 18. Thus, at the same time that it has infringed BLinC’s right to express its message through its Statement of Faith, the University has registered many other student organizations “that require[] leaders or members to agree with the group’s mission, purpose or faith,” including groups that espouse

viewpoints on sexual relationships and gender identity. *See* Defs.’ Resp. ¶¶ 16-18. Moreover, the University also has registered student organizations that “explicitly restrict or control access to leadership or membership based on race, national origin, sex, sexual orientation, [or] gender identity,” in violation of the Human Rights Policy. *See id.* ¶ 24. The University’s selective application of the Human Rights Policy to discriminate against BLinC’s message and “viewpoint,” *Rosenberger*, 515 U.S. at 829, and to “[t]arget [BLinC’s] religious beliefs,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 n.4 (2017), violates BLinC’s First Amendment rights of free speech and free exercise.

The University wholly fails to carry its strict scrutiny burden, and on this record cannot show that censoring of BLinC’s message “is necessary to serve a compelling state interest and . . . narrowly drawn to achieve that end.” *Widmar v. Vincent*, 454 U.S. 263, 270 (1981). The University principally points to its “heavy responsibility . . . to protect the rights of minority students to equally access their publicly-funded educational opportunities” and to eradicate status-based discrimination on campus. Defs.’ Br. 6. To be sure, universities have a compelling interest in eradicating discrimination and promoting equality for all students on their campuses. But state-run institutions like the University also must uphold the bedrock guarantees enshrined in the First Amendment. Thus, while the University may prohibit discrimination based on *status*, it may not compel BLinC to change its *message* in the name of eradicating discrimination. That is particularly true here, because the University’s deregistration of a student organization that *complied* with the Human Rights Policy’s anti-discrimination mandate—especially when coupled with the University’s registration of numerous student organizations that *violate* that mandate—does nothing to advance the University’s underlying anti-discrimination interest.

The First Amendment demands more. The Court should apply the Constitution's guarantee of free and open discourse on public campuses and hold that the University's deregistration of BLinC violated the First Amendment.

### **INTEREST OF THE UNITED STATES**

The United States has an interest in protecting the individual rights guaranteed by the First Amendment. The right to free speech lies at the heart of a free society and is an “effectual guardian of every other right.” Virginia Resolutions (Dec. 21, 1798), *in* 5 THE FOUNDERS’ CONSTITUTION, 135, 136 (Philip B. Kurland & Ralph Lerner, eds., 1987). State-run colleges and universities are no exception from this rule because “the campus of a public university, at least for its students, possesses many of the characteristics of a public forum.” *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981). Thus, public universities have “an obligation to justify [their] discriminations and exclusions under applicable constitutional norms.” *Id.* at 267.

The United States has a significant interest in the protection of constitutional freedoms in institutions of higher learning. Congress has declared that “an institution of higher education should facilitate the free and open exchange of ideas.” 20 U.S.C. § 1011(a)(2). Freedom of expression is “vital” on campuses, *Shelton v. Tucker*, 364 U.S. 479, 487 (1960), which are “peculiarly the ‘marketplace of ideas,’” *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 385 U.S. 589, 603 (1967). And on university campuses, “[a]mong the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.” *Healy*, 408 U.S. at 181. Similarly, the exclusion of religious viewpoints from colleges and universities “risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life.” *Rosenberger*, 515 U.S. at 836.

The United States also has a significant interest in ensuring that colleges and universities, including recipients of federal funds, do not discriminate in their educational programs. The Attorney General is charged with enforcing laws to address such discrimination—including a university’s failure to address discrimination based on race, color, national origin, sex, religion, or disability. *See, e.g.*, 42 U.S.C. § 2000d; 42 U.S.C. § 2000h-2; 42 U.S.C. § 2000c-6; 42 U.S.C. § 1681(a); 42 U.S.C. §§ 12132-12133. Universities therefore are obligated to provide non-discriminatory educational environments to their students while also protecting First Amendment freedoms that are the hallmarks of our public institutions of higher learning.

It is in the interest of the United States to lend its voice to enforce First Amendment rights on campus because “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’” *Keyishian*, 385 U.S. at 603. “[O]ur history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.” *Tinker v. Des Moines Indep. Cmt. Sch. Dist.*, 393 U.S. 503, 508-09 (1969).

The United States thus has submitted statements of interest and amicus briefs in a wide range of cases involving discrimination against religious expression in educational contexts. *See, e.g.*, *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cty. Pub. Sch.*, 373 F.3d 589 (4th Cir. 2004); *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003); *Bronx Household of Faith v. Bd. of Educ. of the City of N.Y.*, 331 F.3d 342 (2d Cir. 2003); *Uzuegbunam v.*

*Preczewski*, No. 1:16-cv-04658 (N.D. Ga. 2018); *O.T. v. Frenchtown Elementary Sch. Dist. Bd. of Educ.*, 465 F. Supp. 2d 369 (D. N.J. 2006).

### FACTUAL BACKGROUND

The University recognizes that student groups “play an important role in developing student leadership and providing a quality campus environment.” Defs.’ Resp. ¶ 381. 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.” *Id.* Accordingly, the University has opened a limited public forum for student organizations to register for and receive University recognition and benefits.

The University “acknowledges the interests of students to organize and associate with like-minded students” and recognizes that “any individual who subscribes to the goals and beliefs of a student organization may participate in and become a member of the organization.” Defs.’ Resp. ¶ 8. The University also recognizes that religious groups have an important role in the extracurricular life of the University. The University’s Statement of Religious Diversity proclaims: “Religious history, religious diversity, and spiritual values have formed a part of The University of Iowa’s curricular and extracurricular programs since the founding of the University.” *See id.* ¶ 21; App. 0374. And while as a public university it may not “promote[ ] any particular form of religion,” the University recognizes that it may not “discriminate[ ] against students, staff, or faculty on the basis of their religious viewpoints.” Defs.’ Resp. ¶ 21.

Accordingly, University policy upholds the right of all registered student organizations “to exercise free choice of members on the basis of their merit as individuals without restriction,” so long as they do so “in accordance with the University Policy on Human Rights.” *Id.* ¶ 14. The Human Rights Policy posits:

The University is guided by the precepts that in no aspect of its programs shall there be any differences in the treatment of persons because of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences or any other classification that deprives the person of consideration as an individual, and that equal opportunity and access to facilities shall be available to all.

App. 0376. “These principles are expected to be observed . . . in policies governing programs of extracurricular life and activities.” *Id.* The Human Rights Policy also acknowledges that the University will “work cooperatively with the community” to further the principle of accommodating the religious practices of members of the community. *Id.*

In accordance with the Human Rights Policy, the University has “reviewed and approved numerous constitutions for registered student organizations that required leaders or members to agree with the group’s mission, purpose, or faith.” Defs.’ Resp. ¶ 16. The University has registered “numerous religious groups, including an actual church, that explicitly require their leaders to sign a statement of faith or satisfy other religious criteria.” *Id.* ¶ 17. One such group, Love Works, was formed after BLinC denied a student consideration for a leadership position. *Id.* ¶¶ 17, 263. Love Works requires executive officers to ascribe to the organization’s Core Beliefs, which include a belief that Jesus Christ is the center of all that the members of the group do, a belief that they have a religious calling to stand with “LGBTQ+” persons who have been rejected by other faith communities, a belief in the obligation of service, and a belief that members should share in community together. *Id.* ¶ 263; App. 239-41. The University also has “approved the constitutions of many organizations that limit their leadership and their membership based on non-religious creeds or missions as well,” such as Feminist Majority Leadership Alliance, the Korean American Student Association, the Latina/o Graduate Student Association, and the National Society of Black Engineers. Defs.’ Resp. ¶ 18. One of those organizations, Trans Alliance, requires 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.” *Id.*

The University also has registered other student organizations that violate the Human Rights Policy by “explicitly restrict[ing] or control[ing] 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.” *Id.* ¶ 24. Such groups include The House of Lorde, the Chinese Basketball Club, the Chinese Students and Scholars Association, and Hawkapellas – Iowa. *See id.* During the course of this litigation, the University exempted single-sex fraternities and sororities from the Human Rights Policy. *See id.* ¶ 12.

The University has admitted that it permits student organizations to express viewpoints on issues such as sexual relationships and gender identity, and even registers student organizations that violate the Human Rights Policy, “for a variety of reasons.” Defs.’ Br. 18. The University reserves the right to register student organizations that violate its policy if it believes that those organizations or their viewpoints “support the educational and social purposes of the forum” or otherwise “support the University’s educational mission.” *Id.* 17-18.

BLinC was formed by students of the University’s Tippie College of Business. Its purpose is to help “seekers of Christ” learn “how to continually keep Christ first in the fast-paced business world,” with the Bible as a guide, through fellowship, small group discussion, and networking with other Christian students and business leaders. Defs. Resp. ¶¶ 99-103. Like other student organizations, it adheres to the Human Rights Policy and does not treat persons differently based on race, religion, sexual orientation, gender identity, or other criteria listed in the University Human Rights Policy. Defs.’ Statement of Material Facts (“Defs.’ Statement”)

¶ 29, Defs.’ Resp. ¶¶ 8, 225; App. 1224. It therefore permits openly gay students to “be [a] leader with BLinC” if those students meet the other membership criteria. *Id.* ¶ 135.

Moreover, like other student organizations, BLinC requires that its officers support its mission and affirm that “they accept and seek to live BLinC’s religious beliefs.” *Id.* ¶ 223. BLinC asks officers to “provide spiritual leadership for the organization including leading prayer and Bible study, explaining the content of BLinC’s religious beliefs, and ministering to others.” *Id.* BLinC’s Statement of Faith includes belief in the Bible as “the unerring Word of God,” *Id.* ¶ 126, and particular beliefs about the nature of God, sin, and salvation, among others. *Id.* ¶ 127-129. It includes a paragraph entitled “Doctrine of Personal Integrity,” which states:

All Christians are under obligation to seek to follow the example of Christ in their own lives and in human society. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including pornography. We believe God’s intention for a sexual relationship is to be between a husband and 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 every person should embrace, not reject, their God-given sex. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.

*Id.* ¶ 222; App. 1230.

In early 2016, a University student who had attended several of BLinC’s meetings inquired about leadership positions with the organization. Defs.’ Statement ¶¶ 50-52. The student, who is gay, *id.* ¶ 53, was denied consideration for a leadership position in BLinC. *Id.* ¶ 60. He subsequently filed a complaint with the University. *Id.* ¶ 68.

After various meetings with University officials, BLinC amended its constitution by adding the “Doctrine of Personal Integrity” set forth above. The University concedes that BLinC would accept openly gay leadership candidates on equal terms with other leadership candidates



so long as they “agree[ ] with, and agree to live by, BLinC’s Statement of Faith.” Defs.’ Resp.

¶ 135. The University believes, however, that “[t]his statement inherently excludes” and is “unwelcoming” to “gay, lesbian, bisexual, and transgender individuals.” *Id.* ¶ 154. The University deregistered BLinC because of BLinC’s decision to require its leaders to affirm the Statement of Faith. Defs.’ Statement ¶¶ 111, 118.

### **ARGUMENT**

The University’s deregistration of BLinC because it finds the Statement of Faith “unwelcoming,” Defs.’ Resp. ¶ 135, violates BLinC’s fundamental First Amendment rights of free association and free speech. *See, e.g., Healy*, 408 U.S. at 187; *Masterpiece Cakeshop*, 138 S. Ct. at 1731. The University’s selective application of its policy to favor student organizations that in its view “support the University’s educational mission,” Defs.’ Br. 18, and to discriminate against BLinC’s “viewpoint,” *Rosenberger*, 515 U.S. at 829, and “religious beliefs,” *Trinity Lutheran*, 137 S. Ct. at 2024 n.4, also violates BLinC’s First Amendment rights of free speech and free exercise. The University cannot demonstrate that its discriminatory application of the anti-discrimination policy somehow advances its anti-discrimination interest, much less serves that interest in a “necessary” and “narrowly drawn” way. *Widmar*, 454 U.S. at 270. The Court should grant summary judgment for BLinC.

#### **I. THE UNIVERSITY VIOLATED BLINC’S FREE ASSOCIATION RIGHTS**

“Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.” *Healy*, 408 U.S. at 181; *see also Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000). This fundamental right flows from “the freedoms of speech, assembly, and petition.” *Healy*, 408 U.S. at 181. “There can be no doubt that denial of

official recognition, without justification, to college organizations burdens or abridges that associational right.” *Id.*

In *Healy*, the Supreme Court held that a public college’s unjustified denial of official recognition to a student group violated the First Amendment. The public college there had created a limited public forum for student groups. *See id.* at 172-76. To receive official recognition, student groups had to agree to abide by “any valid campus rules,” including rules aimed at preventing disruption in the classroom. *Id.* at 194; *see also id.* at 189. Official recognition carried several benefits, including the right to place announcements in the student newspaper and on campus bulletin boards and the right to hold meetings in “campus facilities.” *Id.* at 176.

A group of students requested official recognition for a chapter of the Students for Democratic Socialism (SDS). *See id.* at 172-74. College administrators denied that request because they disagreed with SDS’s message: they believed that “the organization’s philosophy was antithetical to the school’s policies” because it “openly repudiate[d] the College’s dedication to academic freedom.” *Id.* at 175-76. The Supreme Court rejected that basis for denying recognition, holding that a public college “may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.” *Id.* at 187. As the Supreme Court reasoned, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Id.* at 180. “The college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas,’ and we break no new constitutional ground in reaffirming this Nation’s dedication to safeguarding academic freedom.” *Id.* at 180-81.

The Supreme Court likewise upheld an association’s First Amendment rights in *Hurley v. Irish-American Gay Group of Boston*, 515 U.S. 557 (1995). The South Boston Allied War

Veterans Council annually applied for and received a permit to conduct a St. Patrick's Day-Evacuation Day Parade in Boston on March 17. *See id.* at 560. A “number of gay, lesbian, and bisexual descendants of Irish immigrants” requested permission to participate in the parade and to carry a banner conveying a message that “express[ed] pride in their Irish heritage as openly gay, lesbian, and bisexual individuals.” *Id.* at 561. To support their request, that group invoked a state anti-discrimination law that prohibited “any distinction, discrimination or restriction on account of . . . sexual orientation . . . relative to the admission of any person to, or treatment in any place of public accommodation, resort or amusement.” *Id.* (citing Mass. Gen. Laws § 272:98 (1992)).

The Council denied that request. The Council “disclaim[ed] any intent to exclude” from the parade anyone based on his or her sexual orientation, but instead argued that forcing it to allow the group to carry the banner and convey its message violated the Council's First Amendment rights. *See id.* at 572. The Supreme Court agreed. *See id.* at 571-577. The Supreme Court first held that applying the state's anti-discrimination law to prohibit the Council from excluding from the parade any person based on his or her sexual orientation did not violate the First Amendment. *See id.* at 571-72. That is because “public accommodations laws” of that sort prohibit “the act of discriminating against individuals” rather than protected “speech.” *Id.*

The Supreme Court further held, however, that applying the state's anti-discrimination law to prohibit the Council from excluding any message with which it disagreed—even an anti-discrimination message consistent with the state's anti-discrimination law—violated the First Amendment. *See id.* at 572-77. As the Supreme Court reasoned, such an application of the anti-discrimination law would impermissibly “alter the expressive content of [the Council's] parade.” *Id.* at 572-73. Indeed, “[s]ince *all* speech inherently involves choices of what to say and what to

leave unsaid, one important manifestation of the principle of free speech is that one who chooses to speak” may “tailor” his or her own message and “also decide what not to say.” *Id.* at 573.

Thus, in other words, while the state could apply its anti-discrimination law to prohibit exclusion from the parade based on *status*, the First Amendment prevented the state from applying its anti-discrimination law to compel, or prohibit exclusion of, a particular *message*. *See id.* at 571-73.

*Healy* and *Hurley* demonstrate that the University’s deregistration of BLinC violated the First Amendment. The University has admitted that BLinC permits openly gay individuals to join BLinC and even to “be [a] leader with BLinC.” Defs.’ Resp. ¶ 135. In fact, BLinC has included the University’s Human Rights Policy in its charter. *See id.* ¶ 225, App. 1224. Thus, like the Council in *Hurley*, BLinC has “disclaim[ed] any intent to exclude [gay students] as such.” 515 U.S. at 572. Accordingly—again like the Council in *Hurley*—BLinC has complied with, rather than violated, the University’s anti-discrimination policy since it does not engage in status-based discrimination “because of . . . sexual orientation [or] gender identity.” App. 0374; *see also Hurley*, 515 U.S. at 571-72.

Rather, the University attempts to rest the deregistration upon BLinC’s Statement of Faith, but that position only underscores the University’s violation of BLinC’s First Amendment rights. In particular, the University argues that the Statement of Faith “inherently excludes” gay and transgender students because it is “unwelcoming” to them, and that it would reinstate BLinC’s registration if BLinC changed the Statement of Faith. Defs.’ Resp. ¶ 154; *see also* Defs.’ Statement ¶ 111, Defs.’ Resp. ¶¶ 227-28, 229-33. But the University’s effort to use the Human Rights Policy not merely to prohibit exclusion based on protected status but to force BLinC to “alter the expressive content of” the Statement of Faith violates BLinC’s associational (and free speech) rights. *Hurley*, 515 U.S. at 572-73. Indeed, that some members of the student

community or even a class protected by the Human Rights Policy might find a message “unwelcoming” provides no constitutional basis to deregister a student group that otherwise complies with “valid campus rules.” *Healy*, 408 U.S. at 194. After all, the University “may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent,” *id.* at 187, “offensive,” *Masterpiece Cakeshop*, 138 S. Ct. at 1731, or “unwelcoming,” Defs.’ Resp. ¶ 154.

The University offers two arguments in an attempt to avoid the conclusion that the deregistration violated BLinC’s First Amendment associational rights, both of which fail. *First*, the University invokes *Christian Legal Soc’y Chapter of the Univ. of Calif., Hastings Coll. of Law v. Martinez*, 561 U.S. 661 (2010), *see* Defs.’ Br. 11-15, but that decision is inapposite. In *Martinez*, the Supreme Court held that a public law school could constitutionally apply an “all-comers policy” to prohibit a student group from excluding members and leaders “who do not share the organization’s core beliefs.” 561 U.S. at 668. The law school’s all-comers policy was neutral and uniformly applied to all student groups. *See id.* at 668-69, 675, 697 n.27. Thus, for example, under that policy, “the Hastings Democratic Caucus cannot bar students holding Republican political beliefs from becoming members or seeking leadership positions in the organization.” *Id.* at 675. The Supreme Court upheld this policy as reasonable and viewpoint-neutral. *See id.* at 685-97.

*Martinez* has no bearing here because—as the University itself concedes—the University does not have an all-comers policy. *Id.* at 669; *see also* Defs.’ Resp. ¶ 1. Quite to the contrary: the University “acknowledges the interests of students to organize and associate with like-minded students” and expressly recognizes that “any individual *who subscribes to the goals and beliefs of a student organization* may participate in and become a member of the organization.”

Defs.’ Resp. ¶ 8 (emphasis added). Accordingly, the University’s policy upholds the right of registered student organizations “to exercise free choice of members on the basis of their merit as individuals without restriction,” so long as they do so “in accordance with the University Policy on Human Rights.” *Id.* ¶ 14. Thus, far from a neutral all-comers policy that prohibits conditioning membership or eligibility for leadership positions on “shar[ing] the organization’s core beliefs,” *Martinez*, 561 U.S. at 668, the University’s policy expressly allows student organizations to condition membership and leadership eligibility upon agreement to the organization’s “goals and beliefs,” Defs.’ Resp. ¶ 8. *Martinez* provides no basis for the University to violate its own policy and to attempt to “restrict speech or association simply because it finds the views expressed by” BLinC “to be abhorrent,” *Healey*, 408 U.S. at 187, “offensive,” *Masterpiece Cakeshop*, 138 S. Ct. at 1731, or “unwelcoming,” Defs.’ Resp. ¶ 154. That is particularly true because, as explained more fully below, the University has not applied its policy neutrally like the law school in *Martinez* but, in fact, has discriminated against viewpoints based on whether it deems those viewpoints to “support the University’s educational mission.” Defs.’ Br. 18; *see infra* Part II.C.

*Second*, the University attempts to minimize the harm that the deregistration has inflicted on BLinC, asserting that “BLinC has not been silenced by this deregistration” but, in the University’s view, “may continue its activities and speech as before, and even as an unregistered student organization may access a significant number of University resources.” Defs.’ Br. 6. But, of course, “[t]here can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges th[eir] associational right.” *Healy*, 408 U.S. at 181. “The practical effect” of the deregistration “[is] demonstrated in this case,” *id.*, because it results in denial to BLinC of valuable resources for furthering its purpose and message, including

exclusion from the student activity fair, the University’s website, and various speech forums on campus, Defs.’ Resp. ¶¶ 238-39; *see also Child Evangelism Fellowship of Minn. v. Minneapolis Spec. Sch. Dist. No. 1*, 690 F.3d 996, 1001-02 (8th Cir. 2012) (school district’s exclusion of a religious group from a limited public forum violated the First Amendment even though the group “was merely accorded less favorable treatment than other groups, as opposed to being denied access outright”). “[I]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Trinity Lutheran*, 137 S. Ct. at 2022. The Court should hold that the University violated BLinC’s First Amendment right to free association.

## **II. THE UNIVERSITY VIOLATED BLINC’S FREE SPEECH AND FREE EXERCISE RIGHTS**

### **A. The University’s Discrimination Against BLinC’s Viewpoint Triggers Strict Scrutiny Under The Free Speech Clause**

The parties agree that the University’s policy regarding registered student organizations “has created a limited public forum.” Defs.’ Br. 15; *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001) (the First Amendment standards that courts must “apply to determine whether a [government] has unconstitutionally excluded a private speaker from use of a public forum depend on the nature of the forum”). Even in a limited public forum, a governmental entity “may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum[,] nor may it discriminate against speech on the basis of viewpoint.” *Rosenberger*, 515 U.S. at 829.

“Viewpoint discrimination is . . . an egregious form of content discrimination” that arises when the government justifies regulation of speech based upon “the specific motivating ideology or the opinion or perspective of the speaker.” *Id.* Even within a limited public forum, a state entity may engage in viewpoint discrimination only where it satisfies strict scrutiny. *See id.* The

state entity’s strict scrutiny burden attaches to viewpoint discrimination “regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas’” being regulated. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015).

A government entity engages in viewpoint discrimination when it exempts favored speakers from the rules applicable to a forum but strictly enforces those rules against disfavored speakers. *See Thomas v. Chicago Park Dist.*, 534 U.S. 316, 325 (2002) (“Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional.”); *see also McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (had abortion clinic escorts but not protesters been permitted to engage in speech in buffer zone, it would be “a clear form of viewpoint discrimination that would support an as-applied challenge to the buffer zone at that clinic”). Thus, the Seventh Circuit held that a university engaged in viewpoint discrimination when “[f]or whatever reason, [it] has applied its antidiscrimination policy to [the Christian Legal Society] alone, even though other student groups discriminate in their membership requirements on grounds that are prohibited by the policy,” including religion and sex. *Christian Legal Society v. Walker*, 453 F.3d 853, 866 (7th Cir. 2006).

Likewise, the Supreme Court has held that a public university engaged in impermissible viewpoint discrimination when it excluded an organization of Christian students from a limited public forum “based on their desire to use a generally open forum to engage in religious worship and discussion,” which “are forms of speech and association protected by the First Amendment.” *Widmar*, 454 U.S. at 269; *see also Martinez*, 561 U.S. at 684-85, 695 (five-justice majority describing *Widmar* as a “viewpoint” discrimination case); *id.* at 722 (four-justice minority (same)). The Supreme Court also has struck down as viewpoint discriminatory denials of access to limited public forums to teach “morals and character” from “a Christian perspective,” *Good*



*News Club*, 533 U.S. at 108-12, to present films discussing family values from a religious perspective, *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 389 (1993), and to print publications addressing issues from a religious perspective, *see Rosenberger*, 515 U.S. at 826. More generally, the Supreme Court has emphasized that governmental restriction on speech it deems “offensive” is viewpoint discrimination because “[g]iving offense is a viewpoint.” *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017); *Masterpiece Cakeshop*, 138 S. Ct. at 1731 (“[I]t is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive.”).

Here as well, the University’s deregistration of BLinC was viewpoint discriminatory. The University reserves the right to restrict the limited public forum to organizations whose perspectives, in the view of the University, “support the educational and social purposes of the forum.” Defs.’ Br. 17. This unilateral decreeing of which perspectives are acceptable to the University is classic viewpoint discrimination—as the University’s deregistration of BLinC demonstrates. *See Rosenberger*, 515 U.S. at 829.

BLinC’s Statement of Faith adopts the viewpoint that “sexual relationship[s]” should exist only “between a man and a wife in the lifelong covenant of marriage” and that “every person should embrace, not reject, their God-given sex.” Defs.’ Resp. ¶ 222; App. 1230. The University deregistered BLinC because it deemed the Statement of Faith “unwelcoming” to “gay, lesbian, bisexual, and transgender individuals.” Defs.’ Resp. ¶ 154. At the same time, the University admits that it has registered other student organizations that require their members and leaders to affirm adherence to an opposing perspective on the issues of sexual relationships and gender identity. *See id.* ¶¶ 17-18. For example, the University has registered Love Works, which requires “leaders to sign a gay-affirming statement of Christian faith,” *id.* ¶¶ 17; 262-66,

and Trans Alliance, which requires 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,” *id.* ¶ 18. Thus, the University has not imposed a content limitation that forecloses all speech regarding sexual relationships or gender identity from its limited public forum. *Cf., e.g., Rosenberger*, 515 U.S. at 830 (“content discrimination . . . may be permissible if it preserves the purposes of th[e] limited forum.”). Instead, it has engaged in textbook viewpoint discrimination: it has allowed some speech regarding sexual relationships and gender identity but disallowed other speech on those topics that conveys a viewpoint that the University considers “unwelcoming.” Defs.’ Resp. ¶ 154; *Rosenberger*, 515 U.S. at 829 (viewpoint discrimination involves speech restrictions imposed based upon “the specific motivating ideology or the opinion or perspective of the speaker.”).

The University’s viewpoint discrimination against BLinC does not end there. The University has registered student organizations that *expressly* engage in status-based discrimination that violates the Human Rights Policy, including by restricting membership or leadership positions based on race, national origin, sex, sexual orientation, or gender identity. *See* Defs.’ Resp. ¶ 24. But the University’s rationale for deregistering BLinC is that the Statement of Faith “inherently excludes gay, lesbian, bisexual, and transgender individuals.” Defs.’ Resp. ¶ 154. Thus, the University has permitted some student organizations to explicitly violate the Human Rights Policy, but has penalized BLinC for its alleged “inherent[ ]” violation of that policy. *Id.* This, too, is classic viewpoint discrimination triggering strict scrutiny. *See also Rosenberger*, 515 U.S. at 829; *Widmar*, 454 U.S. at 269; *Good News Club*, 533 U.S. at 108-12.

**B. The University's Discrimination Against BLinC Triggers Strict Scrutiny Under The Free Exercise Clause**

The Free Exercise Clause guarantees all Americans the “right to believe and profess whatever religious doctrine [they] desire[ ].” *Empl’t Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990). The Free Exercise Clause therefore prohibits the government from attempting to regulate, compel, or punish religious beliefs. *See id.*; *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492-95 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). Thus, while the Free Exercise Clause does not provide an exemption from neutral and generally applicable laws based upon religious belief, it does subject to heightened scrutiny government action that discriminates against or imposes special burdens upon individuals because of their religious beliefs or status. *See Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978).

“At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs.” *Lukumi*, 508 U.S. at 532 (striking down local ordinances that sought to prevent animal sacrifice of the Santaria religion). The government also may not require a religious group “to renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified.” *Trinity Lutheran*, 137 S. Ct. at 2024. Nor may the government “penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities.” *Sherbert*, 374 U.S. at 402. “Targeting religious beliefs as such is never permissible.” *Trinity Lutheran*, 137 S. Ct. at 2024 n.4.

A governmental entity engages in discrimination that triggers heightened scrutiny under the Free Exercise Clause where it grants exemptions from a neutral and generally applicable rule for one or more secular reasons, but fails to grant the same exemption for religious reasons.

Thus, for example, the Third Circuit has applied strict scrutiny—and found a Free Exercise violation—because a police department provided exemptions to its no-beard policy to officers with a skin condition that made shaving painful but not to Muslim officers who claimed a religious need to wear beards. *See Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999). A district court likewise found that a university violated the Free Exercise Clause when it granted exemptions to a rule requiring freshman to live on campus for secular reasons but denied a similar exemption requested by a student wishing to live off campus in a religious group home. *Rader v. Johnston*, 924 F. Supp. 1540 (D. Neb. 1996). “State actors may not without justification refuse to extend exceptions that they routinely grant to persons for non-religious reasons to those requesting the same exception based on sincerely held religious beliefs.” *Id.* at 1555.

The University’s deregistration of BLinC encompassed discrimination based upon religious beliefs that triggers heightened scrutiny under the Free Exercise Clause for two reasons. *First*, and most fundamentally, the University “[t]argeted [BLinC’s] religious beliefs.” *Trinity Lutheran*, 137 S. Ct. at 2024 n.4. As explained, BLinC complied with, rather than violated, the Human Rights Policy and its ban on status-based discrimination. The University deregistered BLinC because it found BLinC’s Statement of Faith to be “unwelcoming,” and offered to re-register BLinC if it changed its Statement of Faith to conform to University orthodoxy. Defs.’ Resp. ¶ 154. This mandate that BLinC “renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified,” alone triggers heightened scrutiny. *Trinity Lutheran*, 137 S. Ct. at 2024.

*Second*, by its own admission, the University granted exemptions to its Human Rights Policy for organizations that, in the University’s view, “support the educational and social

purposes of the forum.” Defs.’ Br. 17. Indeed, the University has registered “many organizations that limit their leadership or membership based on non-religious creeds or missions” as well as “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” in express violation of the Human Rights Policy. Defs.’ Resp. ¶¶ 18, 24. Yet it has refused to accord BLinC similar exemptions to its putative policy based on BLinC’s religious belief or status. This refusal likewise triggers heightened scrutiny. *Rader*, 924 F. Supp. at 1555-56; *Fraternal Order of Police*, 170 F.3d at 366-67.

### **C. The University Has Failed To Carry Its Strict Scrutiny Burden**

The University may establish that its deregistration of BLinC does not violate BLinC’s free association, free speech, and free exercise rights only by satisfying strict scrutiny. *See, e.g., Widmar*, 454 U.S. at 270; *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (“[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion.”). The University can carry its strict scrutiny burden only by showing that the discrimination “is necessary to serve a compelling state interest and . . . narrowly drawn to achieve that end.” *Widmar*, 454 U.S. at 270. The University has wholly failed to carry that burden here.

*First*, the University principally argues that it bears a “heavy responsibility . . . to protect the rights of minority students to equally access their publicly-funded educational opportunities” and that its deregistration of BLinC is necessary to eradicate status-based discrimination on campus. Defs.’ Br. 6. To be sure, the eradication of discrimination, unrelated to the suppression of expression, is a compelling government interest. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). But the University’s deregistration of BLinC does not “serve” that interest, let alone do

so in a “necessary” or “narrowly drawn” way. *Widmar*, 454 U.S. at 270. After all, BLinC *complies* with the University’s anti-discrimination policy because it complies with the Human Rights Policy and does not discriminate on the basis of any protected status. Defs.’ Statement ¶ 29; Defs.’ Resp. ¶¶ 8, 135, 225; App. 1224. Rather, the University deregistered BLinC because it finds BLinC’s Statement of Faith “unwelcoming” to some members of a protected class. Defs.’ Resp. ¶ 154. At the same time, the University freely admits that it allows registered student organizations to express viewpoints on sexual relationships and gender identity that differ from BLinC’s viewpoint—and sometimes even allows registered student organizations to *explicitly* violate the Human Rights Policy—where the University unilaterally determines that, in its view, those viewpoints and organizations “support the University’s educational mission.” Defs.’ Br. 18; *see also* Defs.’ Resp. ¶¶ 17-18, 24. The University’s selective application of the Human Rights Policy to discriminate against a student organization that *complied* with the policy and in favor of student organizations that flout it does nothing to advance the University’s putative interest in eradicating discrimination, let alone to satisfy strict scrutiny. *See, e.g., Widmar*, 454 U.S. at 270; *Rosenberger*, 515 U.S. at 829; *Good News Club*, 533 U.S. at 108-12; *Lamb’s Chapel*, 508 U.S. 384.

If more were somehow needed, the Supreme Court has emphasized that even the compelling governmental interest in eradicating discrimination does not justify application of rules that “materially interfere with the ideas that the organization s[eeks] to express.” *Dale*, 530 U.S. at 657. Thus—as the unanimous Supreme Court explained in *Hurley*—the First Amendment prohibits the government from pursuing the interest in eradicating discrimination by forcing a speaker to alter its message in order to “produce a society free of the corresponding biases.” *Hurley*, 515 U.S. at 578-79. In other words, while the government may combat

discrimination based on *status*, it may not dictate orthodoxy in a speaker’s *message*, even where that message might pertain or be “unwelcoming” to some members of a protected class. *See id.*; Defs.’ Resp. ¶ 154. The University’s laudable and compelling goal of eliminating discrimination does not permit it to force BLinC to abandon its Statement of Faith on pain of deregistration. *See, e.g., Dale*, 530 U.S. at 657; *Hurley*, 515 U.S. at 578-79; *see also Gay Lib v. University of Missouri*, 558 F.2d 848, 857 (8th Cir. 1977) (upholding the right of a group supporting “gay liberation” to registered student status because “[t]o invoke censorship in an academic environment is hardly the recognition of a healthy democratic society”).

*Second*, the University repeatedly mentions that it may have registered, or permitted to remain registered, certain student organizations that violate the Human Rights Policy because of “administrative oversight” or a lack of student “complaints” against those organizations. *See, e.g., Defs.’ Br.* 17-18. But as the Court already has explained, these excuses fail because “[a]n organization’s proposed constitution and bylaws are reviewed with its registration form before an organization is granted registered status.” Order On Plaintiff’s Motion For Preliminary Injunction at 27-28 (Dkt. No. 36 Jan. 23, 2018). In any event, the University never explains how its negligent or selective failure to address violations of the Human Rights Policy demonstrates a compelling interest in enforcing that policy. *See id.* Indeed, the University cannot use instances where it has *failed* to enforce the Human Rights Policy to satisfy strict scrutiny in its *misapplication* of that policy to deregister BLinC. That is especially true here, where the University has admitted that at least some of its selective application of the Human Rights Policy is viewpoint-driven and favors organizations and sanction perspectives that, in the University’s view, “support the University’s educational mission.” Defs.’ Br. 18.

*Finally*, the University’s violation of its own policy to deregister BLinC is not “narrowly drawn” to the goals of allowing students “to equally access their publicly-funded educational opportunities,” Defs.’ Resp. 6, because other means that are far less restrictive of First Amendment freedoms exist to advance that objective, *Widmar*, 454 U.S. at 270; *Dale*, 530 U.S. at 648; *Roberts*, 468 U.S. at 623. In the first place, the University could neutrally and consistently apply the Human Rights Policy to ensure that the full swath of student organizations are open to all students. For example, the University could apply the Human Rights Policy neutrally to ensure that groups that currently discriminate on the basis of status, *see* Defs.’ Resp. ¶ 24, accept students regardless of status. It may also permissibly ensure that BLinC continues to abide by the Human Rights Policy and its prohibition on status-based discrimination. And another less restrictive alternative would be to eliminate unnecessary barriers to registration and to facilitate widespread registration of student organizations. That the student who complained about BLinC’s Statement of Faith formed a new Christian group embracing openness to “LGBTQ+” lifestyles demonstrates that this alternative already is in place. *See id.* ¶ 262; App. 239-43. It simply is not “necessary” for the University to violate its own policy and BLinC’s First Amendment rights in the name of a deregistration that fails to advance the University’s goal of eradicating status-based discrimination. *Widmar*, 454 U.S. at 270. The Court should hold that the University violated BLinC’s free speech and free exercise rights.



## CONCLUSION

For the foregoing reasons, the Court should grant summary judgment for the Plaintiff on its First Amendment claims.

Dated: December 21, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 21st day of December, 2018, filed the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sent counsel of record e-mail notification of such filing.

/s/William C. Purdy

William C. Purdy

Assistant U.S. Attorney

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

<b>BUSINESS LEADERS IN CHRIST, an, unincorporated association,</b>	)	<b>CASE NO. 3:17-CV-00080</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>THE UNIVERSITY OF IOWA; LYN REDINGTON, in her official capacity as Dean of Students and in her individual capacity; THOMAS R. BAKER, in his official capacity as Assistant Dean of Students and in his individual capacity; and WILLIAM R. NELSON, in his official capacity as Executive Director, Iowa Memorial Union, and in his individual capacity,</b>	)	<b>DEFENDANTS' NOTICE TO COURT OF FILING REQUESTED DOCUMENT</b>
	)	
<b>Defendants.</b>	)	
	)	

**COME NOW** the Defendants and state:

1. Attached is an Organization Chart in response to the Court's e-mail dated January 29, 2019, requesting Defendants file a list of Registered Student Organizations (Documents numbered 23,170 – 23,183).

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ATTORNEYS FOR DEFENDANTS

*Original filed electronically.*

*Copy electronically served on all parties of record:*

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on February 1, 2019:	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Betty Christensen</u>	

Organization Name	Compliant (YES, NO, REVIEW STOPPED, PENDING LITIGATION)
5050 in 2020 @ Iowa	YES
AAUW at Iowa	YES
Acacia Fraternity	YES
Academy of Managed Care Pharmacy (AMCP) Student Chapter at the University of Iowa (UI)	YES
Active Minds at The University of Iowa	YES
Actuarial Science Club	YES
Advocates for Cross Cultural Experiences (ACCE)	YES
African Student Association	YES
Agape Chinese Student Fellowship	STOPPED, PENDING LITIGATION
ALMA (Association of Latinos Moving Ahead)	YES
Alpha Chi Omega	YES
Alpha Delta Pi	YES
Alpha Epsilon Phi	YES
Alpha Epsilon Pi	YES
Alpha Kappa Alpha Sorority, Inc.	YES
alpha Kappa Delta Phi	YES
Alpha Kappa Psi Professional Business Fraternity	YES
Alpha Phi	YES
Alpha Phi Alpha	YES
Alpha Phi Omega-Omicron (APO)	YES
Alpha Sigma Phi	YES
Alpha Tau Omega	YES
Alpha Xi Delta	YES
Amateur Radio Club (University of Iowa)	YES
American Academy of Pediatric Dentistry	YES
American Advertising Federation (formerly known as Students in Advertising)	YES
American Association of Petroleum Geologists	YES
American Association of Public Health Dentistry University of Iowa Student Chapter	YES
American Association of Women Dentists	YES
American Chemical Society Student Chapter (U of I)	YES
American College of Clinical Pharmacy Student Chapter (University of Iowa)	YES
American College of Veterinary Pharmacists	YES
American Constitutional Society for Law and Policy, University of Iowa College of Law Chapter	YES
American Institute of Aeronautics and Astronautics	YES
American Institute of Chemical Engineers - University of Iowa Student Chapter	YES
American Marketing Association (U of I chapter)	YES
American Medical Women's Assoc - UI Std Branch (AMWA)	YES
American Pharmacists Association - Academy of Student Pharmacists	YES
American Rehabilitation Counseling Association (UI)	YES
American Sign Language Club (ASL Club)	YES
American Society of Civil Engineers (ASCE)	YES

American Society of Mechanical Engineers	YES
American Wind Energy Association (Student Chapter)	YES
Amnesty International (U of I)	YES
Anime and Manga Club	YES
Anime, Comics & Games Association	YES
Anthropology Club (University of Iowa)	YES
Anthropomorphic Furry Friends	YES
Arab Students Association	YES
Art Hawks	YES
Artineers	YES
Asian Pacific American Medical Student Association	YES
Asian Pacific American Student Association (U of I)	YES
Associated Residence Halls (ARH)	YES
Association for Computing Machinery Student Chapter	YES
Association for India's Development-IOWA	YES
Association for Multicultural Scientists	YES
Association of Graduate Nursing Students	YES
Association of Graduate Students in English (AGSE)	YES
Association of Nursing Students (UJANS)	YES
Association of Pre-Physician Assistant Students	YES
Astronomy Club	YES
<b>Athletes in Action</b>	STOPPED, PENDING LITIGATION
Auto Club	YES
B Sides	YES
Backpack Project	YES
Badminton Club (U of I)	YES
Ballet Club at Iowa	YES
Baseball Club (Iowa Hawkeye)	YES
Bass Fishing Team (Iowa)	YES
Be The Match on Campus-UI	YES
Bertrand Russell Society - Iowa Chapter	YES
Best Buddies	YES
Beta Theta Pi	YES
Big Brothers Big Sisters at Iowa	YES
Bijou Theater	YES
Bike Friends (University of Iowa) (Formerly Recreational Bicycling Club - UI)	YES
Biochemistry Majors Club (University of Iowa)	YES
Biological Interests Organization (University of Iowa)	YES
Biomedical Engineering Student Society	YES
Biostatistics Student Organization	YES
Black Law Student Association, Alexander G. Clark Sr. & Jr. Chapter (University of Iowa College of Law)	YES
Black Student Union	YES
Board Game Club	YES

Body Image and Eating Disorder Awareness	YES
Book of the Month Club	YES
Bowling Club (U of I)	YES
Brandyou Fashion Channel	YES
Brazilian Jiu-Jitsu Club (Hawkeye)	YES
Breakers (U of I)	YES
Bridges International (UI Chapter)	STOPPED, PENDING LITIGATION
Bruce Gronbeck Rhetoric Society	YES
Business Leaders in Christ	STOPPED, PENDING LITIGATION
Camp Adventure Youth Services	YES
Camp Kesem	YES
Campus Activities Board (CAB)	YES
Campus Bible Fellowship	STOPPED, PENDING LITIGATION
Campus Christian Fellowship	STOPPED, PENDING LITIGATION
Caribbean Student Association	YES
Carver College of Medicine Student Government	YES
Carver College of Medicine-Medicus Mentorship Program	YES
CHAARG at Iowa	YES
Chabad Jewish Student Association	STOPPED, PENDING LITIGATION
Chess Club	YES
Chi Alpha Christian Fellowship	STOPPED, PENDING LITIGATION
Chi Epsilon	YES
Chi Omega	YES
Chi Sigma Iota Counseling Academic & Prof. Honor Society Int'l; Rho Upsilon Chapter	YES
Child Life Student Association (UI)	YES
Children of the Clay - The (formerly Ceramics Society)	YES
Chinese Dance Club	YES
Chinese in Iowa City	YES
Chinese Music Club	YES
Chinese Student Christian Fellowship	STOPPED, PENDING LITIGATION
Chinese Students and Scholars Association (CSSA)	YES
Christian Legal Society	STOPPED, PENDING LITIGATION
Christian Medical Association	STOPPED, PENDING LITIGATION
Christian Pharmacy Fellowship	STOPPED, PENDING LITIGATION
Chronic Illness Alliance	YES
Circle K International	YES
Clothing Closet at Iowa	YES
Club Cheerleading	YES
College Diabetes Network at Iowa	YES
College of Education Graduate Student Executive Committee	YES
College of Law Federalist Society	YES
College of Medicine Emergency Medicine Interest Group (University of Iowa)	YES
College of Pharmacy Student Leadership Council	YES

College Republicans	YES
Colleges Against Cancer (U of I)	YES
Collegiate 4-H (The University of Iowa)	YES
Communication Studies Graduate Student Association	YES
Communication Studies Student Association	YES
Competitive Club Golf Team (Iowa)	YES
Computer Comfort	YES
Continental Crossings	YES
Cosplay Club at Iowa	YES
Craft, Critique, Culture Conference Planning Committee	YES
Crickets Club	YES
Crisis Center	YES
<b>Cru</b>	STOPPED, PENDING LITIGATION
Dance Club (University of Iowa)	YES
Dance Marathon	YES
Dean's Student Advisory Committee	YES
Debate Club (U of I)	YES
DeGowin Blood Center Student Organization (University of Iowa)	YES
Delta Chi	NO LONGER REGISTERED AT UI
Delta Delta Delta	YES
Delta Gamma	YES
Delta Lambda Phi	YES
Delta Phi Lambda	YES
Delta Sigma Phi	YES
Delta Sigma Pi (Professional Business Fraternity)	YES
Delta Sigma Theta	YES
Delta Tau Delta	YES
Delta Upsilon	YES
Delta Zeta	YES
Disc Golf Club	YES
Earthwords	YES
Eats And Treats	YES
Ed on Campus	YES
Electrochemical Society Student Chapter at Iowa	YES
Emergency Medical Services Student Interest Organization (University of Iowa)	YES
Enactus at Iowa	YES
Engineering Student Council	YES
English Society (University of Iowa)	YES
Environmental Coalition (U of I)	YES
Environmental Law Society	YES
Epidemiology Student Association	YES
EPX Studio	YES
EQUAL Meds (formerly Med Iowa's Queer Students (MEDIQS))	YES



eSports Club at Iowa	YES
Eta Sigma Phi National Classics Honor Society	YES
Euclre Club at Iowa	YES
Exchanges	YES
Fair Trade at Iowa	YES
Family Medicine Interest Group	YES
Federal Reserve Challenge at Iowa	YES
Female Alliance of Civil Engineers	YES
Fencing Club (U of I)	YES
Fight Inclined Student Thespians	YES
Figure Skating Club (Black and Gold)	YES
Financial Management Association	YES
Fine Arts Council	YES
FIRST Alumni Club	YES
First Generation Iowa	YES
FLARES (Foreign Language Acquisition Research and Education Students)	YES
Food Pantry at Iowa	YES
Fools Magazine	YES
Fraternal Values Society	NO LONGER REGISTERED AT UI
From Cover To Cover	YES
Futures Trading Challenge	YES
Gamma Iota Sigma	YES
Gamma Phi Beta	YES
Gamma Rho Lambda	YES
Gardeners (University of Iowa)	YES
<b>Geneva Campus Ministry</b>	STOPPED, PENDING LITIGATION
Global Health Club	YES
Golden Key International Honour Society	YES
Graduate & Professional Student Government	YES
Graduate Association of Political Science	YES
Graduate History Society (GHS)	YES
Graduate Organization of Higher Education and Student Affairs (GOHESA)	YES
Graduate Philosophical Society (U of I)	YES
Graduate Social Work Student Association	YES
Graduate Student Anthropology Association (U of I)	YES
Graduate Student Senate	YES
Graduate Women in Science - Iowa City Chapter (previously GWIS - Iota Chi"	YES
Greater China Business Association	YES
Guitar Club at Iowa	YES
Habitat for Humanity Campus Chapter (U of I)	YES
HackIowa	YES
Hallyu@Iowa	YES
Hawkapellas - Iowa	YES

Hawkeye Athletic Training Association (HATA)	YES
Hawkeye Ballroom Dance Company	YES
Hawkeye Caucus	YES
Hawkeye Flying Club	YES
Hawkeye History Corps	YES
Hawkeye Model UN delegation	YES
Hawkeye Optimist Chapter	YES
Hawkeye Sparkles (University of Iowa)	YES
Hawkeye Water for Change! (Formerly: Hawkeye Water to Thrive)	YES
Hawkeyes Fighting Alzheimer's	YES
Hawkeyes for Humanity	YES
Hawkeyes for Israel	YES
Hawkeyes Plan Events - HYPE (formerly Student Event Planners Association - UI)	YES
Hawks for Choice	YES
Hawks for McGuire	YES
Hawks Nest	YES
HawkTrade	YES
Heart Workshop	YES
HFES Student Chapter at Iowa	YES
<b>Hillel (University of Iowa)</b>	STOPPED, PENDING LITIGATION
Hispanic Dental Association (Iowa Chapter)	YES
Hispanic/Latino Law Student Association	YES
Homecoming Council	YES
Hong Kong Student Association	YES
House of Lorde: a space for Black Queer Individuals	YES
Human Rights Student Collective	YES
Human Trafficking Initiative	YES
IC RED	YES
I-Envision Entrepreneurship	YES
<b>Imam Mahdi Organization</b>	STOPPED, PENDING LITIGATION
Immunity Campaign	YES
Indian Student Alliance (ISA)	YES
INFORMS Iowa Student Chapter	YES
Institute of Industrial and Systems Engineers (IISE)	YES
Integrative Medicine Interest Group	YES
Intellectual Property Law Society	YES
Interfraternity Council (IFC)	YES
International Genetically Engineered Machine	YES
International Law Society	YES
International Law Student Association (formerly International Law-school Student Association)	YES
<b>International Neighbors at Iowa</b>	STOPPED, PENDING LITIGATION
International Student Outdoor Recreation Association	YES
Intersection	YES

InterVarsity Graduate Christian Fellowship	STOPPED, PENDING LITIGATION
InvestHer	YES
Iowa Agni	YES
Iowa American Student Dental Association (IASDA)	YES
Iowa Andhi	YES
Iowa Comic Book Club	YES
Iowa Edge Student Organization - The	YES
Iowa Formula	YES
Iowa Forum for Graduate Medievalists	YES
Iowa Health Administration Club	YES
Iowa Improv Club	YES
Iowa Journal of Cultural Studies	YES
Iowa Kendo Kumdo Club	YES
Iowa Marine Autonomous Racing Club	YES
Iowa Men's Hockey	YES
Iowa National Lawyers Guild	YES
Iowa Neuroscience Club	YES
Iowa Print Group	YES
Iowa Quiz Bowl	YES
Iowa Student Association of Healthcare Leaders	YES
Iowa Student Athlete Advisory Committee	YES
Iowa Student Bar Association	YES
Iowa Student Chapter of the American String Teachers Association	YES
Iowa Student Medical Research Club	YES
Iowa Student Psychology Association (ISPA)	YES
Iowa Students for Refugees	YES
Iowa Surgical Interest Group	YES
Iowa Young Americans for Freedom Chapter	YES
Iowa-Illinois Industrial Hygiene Student Association (I3HSA)	YES
J. Reuben Clark Law Society	STOPPED, PENDING LITIGATION
Japan Karate-Do Organization of University of Iowa	YES
Jazz Club	YES
Journal of Corporation Law	YES
Journal of Gender, Race & Justice	YES
Journalism and Mass Communication Graduate Student Association	YES
Judo Club (University of Iowa)	YES
Juggalos (U of I)	YES
Kappa Alpha Psi	no (has been unregistered)
Kappa Alpha Theta	YES
Kappa Kappa Gamma	YES
Kappa Psi Pharmaceutical Fraternity	YES
Kappa Sigma	NO LONGER REGISTERED AT UI
Knitting Club (UI)	YES

Korean Conversation Group	YES
Korean U Iowa Students Association	YES
KRUI-FM	YES
Lacrosse (U of I - Men's )	YES
Lacrosse (U of I - Women's)	YES
Lambda Chi Alpha	YES
Lambda Theta Nu Sorority, Inc.	YES
Lambda Theta Phi Latin Fraternity, Inc.	YES
Latina/o Graduate Student Association	YES
Latino Medical Student Association - University of Iowa Roy J. & Lucille A. Carver College of Medicine	YES
<b>Latter-day Saint Student Association</b>	<b>STOPPED, PENDING LITIGATION</b>
League of Legends Club (UI)	YES
League of United Latin American Citizens Collegiate Council #373	YES
Leopold Society	YES
LGBT Advocates for Public Health Equity	YES
Library & Info Science Std Chapter of American Lib Assoc. (LISSO)	YES
Love Works	YES
<b>Lutheran Campus Ministry</b>	<b>STOPPED, PENDING LITIGATION</b>
Malaysian Student Society	NO
Master of Business Administration Association (MBAA)	YES
Math Graduate Board (MGB)	YES
Media Entertainment & Lifestyle	YES
Medicus Pre-Medical Society	YES
Microbiology Undergraduate Student Association	YES
Middle East Law Students Association	YES
Mindful@Iowa	YES
Minority Association of Pre-medical Students	YES
Mock Trial Club (U of I)	YES
Moneythink	YES
MPR Dance Crew	YES
Multicultural Business Student Association	YES
Multicultural Greek Council	YES
Multicultural Nursing Association	YES
Multi-Ethnic Engineering And Science Association	YES
<b>Multietnic Undergrad Hawkeye InterVarsity</b>	<b>STOPPED, PENDING LITIGATION</b>
Multiracial Student Association	YES
Musicology Society (University of Iowa)	YES
<b>Muslim Students Association</b>	<b>STOPPED, PENDING LITIGATION</b>
Narwhal Finance Group	YES
National Alliance on Mental Illness on Campus at Carver College of Medicine	YES
National Association for Music Education	YES
National Association for the Advancement of Colored People (UI Chapter of NAACP)	YES
National Association of Black Journalists - Unity (UI)	YES

National Community Pharmacists Association	YES
National Pan-Hellenic Council (NPHC)	YES
National Residence Hall Honorary	YES
National Retail Federation Student Association	YES
National Science Teachers Association Chapter at Iowa	YES
National Society of Black Engineers (NSBE)	YES
National Society of Collegiate Scholars	YES
National Student Speech Language Hearing Association (NSSLHA)	YES
Native American Student Association	YES
Nepalese Student Association	YES
Net Impact	YES
Net Impact UIowa	YES
Neuroscience Journal Club	YES
<b>Newman Catholic Student Center</b>	STOPPED, PENDING LITIGATION
Nightingale Writers' Group	YES
NOBCChE (National Organization for the Professional Advancement/Black Chemists & Chemical Engineers)	YES
Old Gold A Cappella	YES
Olympic Weightlifting Club (University of Iowa)	YES
Omega Chi Epsilon	YES
Omicron Delta Kappa	YES
ONE at University of Iowa	YES
Operation Smile at Iowa	YES
Order of Omega	YES
Organization for the Active Support of International Students (OASIS)	YES
Organization for Women Law Students & Staff (OWLSS)	YES
<b>Orthodox Christian Fellowship</b>	STOPPED, PENDING LITIGATION
Orthopedic Surgery Interest Group	YES
oSTEM@Iowa	YES
Outlaws	YES
Pain Management, Substance Use Disorders, Palliative Care (U of I)	YES
Pakistani Student Association	YES
Panhellenic Council (PHC)	YES
PAWS - UI (Promoting Animal Welfare in Society)	YES
Pediatric Pharmacy Advocacy Group at the University of Iowa	YES
Percussion Society (U of I)	YES
Persian Student Organization	YES
Pharmacy Ambassadors	YES
Pharmacy Communicators Association	YES
Phi Alpha Delta Law Fraternity, International Hammond Chapter	YES
Phi Alpha Delta Pre-Law Fraternity	YES
Phi Beta Chi	YES
Phi Beta Sigma	YES
Phi Delta Chi Pharmacy Fraternity	YES

Phi Delta Theta	YES
Phi Eta Sigma (Freshman Honor Society)	YES
Phi Gamma Delta (FJI)	YES
Phi Gamma Nu Professional Business Fraternity	YES
Phi Kappa Psi	YES
Phi Kappa Theta	YES
Phi Lambda Sigma	YES
Phi Mu Alpha Sinfonia Men's Music Fraternity, Iota Gama Chapter	YES
Phi Sigma Pi National Honor Fraternity	YES
Physical Therapy Student Organization	YES
Pi Alpha Phi	YES
Pi Beta Phi	YES
Pi Kappa Alpha (PIKE)	YES
Pi Kappa Phi	YES
Pi Sigma Alpha - Political Honors Society at Iowa	YES
PMBA Student Association, Des Moines (University of Iowa)	YES
Powerlifting (University of Iowa)	YES
Pre-Dental Club (U of I)	YES
Pre-Health International Association	YES
Pre-Occupational Therapy Club	YES
Pre-Optometry Club (U of I)	YES
Pre-Physical Therapy Organization	YES
Pre-Veterinary Club	YES
Product Design Studio	YES
Psi Chi International Honor Society in Psychology	YES
Public Relations Student Society of America (PRSSA)	YES
Quidditch Club	YES
Radiation Sciences Student Organization	YES
Ratio Christi	STOPPED, PENDING LITIGATION
RAYs of REACH	YES
Reaching OUT in Business	YES
Real Estate Club (The)	YES
Red Shamrock Student Organization	YES
Religion Graduate Students Organization	YES
Rex Montgomery Physician Assistant Student Society	YES
Rho Chi Society: Delta Chapter	YES
Rho Lambda	YES
RiverRun	YES
Robotics Club (University of Iowa)	YES
Rock Climbing Club	YES
Roosevelt Network	YES
Rowing Club (Men's)	YES
Rugby Club (Men's)	YES

Rugby Club at Iowa (Women's)	YES
Running Club (University of Iowa)	YES
Russian-Speaking Students and Scholars Association	YES
Sailing Club (Iowa)	YES
Sales Engineering Club	YES
Salsa Dance Club	YES
<b>Salt Company - The</b>	STOPPED, PENDING LITIGATION
SCOPE Productions (Student Commission on Programming Entertainment)	YES
Secular Students at Iowa	YES
Semper Fidelis Society	YES
Shooting Sports Club	YES
Sigma Alpha Epsilon	NO LONGER REGISTERED AT UI
Sigma Alpha Iota - Zeta Epsilon	YES
Sigma Alpha Lambda	YES
Sigma Chi	YES
Sigma Lambda Beta	YES
Sigma Lambda Gamma	YES
Sigma Nu	NO LONGER REGISTERED AT UI
Sigma Nu Tau Entrepreneurship Honors Society	YES
Sigma Phi Epsilon	YES
Sigma Pi	YES
Sigma Tau Delta International English Honors Society, Alpha Tau Iota Chapter of Iowa	YES
<b>Sikh Awareness Club</b>	STOPPED, PENDING LITIGATION
SistaSpeak	YES
Ski & Snowboard Club (U of I)	YES
Slavic Student Alliance	YES
Soccer (Iowa Women's)	YES
Social Work Student Association	YES
Society for Human Resource Management	YES
Society of Automotive Engineers	YES
Society of Black Graduate & Professional Students (BGAPS)	YES
Society of Composers, Inc. Student Chapter	YES
Society of Hispanic Professional Engineers	YES
Society of Physics Students	YES
Society of Women Engineers	YES
Softball Club (University of Iowa)	YES
Sound Awareness for Everyone (University of Iowa - student affiliate group)	YES
South Asian Student Alliance	YES
Special Olympics (University of Iowa Chapter)	YES
Spectrum UI	YES
Sport and Recreation Management Club	YES
Sports Law Society of the University of Iowa	YES
Sports Stocks	YES

Sri Lankan Students' Association (SLSA)	YES
<b>St. Paul's University Center</b>	<b>STOPPED, PENDING LITIGATION</b>
STAR (Students To Assist Recruitment)	YES
Stars and Stripes Club	YES
Starts With Soap	YES
Strength in Numbers	YES
Student Academy of Audiology	YES
Student Advancement Network	YES
Student Advocates for Planned Parenthood	YES
Student Iowa School Counseling Association	YES
Student National Medical Association	YES
Student National Pharmaceutical Association	YES
Student Photography Organization	YES
Student Society of Health-System Pharmacists (University of Iowa)	YES
Student United Way	YES
Student Video Productions (SVP)	YES
Students Against Casteism	YES
Students Care	YES
Students for Boys and Girls Club of Iowa City	YES
Students for Human Rights	YES
Students for Interprofessional Practice and Education (formerly Students for Interprofessional Education)	YES
Students for Life	YES
Students for Pat Wronkiewicz	YES
Students for Reynolds	YES
Students in Design (UI)	YES
Students in Technology and Sciences	YES
Students International Meditation Society	YES
Students Supporting Israel	YES
Swing Dance Club	YES
Tabletop RPG Organization (The U of I)	YES
Taiwanese Student Association	YES
Tau Beta Pi	YES
Tau Kappa Epsilon (TKE)	YES
<b>Tau Omega Catholic Service Fraternity</b>	<b>STOPPED, PENDING LITIGATION</b>
Tau Sigma Military Dental Club	YES
Teddy Bear Clinic	YES
Tennis Club (Hawkeye)	YES
Tennis Club (International)	YES
Thai Student Association	YES
The Celli-Yaks Club	YES
The Gymnastics Club at Iowa	YES
Therapeutic Recreation Student Association	YES
Theta Tau-Professional Engineering Fraternity	YES



Tippie Senate	YES
Tippie Students for Service (formerly Tippie Community Collective)	YES
Tippie Technology and Innovation Assoc.	YES
To Write Love on Her Arms at The University of Iowa	NO
Track and Field Club (Iowa)	YES
Traditional Jujutsu Club (Iowa)	YES
Trans Alliance - UI	YES
Transfers Leading Change	YES
Translate Iowa Project - The	YES
Transnational Law & Contemporary Problems	YES
Triathlon Club (U of I)	YES
Turkish Student Association	YES
Turning Point USA	YES
<b>Twenty Four Seven</b>	<b>STOPPED, PENDING LITIGATION</b>
Tzu Chi Collegiate Association	YES
UI Students for Disability Advocacy & Awareness (Formerly: Hawkeye Accessibility Ambassador Org)	YES
UISG (University of Iowa Student Government)	YES
UISight	YES
Ultimate Frisbee (Women's)	YES
Ultimate Frisbee Club (Iowa Hawkeye Men's)	YES
Under Your Wing	YES
Undergraduate Art History Society	YES
Undergraduate Dance Organization	YES
Undergraduate Political Science Association	YES
Undergraduate Public Health Organization	YES
Unified for Uganda	YES
United Nations Association (University of Iowa)	YES
University Democrats	YES
University of Iowa Men's Club Volleyball	YES
University of Iowa Men's Soccer Club	YES
University of Iowa Men's Water Polo Club Team	YES
University of Iowa Table Tennis Club	YES
University of Iowa Taekwondo Club	YES
University Theatres Student Representatives	YES
Urban and Regional Planning Student Association	YES
USITT Student Chapter	YES
UStart	YES
Vegan Society U Iowa	YES
Vertical Cinema	YES
Veterans Association (U of I)	YES
Veteran's Legal Association	YES
Vietnamese Student Association	YES
Voices of Soul	YES

Volleyball (Women's LadyHawk)	YES
Walk It Out	YES
Wall-Breakers	YES
Water Polo Club (U of I - Women's)	YES
Water Ski Team (U of I)	YES
Werewolf Club	YES
Wilderness Medicine Interest Group	YES
Wishmakers (University of Iowa)	YES
Women in Business	YES
Women in Computing Sciences	YES
Women in Science and Engineering (WISE) Ambassadors	YES
Women's Club Basketball	YES
Women's Ice Hockey	YES
World Languages Graduate Organization	YES
Wrestling Club (Iowa)	YES
Young Americans for Liberty	YES
Young Democratic Socialists at Iowa	YES
Young Life	STOPPED, PENDING LITIGATION
Young Women for America at Iowa	YES
Zeta Beta Tau	YES
Zeta Phi Beta Sorority, Inc.	YES
Zeta Tau Alpha	YES

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

BUSINESS LEADERS IN CHRIST,

*Plaintiff,*

v.

THE UNIVERSITY OF IOWA, *et al.*,

*Defendants.*

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

**PLAINTIFF'S NOTICE OF  
RESPONSE TO COURT INQUIRY**

Attached is a declaration from Plaintiff BLinC's student president responding to this Court's January 29 and 31 emails to the parties seeking clarification as to BLinC's continued existence and size, and regarding whether it shares membership with InterVarsity Christian Fellowship student groups.

Respectfully submitted this 1st day of February, 2019.

/s/ Eric S. Baxter

Eric S. Baxter\*

*Lead Counsel*

Daniel H. Blomberg\*

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***Counsel for Plaintiff***

*\*Admitted pro hac vice*

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

BUSINESS LEADERS IN CHRIST,

*Plaintiff,*

v.

THE UNIVERSITY OF IOWA, *et al.*,

*Defendants.*

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

**DECLARATION OF BRETT  
EIKENBERRY**

I, Brett Eikenberry, declare as follows:

1. I am a student at the University of Iowa. I am also the president of BLinC, or Business Leaders in Christ, which is a student group on campus for students who want to learn to live their faith in the business world. During the 2017-2018 school year I served as vice president for BLinC.
2. Kaitlyn Hockmuth is BLinC's Vice President.
3. Kaitlyn and I were just elected to these positions this semester after BLinC's former president stepped down to study abroad.
4. BLinC's meetings are open to everyone. For the past year and a half, our attendance has fluctuated from approximately five to ten individuals.
5. We consider students to be members for purposes of elections after they sign in and attend two or more meetings in a given academic year.
6. I have not compiled a formal list, but there are probably around five students who qualify for membership this year.
7. Because we are at the start of a new semester, it is not clear which students will continue to participate as members.

8. To my knowledge, no one who has attended our meetings this school year is a member of InterVarsity Graduate Christian Fellowship. I am not aware of any attendees who are members of other InterVarsity groups.

9. I am confident that most people who attend our meetings would not want their names known to the University and may quit rather than agree to having their names published.

10. Producing a list of BLinC's members would also make it harder to recruit new members and leaders.

11. Recruitment of members has already been more difficult because the University has accused BLinC of discrimination.

12. Also, the University's accusations against BLinC show that it will not treat BLinC's members or participants fairly.

13. I am aware, for example, that the University has claimed that BLinC "desires a special dispensation which would allow it to perpetuate discriminatory behavior toward gay, lesbian, and transgender students," and that it was demanding that "religious groups get a 'pass' to discriminate against their peers[.]" Univ. MSJ, Dkt. 70-1 at 4, 17. It has also said that BLinC is threatening a "pillar of our democracy," that it "openly discriminates" against fellow students on the basis of "sexual orientation and gender," that our Christian beliefs were themselves "facially discriminatory," that "the people of Iowa disapprove" of the way we select our leaders, and that we have a "desire to participate in illegal discrimination." Univ. Opp. MSJ, Dkt. 81-1 at 5, 9, 37.

14. Those statements are false and unfair, as BLinC's leaders have repeatedly explained in person and in writing to the University. They also cast BLinC and its leaders as outsiders.

15. Everyone who participates in our meetings is a student of the University. Some work for the University. Since the University controls our grades, our degrees, and in some cases our

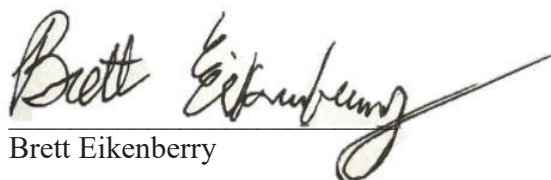
paychecks, and can have significant influence on our future employment, the University's accusations make us worry that we will be treated unfairly.

16. That is doubly true considering our size and the fact that our religious views are not shared by the majority on campus and are vigorously opposed by many of our peers and by the University itself.

17. Recruitment of leaders has been more difficult as result of the University's actions. Past BLinC student leaders have been investigated and interrogated by University attorneys, have had to produce sensitive personal religious communications that would otherwise have been private, have had to meet with University officials in person to explain and justify their religious beliefs, and have had to undergo depositions and the other burdens of litigation. These are demanding and heavy burdens for students who are just trying to work and to get an education.

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

Executed this 1st day of February, 2019.

  
Brett Eikenberry

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

BUSINESS LEADERS IN CHRIST,	)	Case No. 3:17-CV-00080-SMR-SBJ
an unincorporated association,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE UNIVERSITY OF IOWA; LYN	)	ORDER ON CROSS-MOTIONS FOR
REDINGTON, in her official capacity as Dean	)	SUMMARY JUDGMENT
of Students and in her individual capacity;	)	
THOMAS R. BAKER, in his official capacity	)	
as Assistant Dean of Students and in his	)	
individual capacity; and WILLIAM R.	)	
NELSON, in his official capacity as Executive	)	
Director, Iowa Memorial Union, and in his	)	
individual capacity,	)	
	)	
Defendants.	)	

Civil and human rights laws that prohibit discrimination based on an individual’s status—including his or her, gender, race, or sexual orientation—are common. The scope of their protection continues to evolve, but they are a familiar expression of society’s values. They reflect a broad consensus as to the evils of discrimination and the benefits of equal opportunity. This case involves a policy of the University of Iowa that, like those laws, prohibits discrimination based on various protected characteristics. But even the most noble government pursuits are bound by the Constitution’s protection of individual liberties. This case underscores the importance of pursuing the best-intentioned policies in an even-handed manner.

Plaintiff Business Leaders in Christ (“BLinC”) seeks summary judgment in its favor on its various claims that the University violated its First Amendment rights through the application of its nondiscrimination policy. [ECF No. 71]. Defendants University of Iowa (the “University”),

Lyn Redington, Thomas Baker, and William Nelson resist BLinC's motion and move for partial summary judgment in favor of the individual Defendants on the grounds of qualified immunity. [ECF No. 70]. The Court held a hearing on the parties' cross-motions for summary judgment on February 1, 2019. The matter is fully briefed and ready for decision. As explained below, both motions are GRANTED in part and DENIED in part.

## I. BACKGROUND<sup>1</sup>

The University is a public institution of higher education governed by the Iowa State Board of Regents. [ECF No. 84-1 ¶ 1]. The University allows students to form student organizations, defined as "voluntary special interest group[s] organized for education, social, recreational, and service purposes and comprised of its members." *Id.* ¶ 21. Such groups are separate legal entities from the University and may exist on campus whether or not they receive official recognition from the University. *See id.* ¶¶ 22–23.

Some student organizations may register with the University as a Registered Student Organization ("RSO"). *See id.* ¶ 24. RSO status carries with it many benefits, including, eligibility to apply for funds from mandatory Student Activity Fees, inclusion in University publications, utilization of the University's trademarks, and eligibility to use campus meeting facilities and outdoor spaces. [ECF No. 71-3 at 114]. To be eligible for RSO status, a student organization must have at least five members, of which 80% must be University students, and have "purposes [that] are consistent with the educational objectives of the University, and do not violate local, state or federal law." *Id.* at 115. Eligible organizations wishing to register as an RSO must first hold a pre-registration meeting with appropriate University staff. *See id.* University staff will review the

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<sup>1</sup> The facts are derived from the parties' respective statements of undisputed facts and the documents cited therein.



organization's proposed constitution and application for RSO status, and then submit it to the University's Student Organization Review Committee for final review. *See id.* at 116.

University policies impose various restrictions on RSOs. For example, an RSO must "adhere to the mission of [the] University, its supporting strategic plan, policies and procedures." *Id.* at 114. Also, an RSO's "goals, objectives, and activities must not deviate from established University policies and procedures." [ECF No. 84-1 ¶ 26]. Among those policies is the University's Policy on Human Rights (the "Human Rights Policy"). Relevantly, it states:

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

*Id.* ¶ 9. This language, with only minor changes, is incorporated into the constitution of each RSO through a mandatory "UI Human Rights Clause" (the "Human Rights Clause"). *See id.* ¶ 29.

The University does not have an "all-comers policy." [ECF No. 82-2 ¶ 1]. The University's "Registration of Student Organizations" 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." [ECF No. 71-3 at 114]. Thus:

It is the policy of the University that all registered student organizations 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. The University acknowledges the interests of students to organize and associate with like-minded students, therefore any individual who subscribes to the goals and beliefs of a student organization may participate in and become a member of the organization.

*Id.* at 115. Within these parameters, the University has approved the constitutions of numerous RSOs that require members to subscribe to their respective missions. *See* [ECF No. 82-2 ¶ 18]. For example, the Iowa National Lawyers Guild requires its members to agree with the group’s aim of bringing about “basic change in the structure of our political and economic system,” and the Latina/o Graduate Student Association limits membership to “[a]nyone who supports the purpose of the organization, and is willing to commit to its objectives.” *Id.*

However, the Registration of Student Organizations policy stresses that membership and participation in an RSO “must be open to all students without regard to” the protected traits listed in the Human Rights Policy—i.e., race, sex, religion, gender identity, sexual orientation, etc.—and RSOs must “guarantee that equal opportunity and equal access to membership, programming, facilities, and benefits shall be open to all persons.” [ECF No. 71-3 at 115]. Yet, the University has approved the constitutions of numerous organizations that explicitly limit access to leadership or membership based on religious views, race, sex, and other characteristics protected by the Human Rights Policy.<sup>2</sup> These groups include Love Works, which requires leaders to sign a “gay-affirming statement of Christian faith”; 24-7, which requires leaders to sign and affirm a statement of faith and live according to a code of conduct (which includes abstaining from sexual conduct and relations outside of traditional marriage); House of Lorde, which implements membership “interview[s]” to maintain “a space for Black Queer individuals and/or the support thereof”; the Chinese Students and Scholars Association, which limits membership to “enrolled Chinese Students and Scholars”; and Hawkapellas—Iowa (“Hawkapellas”), an “all-female

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<sup>2</sup> Defendants admit 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,” and “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.” [ECF No. 82-2 ¶¶ 17, 24].

a cappella group” with membership controlled by “vocal auditions.” [ECF No. 82-2 ¶¶ 17, 24]. Defendant Nelson also testified during a deposition that when certain groups, such as the Iowa National Lawyer’s Guild, exclude individuals because of their political views, they violate the Human Rights Policy by discriminating based on an individual’s creed. *See id.* ¶ 442.

Defendants argue that some of these groups continue to exist as RSOs—despite their apparent violations of the Human Rights Policy—due to administrative oversight. [ECF No. 81-1 at 18]. But Defendants also admit that some such groups continue as RSOs “for reasons which support the University’s educational mission” and the “social purposes of the forum.” *Id.* at 17–18. As an example, Defendants note that some of the groups in question “provide safe spaces for minorities which have historically been the victims of discrimination.” *Id.* at 18.

In the spring of 2014, students from the University’s Tippie College of Business formed BLinC. *See* [ECF No. 82-2 ¶¶ 93–95]. It was registered as an RSO that fall. *Id.* ¶ 95. BLinC maintains it was founded as a religious organization to help “seekers of Christ” learn “how to continually keep Christ first in the fast-paced business world.” *Id.* ¶ 99. Its members participate in weekly meetings that include prayer, Bible discussion, and spiritual reflection. *See id.* ¶ 101. The group claims to be a “Bible-based group that believes the Bible is the unerring Word of God.” *Id.* ¶ 126. The group believes homosexual relationships are “outside of God’s design” and that “every person should embrace, not reject, their God-given sex.” *Id.* ¶ 222. The parties agree BLinC’s beliefs “are based on its sincere religious interpretation of the Bible.” *Id.* ¶ 230.

In March 2016, one of BLinC’s members, Marcus Miller, approached the group’s then-president Hannah Thompson to discuss his interest in serving on BLinC’s executive board. *Id.* ¶ 109. BLinC’s 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. *Id.* ¶ 114. BLinC claims that its leaders therefore screen prospective officers "to ensure they agree with and can represent the group's religious beliefs." *Id.* ¶ 116. To that end, Thompson met with Miller in April 2016 for roughly two hours to "find out if he was ready to provide spiritual leadership." [ECF No. 71-6 at 108].<sup>3</sup> Thompson claims Miller revealed to her that he thought he was gay. *Id.* She said Miller was open about his desire to engage in same-sex relationships, and he had been struggling with the Bible's teachings on that topic. *Id.*

Thompson discussed Miller's candidacy with the other members of BLinC's executive board. According to Thompson, the board was concerned Miller did not share BLinC's views on the Bible's teachings about sexual conduct. *Id.* at 109. They concluded that Miller fundamentally disagreed with BLinC's faith and thus could not lead their members with "sound doctrine and interpretation of Scripture." *Id.* Thompson met with Miller to convey the board's decision. *Id.* At that meeting, she restated BLinC's view on the Bible's authority and its teachings about sexual morality, and asked Miller if he would be willing to forgo romantic same-sex relationships. *Id.* Miller told Thompson that he was not willing to do so. *Id.* Thompson told him he could not join BLinC's executive leadership. *See id.*

The parties disagree on why BLinC rejected Miller for a leadership position. BLinC maintains it rejected Miller because his religious views on sexual relationships conflicted with those of the group; Defendants assert Miller was rejected because of his status as a gay man. *See* [ECF No. 82-2 ¶ 133]. Ultimately, this issue is not material to the outcome of this case.

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<sup>3</sup> Thompson's account of her discussions with Miller comes from her sworn affidavit, dated December 12, 2017. [ECF No. 71-6 at 105–12]. Defendants have not challenged her account of those discussions. *See generally* [ECF No. 82-2 ¶¶ 117–32, 136–45].

On February 20, 2017, Miller filed a complaint with the University stating that BLinC denied him a leadership position because he was “openly gay.” *Id.* ¶ 158. He demanded that the University “[e]ither force BLinC to comply with the non-discrimination policy (allow openly LGBTQ members to be leaders) or take away their status of being a student organization.” [ECF No. 71-6 at 132].

The University launched an investigation into the complaint. University Compliance Coordinator Constance Shriver Cervantes, from the University’s Office of Equal Opportunity and Diversity, was assigned to the investigation. *See* [ECF No. 82-2 ¶¶ 159–60]. Throughout the investigation, BLinC maintained that it rejected Miller as a leader because he “disagreed with, and would not agree to live by [BLinC’s] religious beliefs.” *Id.* ¶ 168. Cervantes disagreed, concluding that BLinC denied Miller a leadership position because of his sexual orientation. *Id.* ¶ 182.

BLinC appealed. As part of that process, Jacob Estell met with Defendants Dr. William Nelson and Associate Dean Thomas Baker on September 1, 2017. *Id.* ¶¶ 191–92, 194. Estell replaced Thompson as BLinC’s president after Thompson graduated in May 2017. *Id.* ¶ 171. At the time of the meeting, Nelson was the Executive Director of the Iowa Memorial Union and was responsible for registering student groups on campus. *See id.* ¶ 191; [ECF No. 84-1 ¶ 6].<sup>4</sup> Baker is an attorney and works in the Office of the Dean of Students. [ECF No. 84-1 ¶ 8]. Also in attendance at the meeting were BLinC’s vice president, Brett Eikenberry, and two of BLinC’s lawyers. [ECF No. 82-2 ¶ 193].

At the time of the meeting, BLinC was still an RSO. *See id.* ¶ 198. Baker informed Estell and Eikenberry that if BLinC understood the Human Rights Policy and was willing to comply with it going forward, BLinC could remain a registered organization in good standing. *Id.* Much of the

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<sup>4</sup> Presently, Nelson is also the Associate Dean of Students. [ECF No. 84-1 ¶ 6].

meeting focused on what was permissible under the Human Rights Policy. This included discussion of the difference between discriminating based on “status” and choosing leaders based on “beliefs” and “conduct.” *Id.* ¶ 207. As one example, Nelson and Baker explained that a group could require its leaders to abstain from sexual relationships outside of marriage—or abstain only from same-sex sexual relationships—if the requirement was “applicable to all.” *Id.* ¶¶ 200–01. Nelson later testified that BLinC would not have violated the Human Rights Policy if it had denied Miller a leadership position based on his disagreement with their “religious philosophy,” rather than his status as a gay man. [ECF No. 71-3 at 19]. This is consistent with other undisputed statements in the record showing that the Human Rights Policy only prohibited discrimination based on status, and not belief-based restrictions. *See, e.g.*, [ECF No. 82-2 ¶ 272].

The parties agree an RSO could require its leaders to embrace the mission of the organization, provided the group did not intend to pursue illegal activity. *See* [ECF Nos. 71-2 at 45; 82-2 ¶ 205]. Consistent with this, Estell and Eikenberry told Nelson and Baker that BLinC screened its leaders based on their beliefs and conduct, not their status, and that they intended to require BLinC’s leaders to abide by the group’s beliefs about sexual activity outside of marriage. [ECF Nos. 71-3 at 20; 82-2 ¶ 211]. Nelson inquired whether BLinC’s beliefs were written down anywhere and suggested it would be better if students knew BLinC’s beliefs before they joined. [ECF No. 82-2 ¶ 213]. Estell and Eikenberry agreed to detail BLinC’s beliefs in its constitution, and Nelson indicated that such action would resolve his concerns about “any ongoing violation of the Human Rights Policy.” *Id.* ¶¶ 215–16.

On September 13, 2017, Nelson sent BLinC a letter affirming that the group would be permitted “to function as [an RSO] in good standing” if it agreed to:

1. commit to ongoing compliance with the Human Rights policy at all times in the future;

2. submit a basic list of qualifications for leaders 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 officers who interview candidates for executive positions will ask questions relevant to the group's beliefs that are not presumptive of candidates based upon sexual orientation.

*Id.* ¶ 221. In response, BLinC made various changes to its constitution. Relevant among them, it relabeled its "Vision Statement" as a "Statement of Faith" and added to it a new section titled "Doctrine of Personal Integrity." *Id.* ¶ 222. That section contained 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.

*Id.* BLinC also memorialized in its constitution an obligation that BLinC's leaders "accept and seek to live BLinC's religious beliefs." *Id.* ¶ 223. Additionally, BLinC formalized the process whereby all nominees for leadership positions had to be interviewed by the group's president and sign a copy of BLinC's Statement of Faith. *Id.* ¶ 224.

Nelson rejected the changes. In a letter to BLinC, Nelson said the revised constitution "does not satisfy the requirements" set out in his September 13, 2017 letter "for BLinC to remain as [an RSO] in good standing." *Id.* ¶ 227. He added that BLinC's "Statement of Faith, on its face, does not comply with the [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, both of which are protected classifications." *Id.* The letter instructed BLinC that it could remain an RSO only if it revised its Statement of Faith to comply with the Human Rights Policy. *Id.* ¶ 228. Nelson testified

during his deposition that if BLinC would have removed from its Statement of Faith the three sentences excerpted above, he would have accepted the group's constitution. *Id.* ¶ 365.

BLinC appealed to Defendant Dr. Lyn Redington, then-Assistant Vice-President and Dean of Students. *Id.* ¶ 231. She affirmed Nelson's decision and revoked the group's RSO status. *Id.* ¶ 232. In doing so, Redington repeated Nelson's finding that the Statement of Faith failed to comply with the Human Rights Policy because the affirmation required for leadership positions "would have the effect" of disqualifying individuals from leadership positions based on sexual orientation or gender identity. *Id.* ¶ 233. It is notable that Defendants have since admitted that a student could identify as being gay and still hold a leadership position in BLinC, so long as he or she agreed with, and "agreed to live by" the group's Statement of Faith. *Id.* ¶ 135.<sup>5</sup>

Beginning in January 2018, the University reviewed all RSO constitutions for compliance with the Human Rights Policy. *Id.* ¶ 408. This was meant to ensure the governing documents of RSOs contained "all required statements," including the Human Rights Clause and a required financial statement. *Id.* ¶ 409. Reviewers were also instructed to look for any language that might contradict the Human Rights Clause, including language that requires leaders or members to embrace certain "beliefs/purposes." *Id.* ¶¶ 411, 414. Reviewers were told that, although RSOs could have purposes or mission statements related to specific classes or characteristics of the Human Rights Clause, membership or leadership could not "be contingent on the agreement, disagreement, subscription to, etc., of the stated beliefs/purposes which are covered in the [Human

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<sup>5</sup> Defendants qualify this by observing that 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. [ECF No. 82-2 ¶ 135]. Still, the admission shows Defendants do not view BLinC's restrictions on leadership as being based on status.



Rights Clause].” *Id.* ¶ 415. Nelson testified this instruction was incorrect, and that the policy only prohibits status-based discrimination, not belief-based requirements. *Id.* ¶¶ 416.

Following the University’s review, over thirty groups were deregistered, although many were either defunct or failed to timely resubmit their constitutions with a complete version of the Human Rights Policy included. *Id.* ¶ 439. Many of the deregistered groups were re-registered after they added the required language to their constitutions. *Id.* In the end, groups that limit membership or leadership based on characteristics protected by the Human Rights Policy remain registered. Among them are Hawkapellas, House of Lorde, and the Chinese Students and Scholars Association. *See id.* ¶ 24; [ECF No. 101-1 at 3, 5–6]. Love Works, which in many respects is the ideological inverse of BLinC, remains registered. *See* [ECF No. 101-1 at 8].<sup>6</sup> The University has suspended the registration of various religious student groups pending the outcome of this litigation. *See generally id.*<sup>7</sup>

BLinC filed its twenty-count Complaint on December 11, 2017. [ECF No. 1]. The Complaint asserted various counts against Defendants under 42 U.S.C. § 1983 for violations of BLinC’s First Amendment rights to freedom of speech and expressive association, freedom of assembly, free exercise of religion, and, separately, the First Amendment’s Religion Clauses. *See generally id.* ¶¶ 149–224, 284–89. BLinC also asserted claims for violations of the Fourteenth

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<sup>6</sup> At the hearing on the instant motions, counsel for Defendants alleged the University has suspended Love Works’ registered status pending the outcome of this litigation. That assertion is directly contradicted by evidence in the record. *See* [ECF No. 101-1 at 8]. Additionally, Defendants argued in their briefing about the differences between BLinC and Love Works, making no indication that Love Works had been de-registered. *See* [ECF No. 87 at 2].

<sup>7</sup> The University’s approach to religious student groups following the 2018 review is the subject of a related lawsuit, *Intervarsity Christian Fellowship/USA v. Univ. of Iowa*, 3:18-CV-00080-SMR-SBJ.

Amendment's Equal Protection Clause, the federal Higher Education Act, the Iowa Human Rights Act, and various provisions of the Iowa Constitution. *See id.* ¶¶ 225–83. BLinC subsequently filed a Motion for Preliminary Injunction, which the Court granted on January 23, 2018. [ECF No. 36]. In doing so, the Court ordered Defendants to restore BLinC's RSO status for a period of ninety days. *Id.* at 31. On June 28, 2018, the Court extended the injunction until the Court renders a judgment in this matter. *See* [ECF No. 55 at 3].

Following discovery, the parties filed the instant motions. BLinC seeks summary judgment as to its First Amendment free speech (Counts VII–VIII), expressive association (Count VI), free exercise (Counts III–IV), and Religion Clauses claims (Counts I–II).<sup>8</sup> BLinC seeks nominal damages and a permanent injunction “prohibiting enforcement of the University's Human Rights Policy against BLinC based on the content of BLinC's Statement of Faith and leadership selection policies.” [ECF No. 71 at 3]. BLinC also seeks a declaration that the individual Defendants are personally liable for the constitutional violations at issue, and requests that the Court set a trial date for the determination of any further damages against them. *See id.* The individual Defendants have filed a Motion for Partial Summary Judgment in their favor on the grounds of qualified immunity. *See* [ECF No. 70 at 1].

## II. STANDARD OF REVIEW

Summary judgment is proper when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Paulino v. Chartis Claims, Inc.*, 774 F.3d 1161, 1163 (8th Cir. 2014). “A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict

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<sup>8</sup> The First Amendment applies to the states through its incorporation into the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *Wagner v. Jones*, 664 F.3d 259, 269 (8th Cir. 2011).

for either party; a fact is material if its resolution affects the outcome of the case.” *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 252 (1986)). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge.” *Anderson*, 477 U.S. at 255. Even so, at the summary judgment stage, courts must view “the facts in the light most favorable to the nonmoving party and giv[e] that party the benefit of all reasonable inferences that can be drawn from the record.” *Pedersen v. Bio-Med. Applications of Minn.*, 775 F.3d 1049, 1053 (8th Cir. 2015) (quoting *Johnson v. Wells Fargo Bank, N.A.*, 744 F.3d 539, 541 (8th Cir. 2014)). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). But “the nonmoving party [need not] produce evidence in a form that would be admissible at trial in order to avoid summary judgment.” *Id.* at 324.

### III. ANALYSIS

The Court will first analyze BLinC’s claims and its entitlement to nominal damages and injunctive relief. The Court will conclude by considering the individual Defendants’ qualified immunity defense.

#### *A. Free Speech, Expressive Association, and Free Exercise Claims*

As discussed below, Defendants are subject to strict scrutiny with respect to BLinC’s free speech, expressive association, and free exercise claims. The Court will analyze the other elements of those claims before addressing Defendants’ strict scrutiny burden.

1. Free speech and expressive association claims

BLinC asserts three claims under the Free Speech Clause—“expressive association” (Count VI), “compelled speech” (Count VII) and “viewpoint discrimination” (Count VIII). BLinC argues the University created a limited public forum by granting recognition to student organizations. Having done so, BLinC claims, Defendants violated its rights by denying it RSO status because of its leadership requirements. BLinC adds that this action denied its members the ability to associate with “like-minded individuals . . . for the purpose of expressing commonly held views.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 309 (2012). Relatedly, BLinC argues that applying the Human Rights Policy to the group would force it to allow leaders hostile to its beliefs, thus impacting the message it conveys to its members and the University at large. Defendants agree the University created a limited public forum, but they argue no evidence exists that the University intended to discriminate against or disadvantage BLinC because of its views.

When student groups in a limited public forum assert free speech and expressive association claims stemming from restrictions on their leadership criteria, “[w]ho speaks on [the group’s] behalf . . . colors *what* concept is conveyed.” *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 680 (2010). In such circumstances, the Supreme Court of the United States has held that its “limited-public-forum precedents supply the appropriate framework for assessing [the group’s] speech and association rights.” *Id.* Accordingly, the Court will assess BLinC’s speech and association claims together.

“If a state university creates a limited public forum for speech, it may not ‘discriminate against speech on the basis of its viewpoint.’” *Gerlich v. Leath*, 861 F.3d 697, 704–05 (8th Cir. 2017) (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)). Universities “establish limited public forums by opening property ‘limited to use by

certain groups or dedicated solely to the discussion of certain subjects.” *Martinez*, 561 U.S. at 679 n.11 (citation omitted). A university program that grants student organizations official registration or recognition amounts to a limited public forum. *Id.* at 679. Universities may constitutionally restrict access to limited public forums so long as the access barriers are “reasonable and viewpoint neutral.” *Id.*

The parties agree the University has created a limited public forum by granting recognition to student organizations. In its Order granting BLinC’s Motion for Preliminary Injunction, the Court determined: (1) the University’s restrictions on access to the forum based on its Human Rights Policy are reasonable in light of the intended purposes of the forum; and (2) the Human Rights Policy is viewpoint neutral as written. *See* [ECF No. 36 at 22–23]. The Court sees no reason to revisit those determinations. However, Defendants’ actions are still subject to strict scrutiny if the Human Rights Policy is not viewpoint neutral as applied to BLinC. *See id.* at 23.

“Viewpoint discrimination is . . . an egregious form of content discrimination” that arises when “the government targets not subject matter, but particular views taken by speakers on a subject.” *Rosenberger*, 515 U.S. at 829; *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 108–09 (2001) (finding viewpoint discrimination where the limited public forum was available to groups to teach morals and character development to children, but access was denied to a group which sought to teach those issues from a religious viewpoint). Such discrimination “is presumed impermissible when directed against speech otherwise within the forum’s limitations,” *Rosenberger*, 515 U.S. at 830, and is subject to strict scrutiny, *see McCullen v. Coakley*, 134 S. Ct. 2518, 2530 (2014).

The Supreme Court has previously considered these principles as applied to religious student groups. Notably, in *Rosenberger*, the court held that a public university could not withhold

student organization benefits from a group based on its religious perspective. 515 U.S. at 845–46. The officially recognized student group in that case sought reimbursement from a student activity fund for the costs of printing its newspaper, which espoused Christian views. *Id.* at 826–27. The university affirmed the student government’s denial of funds to the group because the newspaper constituted a “religious activity,” and a university regulation prohibited such an activity from receiving reimbursement. *Id.* at 825–26. The court determined that, by its terms, the prohibition did not “exclude religion as a subject matter but select[ed] for disfavored treatment those student journalistic efforts with religious editorial viewpoints.” *Id.* at 831. Consequently, the prohibition, in its terms and application, amounted to viewpoint discrimination. *See id.* at 832, 837.

In contrast, the Supreme Court more recently upheld a public law school’s decision to refuse to grant official recognition to a religious group that sought an exception to the university’s nondiscrimination policy, which the parties stipulated was an “all-comers” policy. *Martinez*, 561 U.S. at 669. Under this policy, approved organizations had to “allow any student to participate, become a member, or seek leadership positions in the organization, regardless of . . . status or beliefs.” *Id.* at 671. The law school granted official recognition to student groups through a “Registered Student Organization” program, and official recognition came with additional benefits. *Id.* at 669. Members of a formerly-approved student group decided to become a charter student chapter of the Christian Legal Society (“CLS”). *Id.* at 672. To become an affiliate chapter, the group had to adopt bylaws requiring members to sign a “Statement of Faith” and agree to live their lives by certain principles. *Id.* Among those principles was “the belief that sexual activity should not occur outside of marriage between a man and a woman; CLS thus interpret[ed] its bylaws to exclude from affiliation anyone who engage[d] in ‘unrepentant homosexual conduct.’” *Id.* The school rejected CLS’s application for registered status for noncompliance with

the nondiscrimination policy because CLS “barred students based on religion and sexual orientation.” *Id.* at 672–73. CLS requested an exemption from the policy, which the school refused to grant. *Id.* at 673.

The Supreme Court applied the limited public forum analysis to the school’s policy and concluded that it was both reasonable and viewpoint neutral. *Id.* at 688–89, 695–97. On viewpoint neutrality, the court found it “hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept *all* comers.” *Id.* at 694. Comparing the policy to those at issue in prior cases, including *Rosenberger*, the court determined that, whereas those “universities singled out organizations for disfavored treatment because of their points of view, Hastings’ all-comers requirement draws no distinction between groups based on their message or perspective.” *Id.* The court concluded that “[a]n all-comers condition on access to RSO status, in short, is textbook viewpoint neutral.” *Id.* at 694–95.

BLinC attempts to distinguish the instant case from *Martinez* on the grounds that the University does not have an all-comers policy. *See* [ECF No. 82-2 ¶ 1]. This is a relevant distinction. *Martinez* is mostly notable for its determination that the all-comers policy at issue was a viewpoint-neutral regulation of speech. But because the University does not have an all-comers policy, *Martinez* does not resolve the viewpoint-neutrality question here.

BLinC argues the Human Rights Policy is not viewpoint neutral because the University does not apply it uniformly. Generally, the disparate application of a regulation governing speech can constitute viewpoint discrimination. “To sustain an as-applied challenge based on viewpoint discrimination, [a plaintiff] must establish a ‘pattern of unlawful favoritism’ by showing that she ‘was prevented from speaking while someone espousing another viewpoint was permitted to do so.’” *Phelps-Roper v. Ricketts*, 867 F.3d 883, 897 (8th Cir. 2017) (citations omitted). Consistent

with this principle, the United States Court of Appeals for the Seventh Circuit has found that a university likely committed viewpoint discrimination when it unevenly applied its nondiscrimination policy to revoke official recognition from a student group. *See Christian Legal Soc’y v. Walker*, 453 F.3d 853, 866 (7th Cir. 2006) (finding that a university likely engaged in viewpoint discrimination when the evidence showed that “[f]or whatever reason, [it] applied its antidiscrimination policy to [the plaintiff] alone, even though other student groups discriminate in their membership requirements on grounds that are prohibited by the policy”).

The United States Court of Appeals for the Ninth Circuit has addressed this issue more recently. In *Alpha Delta Chi-Delta Chapter v. Reed*, San Diego State University declined to grant official registration to several Christian student groups because their membership requirements violated the university’s nondiscrimination policy by requiring officers and members to profess to be Christians. 648 F.3d 790, 795–96 (9th Cir. 2011). The court determined that the nondiscrimination policy was reasonable in light of the purposes of the forum. *Id.* at 799. When evaluating whether the policy was viewpoint neutral, the court addressed the policy both as written and as applied. *Id.* at 800–04. In light of evidence that other student groups had membership requirements that appeared to violate the policy, the court reversed the district court’s entry of summary judgment in favor of the defendants and remanded the case. *Id.* at 804. The court noted it was “possible that these groups were approved inadvertently because of administrative oversight, or that these groups have, despite the language in their applications, agreed to abide by the nondiscrimination policy.” *Id.* However, the court found that “the record [did] not adequately explain why some official student groups at San Diego State appear[ed] to have membership requirements that violat[ed] the school’s nondiscrimination policy.” *Id.* The court thus remanded for consideration of whether “San Diego State has (1) exempted certain student groups from the



non-discrimination policy; and (2) declined to grant Plaintiffs such an exemption because of its religious viewpoint.” *Id.*

Defendants argue that, like in *Reed*, there remain two triable issues of fact: (1) whether “the differences in application of the [Human Rights Policy] were a mixture of administrative oversight and justified exceptions to the policy”; and (2) whether the University discriminated against BLinC based on its viewpoint. [ECF No. 81-1 at 19]. The Court disagrees and finds that both issues on which the Ninth Circuit remanded *Reed* are established here.

First, Defendants admit the University allows some RSOs “exceptions” to the Human Rights Policy “for compelling reasons which support the educational and social purposes of the forum.” [ECF No. 81-1 at 17]. There is no triable issue of fact as to that admission. Even if administrative oversight accounts for some groups’ violations of the Human Rights Policy, it does not diminish the legal significance of the fact that the University deliberately exempted other groups from the policy. Also, the University reviewed all RSO constitutions in 2018, and there remain groups that limit membership or leadership based on characteristics protected under the policy. Although facially neutral, the Human Rights Policy is not neutrally applied.

Second, the undisputed evidence shows BLinC was prevented from expressing its viewpoints on protected characteristics while other student groups “espousing another viewpoint [were] permitted to do so.” *Phelps-Roper*, 867 F.3d at 897. The University allows Love Works to limit leadership to individuals who share its religious beliefs on homosexuality. But BLinC may not. It allows groups, such as Hawkapellas and the Chinese Students and Scholars Association, to limit leadership based on protected traits in violation of the Human Rights Policy.

But BLinC may not. That is viewpoint discrimination.<sup>9</sup> The University allows groups to speak about religion, homosexuality, and other protected traits through their leadership criteria; but BLinC may not express its views on these subjects. “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger*, 515 U.S. at 829. That the University has determined some groups nevertheless further the University’s educational mission is irrelevant. Defendants’ justification for the University’s disparate treatment of BLinC goes to the question of whether Defendants can withstand strict scrutiny, not whether their actions were viewpoint neutral.<sup>10</sup>

## 2. Free exercise claims

BLinC argues Defendants violated its rights under the First Amendment’s Free Exercise Clause by targeting the group for its religious beliefs and, separately, singling out BLinC’s religious practices for censure based on a policy that is not “generally applicable.” Defendants disagree, arguing that the Human Rights Policy is a neutral law of general application permitted under the First Amendment.

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<sup>9</sup> To the extent the University has in fact suspended Love Works’ registered status pending the outcome of this litigation—a proposition that is not supported by the record—the Court finds the University’s viewpoint discrimination is established where Defendants acknowledge other groups can impose leadership restrictions based on characteristics protected under the Human Rights Policy.

<sup>10</sup> Defendants argue that their reliance on student complaints for enforcing the Human Rights Policy should not be viewed as a selective application of the policy. *See, e.g.*, [ECF No. 81-1 at 19–21]. They cite no authority supporting this proposition, and there is authority indicating this is legally irrelevant. *See Walker*, 453 F.3d at 866–67 (finding it irrelevant whether other student groups would comply with a nondiscrimination policy if threatened with nonrecognition, reasoning that the policy “which [the university] insists applies to all student organizations, is a standing threat of nonrecognition”). In any event, the Court finds this argument is factually irrelevant given the University’s 2018 review of RSO constitutions and Defendants’ admission that the University allows exceptions to the Human Rights Policy. The latter especially evidences the University’s selective application of the policy.

As a threshold matter, the Court finds BLinC's free exercise claims merge. BLinC contends the University targeted the group by enforcing the Human Rights Policy in a manner inconsistent with University policies and its approach to other RSOs. *See* [ECF No. 1 ¶¶ 169–72, 176]. BLinC's "not generally applicable" claim states this another way. In that claim, BLinC argues the University does not apply the Human Rights Policy to favored RSOs; thus, the University violated the Free Exercise Clause when it selectively applied the policy to BLinC. As discussed in more detail below, laws that burden religious activity, and that are not neutral or generally applicable, can violate the First Amendment because their discretionary application involves a negative judgment on religious activity. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537–38 (1993). This is ultimately BLinC's targeting claim: the University's actions—deregistering BLinC by selectively enforcing the Human Rights Policy—reflected "animus" (i.e., a negative judgment) toward BLinC's religious beliefs. Thus, the Court finds the "not generally applicable" precedents offer the appropriate framework for assessing both of BLinC's free exercise claims.<sup>11</sup>

Under the First Amendment's Free Exercise Clause, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Free Exercise Clause clearly protects a citizen's right to his or her own religious beliefs. *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) ("The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.").

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<sup>11</sup> In support of its targeting claim, BLinC quotes *Trinity Lutheran Church of Columbia, Inc. v. Comer*, for the proposition that "a law targeting religious beliefs as such is never permissible." 137 S. Ct. 2012, 2024 n.4 (2017) (citation omitted). The Human Rights Policy does not "target[] religious beliefs as such." Hence, it is more appropriate to determine whether Defendants took a negative view of BLinC's religious beliefs through its uneven application of the Human Rights Policy.

Under this clause, the “[g]overnment may neither compel affirmation of a repugnant belief . . . nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities.” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (citations omitted). However, the Free Exercise Clause does not shield every act that may be infected with religiosity from government regulation. *See Smith*, 494 U.S. at 878–79 (“We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.”).

To this end, the Supreme Court has refused to interpret the Free Exercise Clause “to require exemptions from a generally applicable criminal law.” *Id.* Consequently, “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’” *Id.* at 879 (citation omitted). Laws that are not neutral and generally applicable require heightened scrutiny and “must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.” *Lukumi*, 508 U.S. at 531–32.

In *Lukumi*, the Supreme Court considered the neutrality of several municipal ordinances regulating the slaughter of animals. One of the ordinances at issue prescribed punishments for “[w]hoever . . . unnecessarily . . . kills any animal.” *Id.* at 537 (alteration in original). The court rejected the defendant’s argument that the “ordinance is the epitome of a neutral prohibition.” *Id.* In determining that the ordinance was not neutral, the court held:

[B]ecause it requires an evaluation of the particular justification for the killing, this ordinance represents a system of “individualized governmental assessment of the reasons for the relevant conduct,” . . . . As we noted in *Smith*, in circumstances in which individualized exemptions from a general requirement are available, the government “may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” Respondent’s application of the ordinance’s test of necessity devalues religious

reasons for killing by judging them to be of lesser import than nonreligious reasons. Thus, religious practice is being singled out for discriminatory treatment.

*Id.* at 537–38 (citations omitted).

Lower courts have used *Lukumi*'s consideration of “individualized exemptions” as a basis to trigger heightened scrutiny when the government grants secular, but not religious, exemptions from an otherwise neutral and generally applicable rule. Notably, the United States Court of Appeals for the Third Circuit found a Free Exercise Clause violation in a case involving a police department's policy that prohibited officers from wearing beards. *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999). The purpose of the policy was to foster a uniform appearance. *See id.* at 366. The department denied two Sunni Muslims exemptions from the policy for their religious beliefs, even though medical exemptions were permitted under the policy. *See id.* at 360–61.

Relying on *Smith* and *Lukumi*, the Third Circuit held that “the Department's decision to provide medical exemptions while refusing religious exemptions is sufficiently suggestive of discriminatory intent so as to trigger heightened scrutiny.” *Id.* at 365. The court found that the medical exemption undermined the police department's stated interest in uniformity, and thus it “raises concern because it indicates that the Department has made a value judgment that secular (i.e., medical) motivations for wearing a beard are important enough to overcome its general interest in uniformity but that religious motivations are not.” *Id.* at 366. The court concluded by stating, “when the government makes a value judgment in favor of secular motivations, but not religious motivations, the government's actions must survive heightened scrutiny.” *Id.*

Within this circuit, the United States District Court for the District of Nebraska found that a university violated the Free Exercise Clause when it granted secular exemptions to a rule

requiring freshman to live on campus, but denied a similar exemption requested by a student wishing to live off campus in a religious group home. *Rader v. Johnston*, 924 F. Supp. 1540 (D. Neb. 1996). Relying on *Smith* and *Lukumi*, the court found that “[t]he defendants . . . have created a system of ‘individualized government assessment’ of the students’ requests for exemptions, but have refused to extend exceptions to freshmen who wish to live [off campus] for religious reasons.” *Id.* at 1552 (quoting *Smith*, 494 U.S. at 884). The court found the requirement was not generally applicable and subsequently applied strict scrutiny. *See id.* at 1552, 1555–56.

These precedents show that, whether viewed as a breach of neutrality or general application, strict scrutiny applies when: (1) the government declines to grant religious exemptions to facially neutral rules for which secular exemptions are permitted; and (2) the circumstances indicate the government did so based on its judgment of the religious values in question. Applying these principles, the University’s decision to de-register BLinC is subject to strict scrutiny.

Here, by Defendants’ own admission, the University grants student groups secular exceptions to the Human Rights Policy. Further, the University’s purported reasons for doing so necessitate the type of value judgment that carries heightened scrutiny. Defendants assert that the University grants exceptions to the Human Rights Policy for reasons that “support the University’s educational mission” or the “educational and social purposes of the forum.” [ECF No. 81-1 at 17–18]. In declining to grant BLinC an exception for its sincerely held religious beliefs, the University has made a value judgment that BLinC’s beliefs do not support those purposes. Moreover, the exceptions the University does grant undermine the purposes of the forum. Defendants cite many such purposes, including allowing students to associate based on shared beliefs and to organize with like-minded students; ensuring academic growth and access to educational opportunities; and ensuring a safe environment in which to do so. *See id.* at 23–24.

Allowing student groups to restrict leadership or membership based on gender, race, or any protected characteristic does nothing to ensure access to educational opportunities and erodes the safety of the environment for students whose status or views are rejected. This is not to say that the University has violated BLinC's free exercise rights *per se*, but to pass constitutional muster, the University's actions must withstand strict scrutiny.<sup>12</sup>

### 3. Strict scrutiny

To withstand BLinC's viewpoint discrimination, expressive association, and free exercise claims, Defendants must show that the University's decision to revoke BLinC's RSO status "is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Widmar v. Vincent*, 454 U.S. 263, 270 (1981); *see also Lukumi*, 508 U.S. at 531–32.

Defendants never present in their briefs a position on strict scrutiny. However, in the context of BLinC's free speech claims, they argue the Human Rights Policy is reasonable in light of the purposes of the forum. These are different issues, but Defendants' discussion of the relevant policies and their motivations can nevertheless aid the Court in its strict scrutiny analysis.

Defendants assert that student organizations at the University "play an important role in developing student leadership and providing a quality campus environment." [ECF

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<sup>12</sup> In addition to free speech challenges, both the *Martinez* and *Reed* courts considered free exercise challenges to the defendants' nondiscrimination policies. In *Martinez*, the Supreme Court rejected this argument in a footnote. 561 U.S. at 697 n. 27. The court reasoned, "the Free Exercise Clause does not inhibit enforcement of otherwise valid regulations of general application that incidentally burden religious conduct." *Id.* (citation omitted). The court found that, by seeking an exemption from the university's neutral all-comers policy, CLS sought "preferential, not equal, treatment" to which they were not entitled under the Free Exercise Clause. *Id.* In *Reed*, much like its analysis of the plaintiff's free speech claims, the court observed that the nondiscrimination policy was neutral on its face, but because evidence suggested the university granted other groups exemptions to the policy, there remained a factual dispute as to whether the plaintiff was denied an exemption because of its religious beliefs. *See* 648 F.3d at 804–05. Because the record here shows the University unevenly applied the Human Rights Policy, *Martinez* and *Reed* do not contradict the Court's findings as to BLinC's free exercise claims.

No. 81-1 at 23]. As discussed above, Defendants also claim that student groups “[e]nsur[e] academic growth . . . access to educational opportunities, and a safe environment in which to do so.” *Id.* at 24. More broadly, through the Human Rights Policy itself, the University “strives to promote diversity and to ensure that all students are granted equal access to educational opportunities within the forum.” *Id.* As the Court previously observed:

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

[ECF No. 36 at 21].

These are compelling interests that the University is entitled to pursue. However, “[w]here the government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.” *Lukumi*, 508 U.S. at 546–47. The Court sees no appreciable difference in the potential harms caused by BLinC and those caused by the various RSOs that are permitted to limit leadership or membership based on protected characteristics. Those other groups also hinder diversity and equal access to educational opportunities. The University asserts that some such groups promote other goals, such as providing “safe spaces for minorities which have historically been the victims of discrimination.” [ECF No. 81-1 at 18]. Although this goal is important to the University’s educational mission, *Lukumi* trains the Court’s focus on the comparative harms, not benefits, caused by BLinC and student groups that violate the Human Rights Policy.

The Court is also not convinced that revoking BLinC’s registration was narrowly tailored to promote the University’s stated interests in its RSO program and Human Rights Policy. Rather



than burden BLinC's constitutional rights, the University could, for example, neutrally and consistently apply its Human Rights Policy. Similarly, it could adopt an "all-comers" policy, a change which would dramatically promote its goals of diversity and equal access to academic opportunity.

Defendants have failed to satisfy their strict scrutiny burden. Accordingly, Defendants have violated BLinC's First Amendment rights to free speech, expressive association, and free exercise of religion. The Court therefore GRANTS BLinC's Motion for Summary Judgment as to Counts III–IV, and Counts VI–VIII.

### *B. Religion Clauses Claims*

In Counts I and II, BLinC asserts additional claims against Defendants for violating their rights under the First Amendment's Religion Clauses. These claims are titled "Ministerial Exception" and "Internal Autonomy," respectively. [ECF No. 1 at ¶¶ 149–65]. Despite the differing labels, both claims allege Defendants interfered with the group's selection of its leaders by threatening to revoke its RSO status unless it revised its Statement of Faith. *See id.* ¶¶ 155, 164. In its brief, BLinC does not distinguish between the two claims, arguing only that the alleged interference violates the group's rights under the First Amendment's "ministerial exception." *See* [ECF No. 74 at 45–48]. The Court will thus consider both claims together for the purpose BLinC's motion.

BLinC argues the First Amendment's Religion Clauses prevent government interference with a religious organization's leadership selection. In support of this proposition, BLinC relies on *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), and other cases involving internal disputes within religious organizations.

In *Hosanna-Tabor*, a minister/teacher at a religious school was terminated from her employment after she was diagnosed with narcolepsy. *See id.* at 178–79. The minister filed a claim with the EEOC alleging a violation of the Americans with Disabilities Act. *Id.* at 179. The EEOC subsequently sued the church. *Id.* at 180. On appeal, the Supreme Court adopted the “ministerial exception” to employment discrimination statutes and determined that “the existence of a ‘ministerial exception,’ grounded in the First Amendment . . . precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers.” *Id.* at 188. The court further stated:

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Cause, which prohibits government involvement in such ecclesiastical decisions.

*Id.* at 188–89. However, the Supreme Court limited the effect of its ruling:

The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church’s decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.

*Id.* at 196.

BLinC’s claim is distinguishable from the minister/teacher’s claim in *Hosanna-Tabor* because it does not arise from a live internal dispute within the group. By the time the University issued its ultimatum regarding BLinC’s Statement of Faith, the parties had moved on from Miller’s complaint to BLinC’s future compliance with the Human Rights Policy. *See* [ECF

No. 82-2 ¶ 198]. In other words, BLinC does not ask the Court to resolve a dispute between the group and Miller; it asks the Court to resolve a dispute between the group and the University. Additionally, *Hosanna-Tabor* did not involve conditions on receiving public benefits, nor did it involve a limited public forum. More fundamentally, the ministerial exception has traditionally been used as a defense to claims asserted against a religious organization, not as its own cause of action. See, e.g., *Hosanna-Tabor*, 565 U.S. at 177–79; *Scharon v. St. Luke’s Episcopal Presbyterian Hosps.*, 929 F.2d 360, 361 (8th Cir. 1991); *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 117–18 (3d Cir. 2018); *Penn v. N.Y. Methodist Hospital*, 884 F.3d 416, 418 (2d Cir. 2018). This is not surprising. The ministerial exception is concerned with disentangling the government from a religious organization’s internal governance disputes; when the government burdens a religious organization’s free exercise rights outside of this context, *Lukumi* and similar cases provide the appropriate framework to determine if the government has violated the First Amendment.

BLinC does not cite any cases that apply the ministerial exception in the manner it seeks here. Given the Supreme Court’s efforts in *Hosanna-Tabor* to constrain the reach of its holding, the Court declines to extend it to the University’s actions in this matter. The Court therefore DENIES BLinC’s Motion for Summary Judgment as to Counts I and II.

### *C. Permanent Injunction and Nominal Damages*

BLinC seeks nominal damages and a permanent injunction “prohibiting enforcement of the University’s Human Rights Policy against BLinC based on the content of BLinC’s Statement of Faith and leadership selection policies.” [ECF No. 71 at 3]. Having established a free speech violation, BLinC is entitled to nominal damages as a matter of law. See *Lowry ex rel. Crow v.*

*Watson Chapel Sch. Dist.*, 540 F.3d 752, 762 (8th Cir. 2008) (“[N]ominal damages must be awarded when a plaintiff establishes a violation of the right to free speech.”).

Turning to BLinC’s request for a permanent injunction, “[c]onsideration of a permanent injunction involves essentially the same factors as for a preliminary injunction.” *Gerlich v. Leath*, 152 F. Supp. 3d 1152, 1181 (S.D. Iowa 2016). The Court thus considers: (1) whether BLinC has shown success on the merits of its claims; (2) the threat of irreparable harm to BLinC in the absence of an injunction; (3) the balance of harms between BLinC and Defendants; and (4) whether the injunction will serve the public interest. *See id.* (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir.1981) (en banc)).

As set out above, BLinC has demonstrated success on the merits of its claims. As to the second *Dataphase* factor, the United States Court of Appeals for the Eighth Circuit has held that “[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably construes irreparable injury.” *Powell v. Noble*, 798 F.3d 690, 702 (8th Cir. 2015) (alteration in original) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, the second factor also weighs in favor of granting a permanent injunction. The Court also finds that the third factor, the balance of harms, favors BLinC. Whereas BLinC’s injury is irreparable, any injury the injunction causes the University would be less severe, given that the University allows other RSOs to operate in violation of the Human Rights Policy. Finally, “it is axiomatic that protection of First Amendment rights serves the public interest.” *Gerlich*, 152 F. Supp. 3d at 1181. Thus, the fourth factor also favors granting an injunction.

Because all four *Dataphase* factors weigh in BLinC’s favor, the Court finds BLinC is entitled to a permanent injunction. The Court will prohibit Defendants from enforcing the Human Rights Policy against BLinC based on the content of BLinC’s Statement of Faith and leadership

selection policies, provided: (1) BLinC does not materially alter its Statement of Faith or leadership selection policies from those submitted to the University in response to Nelson's September 13, 2017 letter; (2) the University continues to allow other RSOs exceptions to the Human Rights Policy for their membership or leadership criteria; and (3) BLinC otherwise maintains its eligibility for RSO status.<sup>13</sup> The injunction is appropriate, in part, because Defendants have admitted that BLinC's Statement of Faith and leadership selection policies do not discriminate based on status. *See* [ECF No. 82-2 ¶ 135]. Thus, they do not, on their own, violate the Human Rights Policy. Additionally, the Court stresses the importance of the second qualification—the injunction does not grant BLinC a special exemption if the University applies the Human Rights Policy in a manner permitted by the Constitution.

#### *D. Qualified Immunity*

Individual Defendants Redington, Baker, and Nelson seek summary judgment under the doctrine of qualified immunity.<sup>14</sup> “The doctrine . . . protects government officials ‘from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). Thus, the Court must determine: “(1) whether the facts shown by the plaintiff make out a violation of a constitutional or statutory right, and (2) whether that right was clearly established at the time of the defendant's alleged misconduct.” *Foster v. Mo. Dep't of Health & Sr. Servs.*, 736 F.3d 759, 762 (8th Cir. 2013).

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<sup>13</sup> Of course, the University may not discriminate against BLinC by deviating from its normal procedures for enforcing its eligibility requirements.

<sup>14</sup> BLinC argues the individual Defendants seek summary judgment on only BLinC's free speech and expressive association claims. *See* [ECF No. 84 at 16 n.1]. The Court disagrees. The individual Defendants ask the Court to “dismiss them in their individual capacities,” implying that they seek summary judgment on all of BLinC's claims. [ECF No. 70-1 at 2].

The Court has found BLinC cannot establish a constitutional violation under its Religion Clauses claims. However, Defendants have violated Plaintiff's constitutional rights to free speech, expressive association, and free exercise of religion. Thus, as to those claims, the Court focuses on the second qualified immunity factor—whether the constitutional rights were “clearly established.” The Supreme Court recently summarized:

Qualified immunity attaches when an official's conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” While this Court's case law “do[es] not require a case directly on point” for a right to be clearly established, “existing precedent must have placed the statutory or constitutional question beyond debate.” In other words, immunity protects “all but the plainly incompetent or those who knowingly violate the law.”

*White v. Pauly*, 137 S. Ct. 548, 551 (2017) (per curiam) (alteration in original) (citations omitted).

“[Q]ualified immunity is important to society as a whole.” *Id.* at 551 (internal quotation marks omitted). The “social costs” of claims against public officials “include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office.” *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). The Supreme Court has cautioned of the “danger that fear of being sued will ‘dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties.’” *Id.* (alteration in original) (citation omitted).

Consequently, the “‘clearly established law’ should not be defined ‘at a high level of generality’” and “must be ‘particularized’ to the facts of the case.” *White*, 137 S. Ct. at 552 (citations omitted). “Otherwise, ‘[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.’” *Id.* (alteration in original) (citations omitted). Thus, in *White*, the Supreme Court overturned the denial of qualified immunity when the circuit court “failed to identify a case where

an officer acting under similar circumstances as [the defendant]” was found to have violated the Constitution, relying instead on cases laying out the relevant legal principles “at only a general level.” *Id.*

Defendants correctly recognize that the viability of their qualified immunity claim depends on how the constitutional issue is framed. They offer the following:

The question before the court is whether clearly established law exists which sets forth the course a University official should take in protecting the First Amendment and civil rights of protected groups when those rights come into direct conflict with one another, such that the official could be said to be reasonably apprised of the law at the time of the alleged violations. More specifically: does a university’s requirement that a student group adhere to its nondiscrimination and equal opportunity policies in order to receive state funding, recognition, and other peripheral benefits, violate that group’s First Amendment Rights when that group’s sincerely held religious beliefs are in direct conflict with state and federal civil rights law?

[ECF No. 70-1 at 4]. The Court agrees with this, in part. In offering benefits to RSOs, the University created a limited public forum. The law is clear that a state actor may impose conditions on the use of a limited public forum, provided those restrictions are reasonably related to the purposes of the forum and are viewpoint neutral. *Martinez*, 561 U.S. at 685. As applied to the official recognition of student groups by a university, numerous courts have found that nondiscrimination policies are reasonable in light of the purposes of the forum. *See id.* at 690; *Reed*, 648 F.3d at 799. There are no authorities of which the Court is aware that clearly establish the illegality of applying a viewpoint-neutral nondiscrimination policy to restrict the leadership selection of a religious student group.

But the University does not apply the Human Rights Policy in a viewpoint-neutral manner. It applies the policy selectively, and it allows exceptions to the policy for groups that further the University’s educational mission and the purposes of the forum. Thus, the key issue is whether it

was clearly established that such disparate application of a nondiscrimination policy violates a student group's free speech and free exercise rights. That the selective application of a rule or policy can violate the First Amendment has been established for some time. *See Lukumi*, 508 U.S. at 537–38; *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 325 (2002) (“Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional. . . .”). However, the Court must consider the law with regards to the particular facts of this case, namely the nature of the policy at issue and the university setting.

There are elements of nondiscrimination laws and the university setting that could be viewed as complicating this case. For example, nondiscrimination laws “plainly serve[] compelling state interests of the highest order.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984). Such laws generally do not violate the First Amendment because they target discrimination rather than protected speech. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 571–72 (1995). Additionally, in a university setting, “First Amendment rights . . . must be analyzed in light of the special characteristics of the school environment.” *Martinez*, 561 U.S. at 685–86 (citation omitted). “A college’s commission—and its concomitant license to choose among pedagogical approaches—is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process.” *Id.* at 686. Thus, schools “enjoy ‘a significant measure of authority over the type of officially recognized activities in which their students participate.’” *Id.* at 686–87 (citation omitted).

However, the First Amendment’s restrictions on viewpoint discrimination apply to a limited public forum established by a university. *See Gerlich*, 861 F.3d at 709. This is true even when the viewpoint implicates a nondiscrimination policy—“[w]hile the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better



reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.” *Hurley*, 515 U.S. at 579. It is also clear that a university may not illegally burden a student’s free exercise rights. *See Rader*, 924 F. Supp. at 1558.

But these authorities still only set out the general legal principles applicable to this case. At the same time, the cases that are factually most like this matter fail to offer clear conclusions as to the selective application of a nondiscrimination policy. *Martinez* found no liability against the university or its officers. The court emphasized the importance of the policy’s neutrality but did not specifically address how a more selective application of the policy would impact its decision. *See Martinez*, 561 U.S. at 694–95. *Reed* is certainly relevant, but on remand, the parties voluntarily dismissed the case and never reached the issue of why certain groups appeared to be exempted from the university’s nondiscrimination policy. *See Joint Mot. to Dismiss, Alpha Delta Chi-Delta Chapter v. Reed*, 3:05-CV-02186-LAB-WMC (S.D. Cal. March 19, 2013), ECF No. 143. The Seventh Circuit likely sent the strongest message on this issue in *Walker*, but the court was only considering the district court’s denial of a preliminary injunction. *See* 453 F.3d at 858–59. Given the lack of factual record in that case, it is difficult to view *Walker* as clearly establishing the constitutional issues here. Each of these cases also involved free exercise claims, but they were either rejected or left unresolved. *See Martinez*, 561 U.S. at 697 n.27 (rejecting free exercise claim); *Reed*, 648 F.3d at 805–06 (finding factual issue remained as to whether school discriminated against student group based on religious views); *Walker*, 453 F.3d at 860 n.1 (declining to address the plaintiff’s free exercise claim).

Defendants could be forgiven for focusing on *Martinez*, *Reed*, and *Walker*, given their factual similarities to this dispute. Further, despite indications on the issue, those cases left

unresolved how a selective application of the policies in question would impact the respective plaintiffs' constitutional rights (both free speech and free exercise). After all, for example, the Court reached its decision on BLinC's free speech and expressive association claims by applying broader First Amendment principles to fill in the gaps left by *Martinez*, *Reed*, and *Walker*.

In these circumstances, the Court cannot say the constitutional issues were established "beyond debate." Certainly, the individual Defendants should have been aware that their actions implicated BLinC's First Amendment rights; and, indeed, the record shows that they were. *See, e.g.*, [ECF No. 71-4 at 131] (Redington indicating that she had discussions with University counsel over BLinC's revised Statement of Faith); [ECF No. 71-3 at 53–54] (Nelson indicating that he had discussions with Redington and others over whether they were correctly applying the Human Rights Policy). But the law was not so clear that only a state official who was "plainly incompetent" or "knowingly violate[d] the law" could commit the constitutional violations at issue here. *White*, 137 S. Ct. at 551 (citation omitted).

This is a close call. The Court is also mindful that the parties have described this case as "unusual" and "difficult." [ECF Nos. 74 at 8; 81-1 at 5]. The Supreme Court's recent holdings on qualified immunity signal that the defense should only be denied in the absence of such uncertainty. Accordingly, the Court GRANTS the individual Defendants' Motion for Partial Summary Judgment as to BLinC's free speech, expressive association, free exercise, and Religion Clauses claims (Counts I–IV, VI–VIII). However, this only applies to the extent Plaintiffs seek money damages. Qualified immunity does not apply to claims for injunctive relief. *Mead v. Palmer*, 794 F.3d 932, 937 (8th Cir. 2015). Additionally, Defendants have offered no argument as to BLinC's remaining claims. Thus, to the extent the individual Defendants seek qualified immunity as to those claims, the motion is DENIED.

#### IV. CONCLUSION

The Court suspects that some observers will portray this case as a fundamental conflict between nondiscrimination laws and religious liberty. Appealing as that may be, it overinflates the issues before the Court. The Human Rights Policy promotes valuable goals for both the University and society at large. There is no fault to be found with the policy itself. But the Constitution does not tolerate the way Defendants chose to enforce the Human Rights Policy. Particularly when free speech is involved, the uneven application of any policy risks the most exacting standard of judicial scrutiny, which Defendants have failed to withstand.

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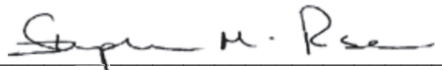
For the reasons set out in this Order:

- (1) The individual Defendants' Motion for Partial Summary Judgment, [ECF No. 70], is GRANTED as to Counts I–IV and Counts VI–VIII. It is DENIED as to all other counts.
- (2) BLinC's Motion for Summary Judgment, [ECF No. 71], is GRANTED as to Counts III–IV and Counts VI–VIII. It is DENIED as to Counts I and II.
- (3) The University must pay BLinC nominal damages in the amount of \$1.
- (4) As discussed *supra*, Defendants are prohibited from enforcing the Human Rights Policy against BLinC based on the content of BLinC's Statement of Faith and leadership selection policies, provided: (1) BLinC does not materially alter its Statement of Faith or leadership selection policies from those submitted to the University in response to Nelson's September 13, 2017 letter; (2) the University continues to allow other RSOs exceptions to the Human Rights Policy for their membership or leadership criteria; and (3) BLinC otherwise maintains its eligibility for RSO status.

The Court will confer with the parties as to BLinC's remaining claims.

IT IS SO ORDERED.

Dated this 6th day of February, 2019.

  
STEPHANIE M. ROSE, JUDGE  
UNITED STATES DISTRICT COURT

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

- - - - -X  
 BUSINESS LEADERS IN CHRIST, :  
 an unincorporated association, :  
 :  
 Plaintiff, :  
 :  
 vs. : Case No. 3:17-cv-00080  
 :  
 THE UNIVERSITY OF IOWA; :  
 LYN REDINGTON, in her official :  
 capacity as Dean of Students :  
 and in her individual capacity; :  
 THOMAS R. BAKER, in his official :  
 capacity as Assistant Dean of :  
 Students and in his individual :  
 capacity; and WILLIAM R. NELSON, :  
 in his official capacity as :  
 Executive Director, Iowa :  
 Memorial Union, and in his :  
 individual capacity, : HEARING TRANSCRIPT  
 :  
 Defendants. :  
 - - - - -X

Judge's Chambers, First Floor  
 U.S. Courthouse  
 123 East Walnut Street  
 Des Moines, Iowa  
 Friday, February 1, 2019  
 3:00 p.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Judge.

KELLI M. MULCAHY, CSR, RDR, CRR  
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P R O C E E D I N G S

(In chambers, with counsel present via telephone.)

THE COURT: Okay. I think that is everybody we should be expecting. So on the line I have Mr. Blomberg and Mr. Baxter and Jacob Estell on behalf of BLinC, and I have Mr. Carroll on behalf of the University of Iowa.

Is anybody else on the line?

Okay. We are here today for purposes of oral argument on the parties' cross-motions for summary judgment. Both parties are seeking summary judgment in this particular case.

Prior to the hearing, we sent to the parties a list of questions I would like the parties to address and advised the parties that I would give each side 30 minutes to make their arguments, which can be apportioned however the parties choose to apportion that time. For each motion, the movant's going to go first, and they can reserve any portion of their 30 minutes to respond to the other side.

So in this particular case, Mr. Blomberg or Mr. Baxter on behalf of BLinC, would you like to make your argument?

MR. BAXTER: Thank you, Your Honor. This is Eric Baxter on behalf of Business Leaders In Christ, and I would like to reserve about three minutes for rebuttal.

May it please the Court. Your Honor, the University has admitted everything that this Court needs to find viewpoint discrimination in violation of the free speech clause and

1 religious targeting in violation of the free exercise clause.

2       It has admitted that religious organizations are not  
3 permitted to require or even encourage their leaders to share  
4 the group's faith, and they have admitted that other  
5 organizations who are formed around beliefs or activities that  
6 touch on protected categories under the human rights policy are  
7 allowed to restrict leadership and membership, as are  
8 nonreligious ideological organizations; feminist groups,  
9 pro-life groups, political groups. They're also allowed to  
10 restrict leadership and membership based on their organization's  
11 beliefs or mission. Such disparate treatment of religious  
12 organizations triggers a strict scrutiny which the University  
13 cannot satisfy here.

14       I'd like to address these issues in that order; first the  
15 free exercise -- or the free speech violation, then the free  
16 exercise violation, and, finally, why strict scrutiny is not  
17 satisfied.

18       Under the free speech clause, *Martinez* is clear that the  
19 minimum requirement in the limited public forum is that the  
20 government cannot engage in viewpoint discrimination, and the  
21 Eighth Circuit, as recently as in the *Gerlich* case in 2017, has  
22 reemphasized this requirement.

23       There are three -- at least three ways that the University  
24 is clearly engaging in viewpoint discrimination. The first  
25 involves the organization Love Works, which is a religious

1 organization with views on marriage and sexuality exactly  
2 opposite those of BLinC. It requires its leaders to sign a  
3 statement of core Christian beliefs and that they will affirm  
4 LGBTQ individuals in their Christian pursuit.

5 BLinC was deregistered for having leaders affirm beliefs  
6 exactly contrary to that, and Love Works has not been  
7 derecognized. There is no more direct example of viewpoint  
8 discrimination for that.

9 (Interruption from the operator.)

10 MR. BLOMBERG: In addition to Love Works, other groups  
11 are allowed to encourage or require their leaders to embrace the  
12 group's mission, both based on protected categories. For  
13 example, men's and women's a cappella groups, club sports teams,  
14 military sports -- support groups are all allowed to select  
15 leaders based on categories that are covered by the human rights  
16 policy, as are nonreligious ideological groups like the Iowa  
17 National Lawyers Guild, which embraces democratic socialist  
18 views; the Latino/Latina Graduate Student Association; and other  
19 groups are all allowed to select their leaders and members based  
20 on their mission.

21 All of these groups have messages that they are trying to  
22 convey, and who they select as leaders impacts that message. By  
23 exempting from the human rights policy or not putting them  
24 subject to it in the first place, the University is enhancing  
25 the messages of these groups while suppressing the message of



1 religious organizations.

2       Finally, there is extensive direct evidence that the  
3 University is engaging in viewpoint discrimination, starting  
4 with the statements by Dr. Nelson and Dean Baker that if BLinC  
5 would just delete its beliefs about marriage and sexuality, it  
6 would have granted or allowed them to remain on campus, down to  
7 the most recent filings by the University in the related case,  
8 the IVCF case, where the University -- I'm sorry -- in this case  
9 in the motion for summary judgment and as opposition to our  
10 motion for summary judgment where the University accused BLinC  
11 of desiring a special dispensation which would allow it to  
12 perpetuate discriminatory behavior toward gays and lesbians;  
13 that it wants, quote, religious groups to get a path to  
14 discriminate against their peers; that it openly discriminates;  
15 that the people of Iowa disapprove of the way it selects its  
16 leaders; and that BLinC has a desire to participate in illegal  
17 discrimination.

18       All of this is after BLinC has clearly expressed what the  
19 Supreme Court in *Obergefell* and *Masterpiece* recognized as decent  
20 and honorable religious beliefs that are protected forms of  
21 expression.

22       In *Masterpiece* the court held that even slight suspicion  
23 that the government is acting from animosity towards these  
24 beliefs is enough to trigger strict scrutiny, and here we have  
25 clear and direct statements from the University from the

1 beginning to the end of this case that it is targeting BLinC  
2 because of its beliefs on marriage and sexuality. Strict  
3 scrutiny is thus triggered under the free speech clause.

4 Excuse me.

5 Strict scrutiny is also triggered under the free exercise  
6 clause. *Lukumi versus City of Hialeah* teaches us that unless  
7 the law is neutral and generally applicable, it is subject to  
8 strict scrutiny. The minimum requirement is that a law not be  
9 or action be not discriminatory on its face, but even subtle  
10 departures from neutrality and covert suppression of religious  
11 beliefs will trigger strict scrutiny.

12 In *Lukumi*, for example, the statute was facially neutral,  
13 but the restrictions were so gerrymandered that only religious  
14 conduct was subject to restriction, and we have the exact same  
15 thing here.

16 For a law to be generally applicable, the government cannot  
17 exempt some groups for secular reasons and then deny an  
18 exemption to groups who need it for religious reasons. There  
19 are several ways that that is happening in this case.

20 The University is not equally enforcing the policy. As  
21 previously mentioned, groups like Love Works, a cappella groups,  
22 veterans' groups all get a one-off exemption while religious  
23 groups are denied it. It's also passed a categorical exemption  
24 under Title IX for fraternities and sports groups.

25 And there are many other belief-based groups that aren't

1 covered by the policy at all. In fact, the policy prohibits  
2 discrimination on the basis of creed, which Cervantes, who was  
3 the 30(b)(6) witness -- one of the two 30(b)(6) witnesses for  
4 the University in addressing the policy, agreed that creed  
5 covers non -- you know, religious and non-religious deeply held  
6 philosophies, and yet the University in its latest statements  
7 has said that it has made no effort to consider what creed means  
8 or what its impact would be on political and other ideological  
9 groups. So the policy is clearly not being enforced or applied  
10 in a generally applicable way.

11 Second, neutrality, even worse than *Lukumi*, this policy is  
12 not neutral on its face because it explicitly names religion as  
13 a restricted category. *Trinity Lutheran*, the Supreme Court's  
14 recent decision, makes clear that when the Government opens up a  
15 program to the public generally, or a subset of the public, it  
16 cannot exclude or restrict people or individuals or groups based  
17 on their religious status. And that's how the University is  
18 construing its prohibition against religious discrimination, as  
19 a restriction against religious organizations.

20 In addition to the -- it's also not neutral on its face  
21 because there are specific exemptions; for example, the Title IX  
22 exemption. Even though Title IX also includes a religious  
23 exemption, the University is applying the Title IX exemptions  
24 only to fraternities, sororities, and sports groups and not  
25 applying the religious exemptions to religious groups.

1       There is also an overwhelming amount of evidence that the  
2 University is targeting religion. From the very commencement of  
3 the case, the investigation against Business Leaders In Christ  
4 was biased. It started with a meeting. This is at Statement of  
5 Fact, all admitted statements, 169, our Statement of Fact 169, a  
6 meeting between Cervantes, the investigator, and Dean Baker, who  
7 said that he wanted there to be an all-comers policy but not in  
8 the pure sense, and then fraternities and sororities, suggesting  
9 that he intended to protect them.

10       A meeting the same day with Dr. Nelson, who was the main  
11 decision-maker, said it was important to protect groups like  
12 glee clubs, Women in Engineering, and Black Student Union, and  
13 but no mention of the importance of religious groups.

14       Cervantes' investigation itself was biased. She admitted,  
15 and this is at Statement of Fact 283 and '84, that it was okay  
16 to have conduct requirements, including the religious groups  
17 could exclude members who engaged in sexual activity outside of  
18 marriage between a man and a woman.

19       She admitted that Hannah Thompson, the then president of  
20 BLinC, said that it was because of the Biblical beliefs that  
21 Marcus Miller was denied a leadership position, and she  
22 admitted, Cervantes admitted, that her notes backed that up.

23       She admitted in Statement of Fact 296 that she had no  
24 reason to think that Hannah was lying, and yet she insisted that  
25 Hannah had told her that it was only because Marcus Miller was

1 gay that he was not given a leadership position, all of this  
2 while at the same time she was searching the Internet for  
3 articles and placing them in her file, articles about the Bible  
4 being sexist and racist.

5       Next, BLinC was asked to meet with University officials,  
6 told them about their religious beliefs -- or were told that  
7 would be okay, asked if they would just add in a statement of  
8 their beliefs into their constitution so that people would know  
9 and be aware of them. And yet once they did that, Dr. Nelson  
10 and Dean Baker turned around and told them that they had to  
11 delete their statement of faith because it was discriminatory on  
12 its face; that if they would have deleted those three statements  
13 that they had added, among others, the statements about marriage  
14 and sexuality, that they would be allowed to remain on campus.

15       They ignored the 20-plus years of history. There was a  
16 1999 memo, a 2004 memo, a 2009 memo that at the time of the  
17 investigation Dean Baker testified were all still current that  
18 explicitly state in exact same circumstances that religious  
19 organizations have the right to express their beliefs, including  
20 beliefs about marriage and sexuality, and to require their  
21 leaders and members to sign a statement of faith affirming that  
22 they agree with and will strive to live by those beliefs. They  
23 ignored all of those to target BLinC because of its religious  
24 beliefs.

25       After this Court entered its preliminary -- its first

1 preliminary injunction, the University ordered investigation and  
2 started by reviewing all of the religious student groups,  
3 pulling from their constitutions beliefs about marriage and  
4 sexuality, which would have been totally irrelevant if that had  
5 not been what they were targeting and looking for.

6 All this time, the University admits in his -- in the  
7 statement of facts Dean -- or Dr. Nelson admitted that up to the  
8 time of his deposition, the policy was that all groups,  
9 including religious groups, could have standards for their  
10 leaders, including standards that touched on marriage and  
11 sexuality.

12 It was only at the deposition that he first learned what  
13 the University had told IVGCF, the InterVarsity Christian  
14 Fellowship, that it couldn't even encourage its leaders to be  
15 Christian. He initially testified that that was inconsistent  
16 with the University's policy, but then, on re-reading the  
17 e-mail, he said, "Oh, my subordinate's communicating with the  
18 in-house counsel. That must be the new policy."

19 So after all this clean-up effort, we have a policy that's  
20 not neutral on its face; that's explicitly added a Title IX  
21 exemption that categorically exempts fraternities, sororities,  
22 and sports groups; that has a number of individualized  
23 exemptions for other groups. And then we're left with what the  
24 University filed today, showing that 32 religious groups have  
25 been put on probation and essentially no others.

1        This is worse than *Lukumi*, and there's not even a neutral  
2 policy on its face, and it's being applied in a discriminatory  
3 manner. To top it off, I already mentioned the statements the  
4 University made in its motion for summary judgment, but in  
5 depositions our clients were asked questions like, "Do you agree  
6 that gay people are human beings? Do you agree that they have  
7 equal status with you? Do you believe that same-sex couples  
8 believe in the same God you do?" all after BLinC has repeatedly  
9 testified that it specifically has religious beliefs about  
10 sexual conduct.

11        The University cannot meet strict scrutiny under any of  
12 these circumstances. Strict scrutiny requires a compelling  
13 government interest. *Gerlich* states it's the most demanding  
14 test known to constitutional law.

15        The *Rosenberger* Supreme Court case says that when there's  
16 viewpoint discrimination, it's extremely rare that there could  
17 be any justification that could satisfy strict scrutiny.

18        *Lukumi* says that when you're directly attacking religious  
19 beliefs, as in saying people have to delete them to stay on  
20 campus, that that's never justified and you don't even have to  
21 get to strict scrutiny.

22        As we go with regard to the differential treatment between  
23 other organizations, the University claims it wants a safe  
24 environment for diverse voices, but there is no evidence of  
25 allowing -- it has provided no evidence of allowing groups to

1 select leaders would negatively impact the diversity of the  
2 campus, and, in fact, all it's done is push religious groups off  
3 campus.

4 THE COURT: Mr. Baxter.

5 MR. BAXTER: Yes.

6 THE COURT: Speaking about today's filings, one of the  
7 things I wanted to look into was the question of whether or not  
8 BLinC continues to have standing as an entity in this lawsuit,  
9 and so I was looking at whether or not they actually qualified  
10 as a registered student organization, setting aside the human  
11 rights issue, setting aside the statement of faith.

12 I asked BLinC to provide me with a list of the students,  
13 and I said under seal, who are members of your organization, and  
14 you were unable to come up with more than two people. The  
15 University of Iowa requires at least five at all times in order  
16 for this to be a student organization that can be registered and  
17 recognized.

18 So help me understand, even if I accept every argument  
19 you're making, help me understand how BLinC still has standing  
20 when they don't meet the completely neutral and basic  
21 organizations to be a registered student organization.

22 MR. BAXTER: Well, first, Your Honor, the declaration  
23 of Brett Eikenberry confirms they have five students who qualify  
24 for membership this year.

25 THE COURT: No, that's not what it says. It says he



1 doesn't know; they don't keep a list; it's approximately, he  
2 thinks, maybe between five and ten. That doesn't cut it. That  
3 doesn't work.

4 MR. BAXTER: Your Honor --

5 THE COURT: And you've refused to provide any names  
6 whatsoever to me.

7 MR. BAXTER: -- he does have -- they do keep  
8 membership lists of who attends. He hasn't compiled those into  
9 a formal list of everybody who's been there twice or more. He  
10 can -- he can amend his declaration to make that statement and  
11 to verify that.

12 I don't think that he -- you know, one of the issues with  
13 producing the names is that University students have been  
14 targeted, including by the University itself in its actions. He  
15 mentions in his declaration the actions of the University, and  
16 some of those students -- some of those members are employees of  
17 the University, and so they're hesitant to produce their name to  
18 the University.

19 So we would ask that he be allowed to amend the  
20 declaration, to count the list. He didn't have time. Because  
21 of the snowstorm, we had difficulty reaching everybody. The  
22 secretary/treasurer who maintains the list, we hadn't reached  
23 before the call today.

24 And so we would ask for the opportunity to clarify the  
25 number of students who are actual members, and it's absolutely

1 necessary to produce their names under seal for attorneys' eyes  
2 only.

3 THE COURT: I'll agree to that. I want their names, I  
4 want to know if they're students, I want to know when they  
5 joined BLinC, and I want to know -- well, those are basically  
6 the three that bring forth whether or not this group still  
7 qualifies as a registered student organization.

8 But those are important issues with regard to standing, and  
9 it can't just be brushed aside here. It's important, especially  
10 when you're seeking a permanent injunction.

11 MR. BAXTER: I understand, Your Honor, and I  
12 apologize. I didn't understand from your e-mail that you were  
13 looking for a specific number, and so I appreciate that  
14 clarification, and we will provide the additional information.

15 THE COURT: All right. Thank you.

16 You can continue with your argument.

17 MR. BAXTER: In addition to claiming a safe  
18 environment, which the University has provided, that they need  
19 to restrict religious organizations to protect a safe  
20 environment, for which they have produced no evidence, the  
21 University also claims it's necessary to comply with federal and  
22 state law, yet in their statement of faith -- response to our  
23 statement of -- I'm sorry -- our Statement of Fact No. 382, they  
24 admit that neither the University policy nor law require the  
25 University to control who Christian organizations select as

1 their leaders.

2 As I mentioned previously, the laws they cite, Title IX and  
3 the Iowa Civil Rights Act, both have exemptions for religious  
4 organizations that acknowledge, as is required by the First  
5 Amendment, the right of religious organizations to select their  
6 own leaders without government interference.

7 Finally, Baker, Nelson, and Redington all testified that  
8 the ability of religious groups -- for example, at 352,  
9 Statement of Fact 352, Baker testified that the ability of  
10 religious groups to select leaders based on beliefs is, quote,  
11 beneficial, positive good, an aspect of democracy, he just  
12 preferred it be done by popular vote; and at 355 that religious  
13 groups play an important role on campus by promoting persistence  
14 towards graduation, giving students a sense of camaraderie and a  
15 place where they can feel welcomed.

16 Nelson similarly testified that student groups are an  
17 important part of diversity and important parts of the groups is  
18 to have -- give students an opportunity to confront ideas they  
19 might disagree with.

20 Redington, at 403, made the same or the similar statement.

21 There's no evidence that what they're doing, what the  
22 University is doing, is consistent with its policy of allowing  
23 students to meet with other like-minded students who have shared  
24 beliefs and values for the purposes of increasing diversity on  
25 campus.

1       Finally, they also said that there are historic reasons for  
2       exempting, for example, sports clubs, and they have no intention  
3       to change. That's at Statement of Fact 426 and 427. Yet there  
4       are also historic reasons for religious organizations who have  
5       been allowed to do this for 20 -- more than 20 years and,  
6       presumably, indefinitely back in time.

7       So, Your Honor, in closing, there's clear evidence of  
8       viewpoint discrimination, of religious targeting, of unequal  
9       enforcement, and other aspects of non-general applicability, and  
10      the University has fallen far short of meeting its standard  
11      under the -- of showing the compelling government interest and  
12      hasn't even addressed whether there are other means where it  
13      could meet its interests, for example, by stating its own views,  
14      and so forth.

15      So with that, we would ask this Court to grant summary  
16      judgment in BLinC's favor.

17             THE COURT: Thank you, Mr. Baxter. And you still have  
18      nine minutes left for later.

19      Mr. Carroll.

20             MR. CARROLL: Yes. And if I understand it correctly,  
21      I'm just going to respond to his motion right now?

22             THE COURT: You can both respond to his motion and you  
23      can make your argument because you'll go first now on --

24             MR. CARROLL: On the qualified immunity?

25             THE COURT: Correct.

1 MR. CARROLL: Okay. So thank you.

2 Just a couple things early on as Mr. Baxter was speaking.  
3 I would like the opportunity to respond to the affidavit that  
4 was filed today. Obviously, I just saw it this morning.

5 And Mr. Baxter made comments about me deposing witnesses  
6 and intruding on religious beliefs, but simply I was asking  
7 questions that were related to the case.

8 With that being said, I'll move on to their -- you know,  
9 the substance of their arguments.

10 When we look at, obviously, you know, the standards for  
11 summary judgment are pretty clear. They're saying, "Hey, we  
12 win. There's no fact disputes," yet Mr. Baxter continually  
13 raised up fact disputes. You know, "The evidence is clear," and  
14 a witness said this and a witness said that, but we had  
15 responded, the University of Iowa had responded, with our  
16 response essentially saying, "Yeah, that was said," but that  
17 doesn't mean at this stage, you know, that -- you know,  
18 literally the fact-finder has to wait until there's an actual  
19 hearing or trial; a trial, actually, in this case.

20 And so just from a motion for summary judgment standard,  
21 there's a lot of matters that have to be determined as a matter  
22 of fact and not just, okay, you don't have enough here, and this  
23 thing's over.

24 And I think there's enough here to have the Court have to  
25 look at it in a trial setting and say, okay, here's the

1 evidence; here's the, you know, opposing witnesses. I mean, we  
2 took depositions, but that doesn't end everything, necessarily.  
3 And you can take any -- like Mr. Baxter did, you can take any  
4 statement out of context you want, but the Court needs to hear  
5 all the evidence.

6 And when we go through what Mr. Baxter said, for example,  
7 well, this witness said that, but they're not adding in  
8 everything that was said. And we've done our best -- I mean,  
9 Iowa has done its best to go through all their, you know,  
10 statements of uncontroverted facts and admit or deny and then,  
11 you know, under the rules, support where you can find it in the  
12 record, Your Honor.

13 And now I'll address the specific questions I got on the  
14 e-mail. So I'm just going to go down. I don't know if the  
15 Court has that e-mail in front, but I'm just going to go, I call  
16 them like No. 1, No. 2.

17 So one of them was why do we admit certain groups are an  
18 apparent violation of the human rights policy, and that's  
19 admissions -- well, the statement of uncontroverted/controverted  
20 facts 16 through 35.

21 At the time of the court filings, we admitted because it  
22 was accurate in one sense, and that was because the actual  
23 complete review of every group wasn't done. And the Court had  
24 asked that we file essentially what's the status as of today,  
25 and I think I filed it yesterday, actually, or maybe Wednesday.

1       So the status -- the chart you have, and Mr. Baxter has it,  
2       that chart is the complete status, and it says student group --  
3       because, you know, that the number of groups change so, you  
4       know, sometimes there's 510, sometimes there's 495. I mean, the  
5       number changes.

6       But all groups have been reviewed as of today. I mean,  
7       what the Court has today is accurate. And when Mr. Baxter said,  
8       "Well, look, these are religious groups, and they're -- clearly  
9       Iowa's targeting them," I was highlighting the fact -- and I was  
10      trying to be helpful. I was trying to highlight the fact we  
11      have put all religious groups, "we" being Iowa, on hold pending  
12      this litigation because we don't -- Iowa does not know what to  
13      do right now.

14      So rather than say, "Hey, group, you're not in compliance,"  
15      Iowa is simply saying, "You're on hold." And so but all the  
16      other groups are either, yes, in compliance or you're not in  
17      compliance and you're deregistered.

18               THE COURT: Okay. Mr. Carroll --

19               MR. CARROLL: Yes.

20               THE COURT: -- Love Works is a religious organization,  
21      but you've approved them. They're not on hold. What --

22               MR. CARROLL: No. They should be on hold. They're on  
23      hold.

24               THE COURT: According to the chart you gave me, and it  
25      was filed today, I'm looking at page 8 of 14, you have it listed

1 under "YES," meaning --

2 MR. CARROLL: Oh, I'm sorry. Then that means they're  
3 in compliance, but --

4 THE COURT: Okay. So let's talk about Love Works.  
5 Love Works is a Christian organization, and they require their  
6 leaders to sign a statement of faith that essentially says the  
7 exact opposite of what BLinC has their leaders say.

8 BLinC has been penalized. They've been stripped of their  
9 status, and now they're on hold, apparently, with every other  
10 religious organization that you highlighted, but Love Works is  
11 not. Now, if that's not viewpoint discrimination, explain to me  
12 what that is.

13 MR. CARROLL: Well, all I can say, Your Honor, is then  
14 that chart's going -- my chart's wrong. Their constitution is  
15 in compliance. They're on hold on enforcement.

16 THE COURT: What does that mean?

17 MR. CARROLL: It means that, for example, like BLinC  
18 and other religious groups, they can have their constitution in  
19 compliance, like they included the language of the University of  
20 Iowa Human Rights Policy, and regardless of how they're treating  
21 the policy, right now, the University of Iowa is saying you're  
22 on hold. So, I mean, honestly, Your Honor, that's just an error  
23 on my part, then, that chart.

24 They have the language to be compliant, but there's no  
25 enforcement against any what we can identify as religious



1 groups. I mean, some of them you can't even -- I mean, it's  
2 difficult to tell with some of the groups so we were trying to  
3 be careful.

4 THE COURT: It's also in the record at Document 82-2,  
5 paragraph 17. That's not your chart. That's the record. Is it  
6 also in error there?

7 MR. CARROLL: Well, no, not necessarily. It kind of  
8 depends on the timing of documents. And what I mean by that is  
9 there was a time when the reviews weren't completed, and so --

10 THE COURT: All right.

11 MR. CARROLL: -- I can't say --

12 THE COURT: In that same document, and here I'm  
13 quoting from what you've called my Question No. 3, it's the  
14 third bullet point, you told me, in response to Plaintiff's  
15 statement of material facts, that the University, quote, has  
16 approved the constitutions of dozens of organizations that  
17 explicitly restrict or control access to leadership or  
18 membership based on race, national origin, sex, sexual  
19 orientation, gender identity, status as a U.S. veteran and/or  
20 military service, end quote.

21 Now, explain to me why all those groups are allowed to  
22 restrict, based on protected classifications, their members but  
23 BLinC is not and it's not, again, viewpoint discrimination.  
24 Explain that to me.

25 MR. CARROLL: Yes. Well, these different groups, you

1 know, you have -- I mean, if we break them out, they're allowed  
2 to have criteria, but at the same time they have to comply with  
3 the human rights policy of the University of Iowa.

4 So they can -- so the constitutions -- and, again, I'll --  
5 I'll double-check and I'll correct, if necessary, but the  
6 constitutions need to be in compliance with the University's  
7 policy.

8 Now, where we run into this issue is we're a  
9 complaint-driven process, and the constitutions are in  
10 compliance, but we wait for a student to say, "Hey, I was denied  
11 membership because of my status," and then we would investigate  
12 and say, "Is that what happened?"

13 Or, for example, I mean, the veteran, the military groups,  
14 "Were you denied because you're not a veteran?" And we'd  
15 probably say, "Well, you do have to be a veteran," but I don't  
16 know the answer, I mean, because it's complaint-driven.

17 THE COURT: Okay. Then let's compare a couple more.

18 MR. CARROLL: Okay.

19 THE COURT: You have a Chinese student Christian  
20 fellowship group that, according to the chart you filed today,  
21 because it's religious, you've put it in a pending status. And  
22 yet the Chinese Students and Scholars Association, which is not  
23 religious but which requires membership only for enrolled  
24 Chinese students and scholars, that one you've approved.

25 So the one that is religious, you've stopped; the one that

1 is not religious, you allowed to go forward. Both of them  
2 discriminate based upon a protected classification. Explain  
3 that to me if it's not clear viewpoint discrimination.

4 MR. CARROLL: We, Iowa, put them on hold because of  
5 the current litigation. Mr. Baxter and his group have sued Iowa  
6 twice now. We were trying to be proactive to say, okay, if this  
7 is a religious discrimination problem, let's figure out BLinC,  
8 and then we can move forward. We weren't trying to target  
9 religious groups.

10 I mean, they're using it against me right now when Iowa was  
11 trying to be proactive to say let's just wait on this religious  
12 issue. The other groups, whatever they've identified, I mean,  
13 they complied with the constitutional provisions and they were  
14 approved. There were no complaints filed by any students at the  
15 University of Iowa to say you're discriminating, but --

16 THE COURT: All right. We talked about that, though,  
17 a year ago at our last hearing.

18 MR. CARROLL: Yes.

19 THE COURT: Would you say that these decisions you're  
20 making are status-based or belief-based? In BLinC's case --

21 MR. CARROLL: They're status.

22 THE COURT: Okay. Tell me what status BLinC is  
23 infringing upon with their statement of faith. They have said,  
24 and you have not disputed, that they did not strike Mr. Miller  
25 from their group or prohibit him from becoming a leader based on

1 the fact that he is a gay man.

2 They have said, and you have not disputed, in fact, you  
3 have agreed, that what was said is that he was excluded from  
4 leadership because he would not sign and agree to the statement  
5 of faith. Is that belief-based or status-based, in your view?

6 MR. CARROLL: Well, I think it's status because I  
7 don't see how you can distinguish the two.

8 THE COURT: The law distinguishes the two.

9 MR. CARROLL: And I don't mean you personally. I mean  
10 when we get into these conversations or legal arguments about  
11 religious beliefs, the fact of the matter is your status may  
12 control your beliefs, and BLinC just literally, I mean, they  
13 don't want -- they don't want gay members. And they certainly  
14 don't want gay leaders, unless they sign something that says,  
15 hey, this is what I believe in. But it's the status that starts  
16 the equation.

17 THE COURT: Okay. But in your response to the  
18 plaintiff's statement of material facts, and this is paragraph  
19 135, and I sent it to you by e-mail, I think it's Question No.  
20 6, you admitted, quote, a student could publicly acknowledge or  
21 identify as being gay and still be a leader with BLinC so long  
22 as the student agreed with and agreed to live by BLinC's  
23 statement of faith.

24 That was a quote from your response filed at 82-2. Explain  
25 to me again how that's a status distinction rather than a belief

1 distinction.

2 MR. CARROLL: I'm sorry. Can you give me the -- and  
3 I'm looking at my notebook -- the number? What did you say, I'm  
4 sorry, 165?

5 THE COURT: 82-2. And this was Question No. 6 in the  
6 questions I sent you a few days ago.

7 MR. CARROLL: Okay.

8 THE COURT: It's paragraph 135.

9 MR. CARROLL: Oh, 135, okay. Thank you.

10 So I'm looking at the response I filed, and so, "Admit,  
11 with the qualification that according to" Hannah -- it's Hannah  
12 Thompson and Jacob Estell, "the 'openly gay' individual would  
13 have to regard his or her innate attraction to members as  
14 'sinful.'"

15 I mean, I'm admitting what they're claiming because both  
16 BLinC represented -- these are the only two people I deposed.  
17 They both said it in their depositions.

18 THE COURT: And you haven't disputed that, correct?

19 MR. CARROLL: I haven't disputed that that's what they  
20 said.

21 THE COURT: Do you have any evidence that dispute -- I  
22 mean, you haven't objected to that. Those are now stipulated  
23 facts upon which I can rely because you've admitted them.

24 MR. CARROLL: Well, yes, but I say that with  
25 qualification. This is what they testified to. I mean, I don't

1 understand how more -- I mean, they testified to this, so, I  
2 mean, but 135 is citing their depositions, and I'm admitting  
3 that's what they said.

4 THE COURT: All right. Let's turn to your qualified  
5 immunity issue. I don't want you to run out of time to talk  
6 about that. Give me your thoughts on that particular argument.

7 MR. CARROLL: Okay. Well, on qualified immunity, I  
8 mean, obviously, the standard seems to be moving within the  
9 court systems, but, you know, at the end of the day, qualified  
10 immunity protects individuals. It wouldn't change anything  
11 having BLinC move forward, you know, against the entity itself.

12 But the fact of the matter is when we look at all this, the  
13 law is not that clear, and so while there has to -- you know, it  
14 doesn't have to be complete everybody understands the law, but  
15 at the same time when we -- when we look at all the briefs that  
16 are filed, this First Amendment and the -- honestly, the First  
17 Amendment and the Fourteenth Amendment, this is a collision  
18 course. What rights are we supposed to be enforcing? How do we  
19 enforce them?

20 You have individuals who did certain things under certain  
21 policies and honestly tried to do their best. And so, you know,  
22 the summary of that argument truly is you don't have to have an  
23 actual case on point to, you know, defeat qualified immunity.  
24 But when you look at the First Amendment and civil rights cases,  
25 it seems like, you know, a reasonable public official would go,

1 "I'm really not sure what I'm supposed to be doing here." And  
2 it's an objective test, which is what are we supposed to do.

3 So we have all these interests -- Title VII, the Iowa Civil  
4 Rights Act, the Fourteenth Amendment -- and everything's trying  
5 to be applied, and then you have the First Amendment, of course,  
6 and everybody's trying to apply it, and all the sudden the whole  
7 purpose of qualified immunity is, "But I shouldn't be held  
8 personally responsible. I was trying to do" -- you know, I  
9 mean, I'm sure it's not a legal test, but, "I was trying to do  
10 the best I could under the circumstances I was given."

11 And these individuals, there's no evidence in the record  
12 that they targeted this group. I mean, when we look at it, in  
13 the undisputed record is Iowa has a complaint-driven system. A  
14 complaint was filed and properly -- I mean "properly" in the  
15 sense of that student had the absolute right to file a  
16 complaint -- and they looked into it, and so then they had to  
17 start making decisions.

18 And so, really, at the end of the day, would a reasonable  
19 public official understand what they're doing is  
20 unconstitutional? It's not, "Oh, this is interesting," it's,  
21 "Is this unconstitutional?" And I think all the case law  
22 suggests, no, we don't know yet. We just don't.

23 So, I mean, and that's really the summary of the qualified  
24 immunity argument, that I don't know how public officials can  
25 equate First Amendment versus civil rights and walk away when

1 the U.S. Supreme Court still struggles with how this plays out.

2 THE COURT: Of the individuals here that are being  
3 sued, Redington, Baker, and Nelson, I know Mr. Baker is an  
4 attorney. Are either of the other two?

5 MR. CARROLL: Oh, Ms. Redington might be, but  
6 certainly not -- I mean, Mr. Baker has a law degree, but he's  
7 not an attorney for the University of Iowa. I don't know -- I  
8 know Mr. Nelson is not. I can't say for sure Ms. Redington is  
9 not.

10 THE COURT: And would you be --

11 MR. CARROLL: That wasn't her role at Iowa, that's for  
12 sure.

13 THE COURT: Would you be the attorney they consulted  
14 or would the University of Iowa typically call upon the law  
15 school to get legal advice if they needed it? I mean, in your  
16 view, this is very difficult legal stuff so who did these  
17 administrators get advice from about this complex legal issue  
18 that you argue they shouldn't be held individually responsible  
19 for?

20 MR. CARROLL: The only thing I can say is they didn't  
21 come to me. They didn't ask me. I do not know if they asked  
22 others.

23 THE COURT: Okay. Is there something set up at the  
24 University of Iowa, some kind of general counsel's office that  
25 they use for issues like this?



1 MR. CARROLL: Well, there is a general counsel's  
2 office, yes. I just -- to answer the question, I just don't  
3 know.

4 THE COURT: Okay.

5 MR. CARROLL: Other than I know they didn't -- nobody  
6 talked to me.

7 THE COURT: Okay. Any other thoughts before I toss it  
8 back over to the plaintiff?

9 MR. CARROLL: No. Thank you.

10 THE COURT: Okay. You've still got about seven  
11 minutes left if you have any response to their arguments here.

12 Mr. Baxter, are you arguing the remainder of the issues as  
13 well?

14 MR. BAXTER: Yes, I will be.

15 Your Honor, I have to admit I find this extremely  
16 frustrating to hear the University for the first time in this  
17 argument contest that Love Works is on probation. It's  
18 completely contrary to everything they've said in the case.

19 They never put -- when they first purged the list in last  
20 July, Love Works was not on it. It's not on the list today.  
21 They have admitted in the statements of facts that Love Works  
22 would continue to be on campus.

23 In their reply brief, they wrote that -- I'm just trying to  
24 find here -- they specifically defended why BLinC -- why Love  
25 Works was distinguishable from BLinC; because it provides a safe

1 space for minorities who have historically been the victims of  
2 discrimination, because BLinC excludes people and Love Works  
3 doesn't, and so forth.

4 So there's absolutely no evidence in the record, and it's  
5 contrary to the record to come in and now say that Love Works is  
6 on probation. It's false. The evidence is in, and it's binding  
7 on the University, and the Judge should disregard Mr. Carroll's  
8 unsupported statements.

9 It's also critical here that there is no written -- there's  
10 no policy change and there's no evidence of any policy change.  
11 Every single witness who's testified about this -- Cervantes, at  
12 283 and '84 of our statement of facts, admitted that it was  
13 permissible under the policy for religious groups to have  
14 standards of sexual conduct.

15 Nelson, at 376, in the voice of the University, admitted  
16 it, and the University has said "Admitted" in response.

17 Baker admitted it as long as -- it was okay to have  
18 standards that prohibited, for example, marriage -- sexual  
19 contact outside of marriage between a man and a woman, as long  
20 as it wasn't based on status alone, that it was based on the  
21 religious belief.

22 Redington testified that she never would have -- never  
23 would have deregistered BLinC if she had known what was really  
24 going on, but she didn't read the underlying evidence, she just  
25 relied on what the investigator said. She admitted that it was

1 a First Amendment violation, that red flags went off on her head  
2 but she did -- in her head but she did it anyway.

3 Every single witness has admitted what the policy is, and  
4 under that interpretation of the policy, BLinC is not in  
5 violation of that. There's no change in the policy except that  
6 they've added a Title IX exemption and statements from counsel  
7 essentially that they have a different policy.

8 It's ridiculous to come now and say that, well, this is --  
9 you know, we only have a complaint-driven system when this Court  
10 has already criticized that in its initial preliminary  
11 injunction ruling.

12 The University conducted a six- or seven-month review of  
13 all of the constitutions, sent letters and e-mails to all of the  
14 student groups saying if you have any language about leadership  
15 selection, you'll have to remove it. They didn't actually  
16 follow up on that or do anything about it except with respect to  
17 religious groups.

18 You know, it makes a mockery of this whole process that  
19 we're here today claiming all of the sudden that Love Works is  
20 on probation. He hasn't said anything -- Mr. Carroll hasn't  
21 said anything about all the other groups; the military groups,  
22 the minority support groups, the a cappella groups, the sports  
23 groups. We haven't even touched the fraternities and  
24 sororities, though I think that's a huge issue in this case, and  
25 that's set forth in our briefs.

1 All of those groups are allowed, as they always have been,  
2 to select leaders based on their mission and beliefs, and only  
3 religious groups have been targeted. The fact that they have  
4 still not even clarified what the policy means is further  
5 evidence that this is simply driven by an attempt to shut down  
6 groups who have unfavorable beliefs on sexual orientation and  
7 gender identity.

8 And you can see this in each of the witnesses because they  
9 got so twisted trying to interpret the policy under this  
10 supposedly new way. Cervantes, for example, said that it was  
11 okay for Catholics to exclude Muslims because that was -- or it  
12 wasn't okay for Catholics to exclude Muslims because that would  
13 be based on religion, but that it was okay for Muslims to  
14 exclude Muslims who didn't endorse the Prophet Muhammad.

15 Baker said that it was okay to have standards that  
16 prohibited students from engaging in sex outside of marriage but  
17 not if it was -- marriage generally but not if marriage was  
18 defined as between a man and a woman, further indicating that  
19 this is really about BLinC's religious beliefs.

20 And so at this point, the record is closed, and the Court  
21 should not allow counsel to come in and make statements that are  
22 inconsistent with the evidence and contrary to everything that's  
23 happened in this case to date.

24 Counsel also suggests that there are, you know, unresolved  
25 questions of fact. He has not identified what any of those

1 questions are. The University admitted almost everything in  
2 BLinC's statement of facts, and those things that it denied, it  
3 denied only by saying things such as, "Well, we admit that  
4 that's what they said."

5 They basically admit in part or there's hardly any direct  
6 denials. I can't think of anything in the statement of facts,  
7 except issues that aren't really relevant, that are directly  
8 contradicted by the University, and Mr. Carroll has not  
9 identified any.

10 Finally, on the issue of counsel, there's no evidence in  
11 the record that any of the -- anyone other than -- that anyone  
12 went to counsel and looked for advice. Dean Redington did  
13 testify that she had red flags but she had the go-ahead from the  
14 University so she went ahead and did that. But there's no  
15 evidence that anybody else reached out to counsel, and the  
16 University has never asserted that as a defense and should not  
17 be allowed to do so now after discovery has closed.

18 Your Honor, the evidence in this case is clear. It's  
19 undisputed. There is rampant evidence that the University  
20 targeted BLinC because of its religious beliefs and for the last  
21 two years has continuously been changing its story to try to  
22 make its policy fit the facts without harming groups that it  
23 favors, like fraternities and sororities, sports clubs, and  
24 almost every other group on campus.

25 As I understood the Judge's e-mail, it asked counsel not

1 just to produce a list of the status of the groups, but why, why  
2 they were deregistered, why they weren't deregistered, and what  
3 the University would do to the religious groups if it were to  
4 apply its policy.

5 The fact that it's put them on pause of its own accord,  
6 yes, it was forced by the Court to allow them to remain on  
7 campus, but there's nothing stopping the University from  
8 explaining what it would do with each of those religious groups,  
9 which ones of them are in compliance with its policy and which  
10 ones are not.

11 It's clear the University is engaging in viewpoint  
12 discrimination. It's clear that they're targeting BLinC because  
13 of its religious beliefs. It's clear that they're unevenly  
14 enforcing the policy, and it's clear that it has no  
15 justification that would pass strict scrutiny. For these  
16 reasons, we would ask the Court to rule in favor of both  
17 motions.

18 I forgot that I wanted to just hit one issue on qualified  
19 immunity. The courts hold that you don't have to have a case  
20 right on point -- that's *De Boise*, the Eighth Circuit *De Boise*  
21 case -- it just has to be sufficiently clear what the contours  
22 of the right are.

23 The *CLS v. Martinez* case and *Gerlich* both clearly state you  
24 can't do viewpoint discrimination. The *Lukumi* case and other  
25 cases clearly demonstrate that you can't target based on

1 religion or you can't grant secular exemptions but not religious  
2 exemptions.

3 The case law in the Eighth Circuit goes back into the  
4 seventies in the *Gay Lib* case. All these cases make very clear  
5 what the standard is, and the University has identified nothing  
6 that would confuse that standard. The *Gerlich* case is just from  
7 2017.

8 Moreover, Baker and Nelson and Redington all admitted that  
9 they had concerns about what they were doing and they did  
10 nothing about it. Nelson and Baker were both involved with the  
11 CLS issue. They knew that -- Baker testified that he knew  
12 viewpoint neutrality was a standard, that the free speech clause  
13 protects student rights to express religion on campus. That's  
14 at 349.

15 351 statement of fact --

16 THE COURT: I'm sorry. You've got to go back and slow  
17 way down for the court reporter, please.

18 MR. BAXTER: Okay. I'm sorry.

19 The Statement of Facts 319, Baker and Nelson, deeply  
20 involved in the CLS issue.

21 At Statement of Facts 53 through 60 is Baker's 2004 letter  
22 that it was okay to have codes of conduct, even prohibiting  
23 homosexual conduct.

24 Statement of Facts 55, Baker emphasized that viewpoint  
25 neutrality is the guiding principle. He admitted.

1       He's on the memo at Statement of Facts 70 through 85, memos  
2 to students threatening personal liability if they continued to  
3 try to cut funding off to Christian Legal Society.

4       Statement of Facts 354, he admitted that the 2009 memo that  
5 upheld First Amendment rights of religious groups was still  
6 current. He sent that to Cervantes to guide her investigation.

7       Statement of Facts 339, he admitted that he knew the free  
8 speech clause protects students' rights to express their  
9 religious views on campus.

10       351, he knew that the University telling religious groups  
11 who to select as leaders would raise questions under the free  
12 speech clause.

13       And in 353, he said the BLinC situation did "raise First  
14 Amendment concerns in my mind," but then he says he "chose to  
15 defer to Ms. Cervantes" in her investigation.

16       If you look at Statements of Fact 334 through 345, it  
17 details how deeply involved he was, including being the  
18 individual who recommended to counsel that they discriminate --  
19 or that they deregister BLinC.

20       Nelson testified that he was also deeply involved with the  
21 CLS institute -- or incident, that's at Statements of Facts 68,  
22 74, and 369, including the warnings to students that penalizing  
23 CLS because of its religious beliefs would subject them to  
24 personal liability.

25       At Statement of Fact 373, he admitted that telling student



1 groups what they had to believe or say, including in their  
2 constitution, violated federal and state law.

3 And in 374, he admitted discussing with Redington and Dean  
4 Shivers whether they were taking the right action but pursuing  
5 going forward anyway.

6 Redington at 387 --

7 THE COURT: Mr. Baxter, you're way out of time. Do  
8 you have a couple more citations you'd like to cite?

9 MR. BAXTER: Sure. I would just point you to 387  
10 through 389 and 395, Redington, where she also admitted that she  
11 had red flags, that she knew it was a violation but she just  
12 wasn't paying attention, and she did what -- just deferred to  
13 what the investigator told her.

14 THE COURT: Okay. Thank you, Mr. Baxter.

15 Mr. Carroll, any final thoughts?

16 MR. CARROLL: Oh, no. I'll be very brief, I know,  
17 because we're running on our hour.

18 Mr. Baxter said the record is closed, but, in fact, he was  
19 going to supplement an affidavit so I would seek the same  
20 permission to make sure the chart that I forwarded to the Court  
21 is accurate.

22 And so with that, we've argued the case. It's been fully  
23 briefed, obviously.

24 MR. BAXTER: Your Honor, for all the reasons I  
25 previously stated, I object to any effort to amend the record in

1 that regard.

2 THE COURT: I understand.

3 There is a distinction here, in my mind. I raised the  
4 issue for the first time when I sent questions to counsel about  
5 how many members remain within BLinC. For reasons that escape  
6 me, the University of Iowa has never, apparently, asked that  
7 question during discovery or during the litigation at hand, so  
8 that was a new issue.

9 Plaintiff has raised some, I think, legitimate concerns  
10 about publicizing that kind of information given the history of  
11 this particular case, and so I granted them permission to  
12 supplement that affidavit because I think it will be helpful. I  
13 would like to have that information by close of business on  
14 Tuesday, February 5th.

15 Love Works is an entirely different issue. That has been a  
16 part of the litigation for quite some time. There have been  
17 numerous admissions by University of Iowa that Love Works was,  
18 in fact, approved and continues to operate as an RSO at the  
19 University of Iowa. You've sent a chart to date that is  
20 consistent with that.

21 If there's some error in the chart, then there's some error  
22 in multiple other filings that have been made by the University  
23 of Iowa. That's a matter of evidentiary dispute between the  
24 parties. That's different, in my mind, and I am not going to  
25 reopen the issue on Love Works. We have the record we're going

1 to have there. And so I do deny University of Iowa's motion to  
2 supplement the record as to Love Works.

3 Thank you both for your -- I'm sorry.

4 (Interruption from the operator.)

5 THE COURT: Thank you to the parties. Thank you to  
6 the parties for your time. We'll get an order out.

7 Thank you. We're adjourned.

8 (Proceedings concluded at 4:00 p.m.)

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C E R T I F I C A T E

I, Kelli M. Mulcahy, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28, United States Code, Section 753, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated at Des Moines, Iowa, this 8th day of February, 2019.

/s/ Kelli M. Mulcahy  
Kelli M. Mulcahy, CSR, RDR, CRR  
Federal Official Court Reporter

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

**BUSINESS LEADERS IN CHRIST, an,  
unincorporated association,**

**Plaintiff,**

**VS.**

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

## Defendants.

**CASE NO. 3:17-CV-00080**

**DEFENDANTS' MOTION  
TO RECONSIDER RULING  
PURSUANT TO FED. R. CIV. P. 52(b)**

**COME NOW** the Defendants and move the Court to reconsider its ruling requiring the University of Iowa to not enforce the University's human rights policy against Registered Student Organizations that are not a party to this litigation.

1. The Court's Order dated February 6, 2019, enjoins the University of Iowa from enforcing its human rights policy with respect to all Registered Student Organizations.
2. This litigation does not involve all Registered Student Organizations.
3. Attached to the brief is a chart of the University's review of Registered Student Organizations by the University. (Attachment A).
4. The University should be allowed to enforce its policy.

**WHEREFORE**, the Defendants request the Court to reconsider its Order with respect to the scope and the extent of the permanent injunction.

**THOMAS J. MILLER**  
Attorney General of Iowa

**/s/GEORGE A. CARROLL**  
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E-MAIL: [George.carroll@ag.iowa.gov](mailto:George.carroll@ag.iowa.gov)  
ATTORNEYS FOR DEFENDANTS

*Original filed electronically.*

*Copy electronically served on all parties of record:*

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on February 12, 2019:	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Betty Christensen</u>	

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

BUSINESS LEADERS IN CHRIST,	)	Case No. 3:17-CV-00080-SMR-SBJ
an unincorporated association,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE UNIVERSITY OF IOWA; LYN	)	
REDINGTON, in her official capacity as Dean	)	ORDER ON MOTION TO RECONSIDER
of Students and in her individual capacity;	)	
THOMAS R. BAKER, in his official capacity	)	
as Assistant Dean of Students and in his	)	
individual capacity; and WILLIAM R.	)	
NELSON, in his official capacity as Executive	)	
Director, Iowa Memorial Union, and in his	)	
individual capacity,	)	
	)	
Defendants.	)	

Before the Court is a Motion for Reconsideration filed by Defendants University of Iowa, Lyn Redington, Thomas R. Baker, and William R. Nelson. [ECF No. 117]. Defendants ask the Court to reconsider the scope of the permanent injunction the Court imposed on Defendants in its February 6, 2019 Order on the parties' cross-motions for summary judgment. [ECF No. 108]. Plaintiff Business Leaders in Christ ("BLinC") has not yet filed a resistance to Defendants' motion; however, the Court finds the motion "appears to be noncontroversial" and elects to rule on it without waiting for a responsive filing. *See* LR 7(e).

In the Court's February 6, 2019 Order, the Court enjoined Defendants "from enforcing the Human Rights Policy *against BLinC* based on the content of *BLinC's* Statement of Faith and leadership selection policies," subject to certain conditions that are not relevant to the scope of the

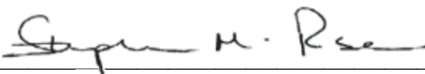
injunction. [ECF No. 108 at 30–31] (emphasis added). The Court repeated this language in the Order’s conclusion. *See id.* at 37.

Notwithstanding the unambiguous wording setting out the scope of the permanent injunction, “[a]s Defendants read the Court’s ruling, they are also prohibited from enforcing the policy against the hundreds of other registered student organizations on campus.” [ECF No. 117-1 at 1]. Defendants ask the Court to “amend or clarify its ruling to indicate that [Defendants] are only enjoined from enforcing the Human Rights Policy as it pertains to BLinC.” *Id.* at 2. The injunction clearly states Defendants are enjoined from enforcing the Human Rights Policy against BLinC. But, for the avoidance of doubt, Defendants are *only* enjoined from enforcing the Human Rights Policy as it pertains to BLinC, and only then under the circumstances outlined in the February 6, 2019 Order.

To the extent Defendants’ motion, [ECF No. 117], seeks clarification only, it is GRANTED. This Order in no way modifies the Court’s February 6, 2019 Order, [ECF No. 108].

IT IS SO ORDERED.

Dated this 13th day of February, 2019.

  
STEPHANIE M. ROSE, JUDGE  
UNITED STATES DISTRICT COURT



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

BUSINESS LEADERS IN CHRIST,

*Plaintiff,*

v.

THE UNIVERSITY OF IOWA, *et al.*,

*Defendants.*

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

**PLAINTIFF’S UNOPPOSED  
MOTION UNDER RULE 41 TO  
DISMISS COUNTS V AND IX-XX  
WITH PREJUDICE, FOR ENTRY OF  
FINAL JUDGMENT ON ALL OTHER  
CLAIMS, AND FOR EXTENSION OF  
TIME TO FILE FOR COSTS AND  
FEES**

In light of this Court’s summary judgment rulings and issuance of a permanent injunction [Dkt. 108], Plaintiff Business Leaders in Christ (BLinC) respectfully moves this Court to dismiss or otherwise finally resolve the remaining claims before this Court, and then to enter final judgment. BLinC also requests an extension of the time to file a motion for costs and fees until 60 days after the expiration of any deadline for appeal or after entry of the court of appeals’ mandate. The motion is unopposed by Defendants.

In support of this motion, BLinC states:

1. This Court has entered summary judgment on Counts I-IV and VI-VIII in favor of the individual defendants regarding BLinC’s claims for damages. This Court has also granted summary judgment and a permanent injunction for BLinC on Counts III-IV and VI-VIII. It denied BLinC summary judgment on Counts I-II as against the University.
2. Counts V and IX-XX remain outstanding against all defendants, and Counts I-II technically remain outstanding as against the University, as the University did not file a counter-motion for summary judgment on those counts.

3. Dismissal and resolution of the outstanding claims will resolve the litigation before this Court, allowing this Court to enter a final judgment and avoiding unnecessary trial proceedings.
4. Thus, BLinC moves this Court under Rule 41(a)(2) of the Federal Rules of Civil Procedure to dismiss with prejudice Counts V and IX through XX of its complaint [Dkt. 1].
5. With regard to Counts I-II as against the University, although the University did not move for summary judgment on those counts, this Court resolved them in the University's favor as a matter of law. Dkt. 108 at 29 ("Given the Supreme Court's efforts in *Hosanna-Tabor* to constrain the reach of its holding, the Court declines to extend it to the University's actions in this matter."); *see also Acton v. City of Columbia, MO*, 436 F.3d 969, 974 (8th Cir. 2006) (recognizing "the district court's order denying summary judgment to be, in sum and substance, a grant of summary judgment to [nonmovant]"); Fed. R. Civ. P. 56(f).
6. Finally, BLinC requests that this Court extend the time to file a motion for costs and fees until 60 days after the expiration of the deadlines to appeal or after entry of the court of appeals' mandate.
7. The parties agree that this motion and the requested relief will in no way adversely impact their ability to fully appeal the Court's ruling [Dkt. 108].

WHEREFORE, BLinC respectfully requests the Court to enter an order under Rule 41 dismissing Counts V and IX through XX with prejudice, entering a Rule 58 final judgment on all remaining claims, and extending the time to file a motion for costs and fees until 60 days after entry of the court of appeals' mandate or the expiration of any time for appeal.

Respectfully submitted,

/s/ Eric S. Baxter

Eric S. Baxter\*

*Lead Counsel*

Daniel H. Blomberg\*

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

BUSINESS LEADERS IN CHRIST,	)	Case No. 3:17-CV-00080-SMR-SBJ
an unincorporated association,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE UNIVERSITY OF IOWA; LYN	)	ORDER DISPOSING OF REMAINING
REDINGTON, in her official capacity as Dean	)	CLAIMS
of Students and in her individual capacity;	)	
THOMAS R. BAKER, in his official capacity	)	
as Assistant Dean of Students and in his	)	
individual capacity; and WILLIAM R.	)	
NELSON, in his official capacity as Executive	)	
Director, Iowa Memorial Union, and in his	)	
individual capacity,	)	
	)	
Defendants.	)	

Before the Court is Plaintiff Business Leaders in Christ's ("BLinC") unresisted motion to dispose of the remaining claims in this matter following the Court's Order on the parties' cross-motions for summary judgment (the "Summary Judgment Order"). [ECF No. 122]. BLinC initiated this action by filing a twenty-count Complaint against Defendant University of Iowa (the "University") and individual Defendants Lyn Redington, Thomas R. Baker, and William R. Nelson. [ECF No. 1]. On February 6, 2019, the Court ruled on the parties' cross-motions for summary judgment. [ECF No. 108]. BLinC sought summary judgment on its various First Amendment claims in Counts I–IV and VI–VIII of its Complaint (the "Summary Judgment Counts"). It sought a permanent injunction, nominal damages, and a determination that the individual Defendants were personally liable to BLinC for any damages caused by the alleged constitutional violations. Defendants moved for partial summary judgment

in favor of the individual Defendants on the grounds of qualified immunity. The Court granted Defendants' motion as to the Summary Judgment Counts only. It granted BLinC's motion as to all Summary Judgment Counts except Counts I and II. As to those counts, the Court determined BLinC was not entitled to summary judgment as a matter of law. *See* [ECF No. 108 at 29]. Presently, Counts V and IX–XX remain outstanding against all Defendants. Counts I and II technically remain outstanding against the University, as the University did not file a cross-motion for summary judgment on those counts.

BLinC now asks the Court to: (1) dismiss with prejudice Counts V and IX–XX under Rule 41(a)(2) of the Federal Rules of Civil Procedure; (2) sua sponte grant summary judgment to the University on Counts I and II; (3) extend the time to file a motion for costs and fees until sixty days after the expiration of the deadlines to appeal or after entry of a mandate by the United States Court of Appeals for the Eighth Circuit (if there is an appeal); and (4) enter a final judgment in this matter. Defendants do not oppose BLinC's motion.

Rule 41(a)(2) allows the Court to dismiss an action at the plaintiff's request "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). BLinC has indicated that, in light of the relief granted in the Summary Judgment Order, it views proceeding to trial on its remaining claims to be unnecessary. Additionally, because Defendants do not oppose the motion, and because the claims will be dismissed with prejudice,<sup>1</sup> the Court finds dismissal will not prejudice Defendants. Accordingly, Counts V and IX–XX are DISMISSED with prejudice.

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<sup>1</sup> A dismissal with prejudice is "ordinarily deemed a final judgment that satisfies the *res judicata* criterion." *United States v. Cunan*, 156 F.3d 110, 114 (1st Cir. 1998); *accord Crawford v. San Marcos Consol. Indep. Sch. Dist.*, 637 F. App'x 808, 811 n.10 (5th Cir. 2016) (*per curiam*).

Turning to Counts I and II, BLinC asserted in those counts claims under the First Amendment's "ministerial exception." The Court denied summary judgment on those counts, reasoning that, on the undisputed facts, the ministerial exception was inapplicable as a matter of law. The University did not seek summary judgment in its favor on those counts. However, the Eighth Circuit has recognized:

It is within the court's power to grant summary judgment sua sponte against the moving party, lacking a cross-motion, where the party against whom the judgment is entered has had a full and fair opportunity to contest that there are no genuine issues of material fact to be tried and the party granted judgment is entitled to it as a matter of law.

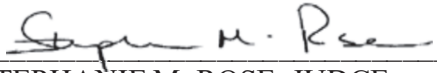
*Burlington N. R.R. Co. v. Omaha Pub. Power Dist.*, 888 F.2d 1228, 1231 n.3 (1989). By seeking summary judgment on Counts I and II, BLinC necessarily took the view that there were no genuine issues of material fact as to those counts. Additionally, the University is entitled to judgment as a matter of law on those counts for the same reasons the Court determined BLinC was not so entitled. On these grounds, and absent any objection by Defendants, the Court sua sponte GRANTS the University summary judgment as to Counts I and II of the Complaint.

Finally, because Defendants raise no objection, the Court GRANTS BLinC's request to extend the time to file a motion for costs and fees until sixty days after the expiration of the deadlines to appeal or after entry of a mandate by the Eighth Circuit (if there is an appeal).

IT IS THEREFORE ORDERED that all claims and matters raised in this case are hereby disposed. There being no other claims or matters pending, this is a final and appealable order.

IT IS SO ORDERED.

Dated this 19th day of February, 2019.

  
STEPHANIE M. ROSE, JUDGE  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

Business Leaders in Christ,

Plaintiff

v

The University of Iowa, Lyn  
Redington, Thomas R. Baker, and  
William R Nelson,

Defendant

JUDGMENT IN A CIVIL CASE

CASE NUMBER:

☐ JURY VERDICT . This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ DECISION BY COURT. This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

That all claims and matters raised in this case are hereby disposed, case is closed.

Date: February 28, 2019

CLERK, U.S. DISTRICT COURT

/s/ Donnell Vance

By: Deputy Clerk

JA 2717

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

BUSINESS LEADERS IN CHRIST,

*Plaintiff,*

v.

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

*Defendants.*

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

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Plaintiff Business Leaders in Christ appeals to the United States Court of Appeals for the Eighth Circuit from the final judgment entered on February 28, 2019 [Dkt. 125], and the permanent injunction shaped and entered by the Court's January 23, 2018 Order on Plaintiff's Motion for Preliminary Injunction [Dkt. 36]; its June 28, 2018 Order on Plaintiff's Renewed Motion for Preliminary Injunction [Dkt. 55]; its February 6, 2019 Order on Cross-Motions for Summary Judgment [Dkt. 108]; and its February 13, 2019 Order on Motion To Reconsider [Dkt. 119].

Respectfully submitted,

/s/ Eric S. Baxter

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*Lead Counsel*

Daniel H. Blomberg\*

The Becket Fund for Religious Liberty



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