

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

BUSINESS LEADERS IN CHRIST, *et al.*,

Plaintiffs,

v.

THE UNIVERSITY OF IOWA, *et al.*,

Defendants.

Civ. Action No. 3:17-cv-00080-SMR-SBJ

**DECLARATION OF
KIMBERLEE W. COLBY**

I, Kimberlee W. Colby, declare as follows:

1. I am the Director of the Christian Legal Society's (CLS's) Center for Law and Religious Freedom.
2. I have worked at the Center since 1981 and have been its Director since 2014.
3. One of my responsibilities at the Center is overseeing the legal affairs of CLS student chapters at colleges and universities around the country.
4. The Christian Legal Society Student Chapter at the University of Iowa College of Law (the "Chapter") has been recognized as an official student organization by the University of Iowa since at least 1980.
5. In 2003, when the Chapter submitted a Recognition Form for the annual renewal of its recognition, the renewal was denied because of a perceived conflict between the University's Membership Clause regarding nondiscrimination and the Chapter's leadership selection and membership policies.

6. Attached as Exhibit 1 is a true and correct copy of a letter dated February 20, 2004, from Thomas Baker, the University's Associate Dean of Students, to Craig Nierman, a lawyer representing the Chapter in the matter.

7. Pursuant to the clarification of the University's policies provided by Associate Dean Baker, the matter was resolved in a manner suitable to both parties.

8. Since that time, the Chapter has continued to be recognized by the University without interruption.

9. There have been other times when University officials or representatives have initially indicated that the University would deny recognition or funding to the Chapter because of CLS's leadership and membership policies, including in 2008. But each time, the University has eventually recognized the chapter's right to maintain its policies without punishment.

10. From the beginning of its existence at the University and through the present time, the Chapter has maintained a policy of requiring its leadership to affirm and live by CLS's statement of faith.

11. As relevant here, the statement of faith prohibits sexual conduct outside of marriage between a man and a woman and upholds the orthodox Christian view that any sexual conduct outside that relationship, including but by no means limited to conduct between persons of the same sex, is sinful.

12. A person who may have engaged in sexual conduct outside of marriage between a man and a woman in the past but has repented of that conduct, or who experiences a desire to engage in such conduct but does not engage in or advocate in favor of such conduct, would not on those grounds be prevented from serving as an officer of a CLS chapter.

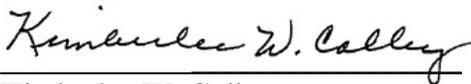
13. CLS holds the same standard for other forms of behavior that we understand the Bible teaches is sinful. CLS affirms the biblical teaching that everyone sins and everyone experiences sinful desires. Our faith does not require perfection from believers. But in order to receive God's forgiveness through Jesus Christ, we must accept God's standard of right and wrong, repent of our sins, and ask for Christ's forgiveness for our sins.

14. Only chapter leaders are required to affirm and live by CLS's statement of faith.

15. Anyone may be a member of the Chapter and participate in Chapter activities.

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

Executed on this 10th day of December, 2017.



Kimberlee W. Colby

Exhibit 1



Office of the Vice President for
Student Services and Dean of Students

February 20, 2004

RECEIVED
BY: _____

Mr. L. Craig Nierman
[Redacted]

Dear Craig:

RE: CHRISTIAN LEGAL SOCIETY

This letter is in response to your January 30 letter regarding your clients, the student members of the Christian Legal Society (CLS). During the fall semester of 2003, CLS student leaders declined to include the University of Iowa Human Rights Policy in their proposed group constitution. Because the proposed constitution did not include the Human Rights Policy, the CLS application for recognition was rejected by the University of Iowa Student Government (UISG).

You object to the actions of UISG and asked that the First Amendment rights of the CLS students be protected. I have reviewed the First Amendment case law and the two law review articles cited in your letter. I have discussed the legal issues you raised in your January 30 letter with Vice President Phillip Jones.

Your letter states, in essence, that the CLS has a constitutional right to refuse to include in its constitution the Human Rights Policy in its entirety. As you know, the Human Rights Policy explicitly prohibits the University from engaging in race and sex discrimination as well as other forms of discrimination prohibited by the Policy. Under the Human Rights Policy, University officials may not treat persons differently based upon any classification "that deprives a person of consideration as an individual." Creed and sexual orientation are specifically listed as examples of categories that deprive a person from consideration as an individual. Religion and religious affiliation are not specifically identified in the Policy, although in some instances discrimination on the basis of religion would violate the Policy, such as a practice of not permitting Christians to join a student political group.

With respect to student organizations, the University applies the Human Rights Policy to prohibit certain forms of discrimination when organizational leaders decide to accept or exclude students interested in becoming members of the group. Federal law generally *requires* that the University of Iowa (and all post-secondary institutions which receive federal funds) prohibit recognized student organizations from discriminating on the basis of race and sex in the selection of new members. By requiring that groups observe the Human Rights Policy, University officials responsible for reviewing applications for group recognition ensure that Title VI and Title IX are observed. The Human Rights Policy was enacted in 1963, and ever since then it has been the University's practice to apply the Policy to student organization membership selection decisions.

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Contrary to your letter, the Human Rights policy does not prohibit student groups from establishing membership criteria. A student religious group is entitled to require a statement of faith as a pre-condition for joining the group. *Asking prospective members to sign the CLS statement of faith would not violate the UI Human Rights Policy.* While 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.

You specifically cited sexual orientation as one category of discrimination prohibited by the Human Rights Policy that your clients find objectionable. Your letter did not, however, cite 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. The Supreme Court cases on student organizations mentioned in your letter address other issues beside membership rules, namely equal access to funding and meeting space, for instance. The case law you cited supports, in fact, the Vice President's position 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.

Implicit in the Human Rights Policy is the distinction between class characteristics such as race and gender, on the one hand, and on the other hand the personal conduct of those who seek to join student organizations. The CLS 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. Individuals who fail to observe the CLS statement of faith may be dismissed as members. Your group may not, however, 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.

With regard to the distinction between class characteristics and personal conduct, it is apparent that we may be in agreement. You acknowledge in your letter that your group is not opposed to accepting into its membership law students who have homosexual inclinations or who have engaged in homosexual behavior. I respect the fact that the CLS welcomes all students, including homosexuals, to attend CLS meetings. This practice is entirely consistent with the spirit of the Human Rights Policy.

To my knowledge, religious students groups have operated for many years on the UI campus using statements of faith as a basis for membership. No threat has ever been directed to a student religious group by the student government, by the Dean of Students, or by the Office of Student Life regarding the use of statements of faith as a basis for membership. Moreover, 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.

Your January 30 letter specifically asks that the Human Rights Policy be amended to exempt student religious groups "from the religion, creed, sexual orientation, and gender identity language of the University's required Membership Clause." Since the Human Rights Policy protects groups such as your CLS student clients from discrimination on the basis of creed, it is not necessary to formally exempt religious groups from the Human Rights Policy in order to ensure that the rights of CLS members are protected. Once recognized, the University is obliged to protect the right of CLS members to espouse the group's basic tenets.

The Supreme Court long ago in Healy v. James concluded that it is not inconsistent with the Constitution for tax-supported universities to deny or withdraw recognition to groups that refuse to follow reasonable rules. Observing the Human Rights Policy during new member selection is a reasonable requirement for group recognition. If the students you represent choose to re-submit a revised group constitution with an unmodified Human Rights Policy statement included, the CLS would then become eligible to use University resources, as would any other recognized student organization, once the CLS has been recognized by UISG.

In conclusion, it is apparent that the UISG did not violate the University Policy on Human Rights or the First Amendment of the U.S. Constitution. The UISG decided not to grant recognition to the Christian Legal Society because the UI Human Rights Policy was entirely left out of the proposed CLS constitution. UISG is prepared to grant recognition once the Human Rights Policy is included in the proposed CLS constitution. Every 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.

I understand that you may feel compelled to pursue formal legal avenues in response to this letter. Please be informed that the standard appeal process for recognition disputes has not been exhausted. As stated in sub-section III.A.9 of "Recognition of Student Organizations," a group may appeal an adverse decision of the governing body to the president of the University or designated representative (refer to page 18 of "Policies and Regulations affecting Students, 2003-2004," a copy of which is enclosed). To my knowledge, no appeal has been filed with President Skorton. If the group of students you represent elects to exercise its appeal opportunity, please copy me on your letter to President Skorton.

Sincerely,



Thomas R. Baker, J.D., M.A.
Associate Dean of Students

Enclosure

cc: Phil Jones
Bill Hines
Linda McGuire
Bill Nelson
Mark Schantz
Charlotte Westerhaus