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

BUSINESS LEADERS IN CHRIST, an unincorporated association, *Plaintiff,* v. THE UNIVERSITY OF IOWA; LYN REDINGTON, in her official capacity as Dean of Students and in her individual capacity; THOMAS R. BAKER, in his official capacity as Assistant Dean of Students and in his individual capacity; and WILLIAM R. NELSON, in his official capacity as Executive Director, Iowa Memorial Union, and in his individual capacity, *Defendants.*	Civil Action No. 17-cv-00080-SMR-SBJ **MEMORANDUM IN SUPPORT OF APPLICATION FOR PRELIMINARY INJUNCTION** **ORAL ARGUMENT REQUESTED** **(Expedited relief before January 24, 2018 requested.)**

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INTRODUCTION

Justice Kennedy recently stated in a case similar to this one that "tolerance is essential in a free society. And tolerance is most meaningful when it's mutual."[1] The opposite of tolerance is when government officials intentionally target a religious group because they are hostile to its religious beliefs. That is this case. Far from being the haven of tolerance it ought to be, the University of Iowa has singled out a Christian student group for special disfavor, banishing it from its campus. University officials, including Dean of Students Lyn Redington, say they are enforcing a nondiscrimination policy. Yet the University is the one doing the discriminating—it allows literally thousands of students to violate its nondiscrimination policy, but enforces that policy against a small group of fewer than ten Christian students. If there is room at the University for single-sex fraternities and literally hundreds of other ideology- and identity-driven student groups, surely there is also room for a student group that wants its leaders to be Christian. The First Amendment demands no less.

* * *

Business Leaders in Christ, BLinC, is a religious student group at the University of Iowa. Its members meet weekly for Bible study and spiritual support, organize one or two service projects each semester, and invite speakers to mentor students on how to integrate their faith and careers. Membership in BLinC is open to everyone. Leaders, however, are required to affirm BLinC's Statement of Faith, which asks them to embrace and strive to follow BLinC's religious beliefs, including traditional beliefs concerning marriage and sexual morality. After a student complained about these leadership requirements, the University deregistered BLinC, denying it the right, among other things, to reserve meeting space on campus, to participate in student recruitment fairs,

[1] Oral Argument Tr. at 64:3-5, *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, No. 16-111 (S. Ct. argued Dec. 5, 2017).

to access funds from the University's mandatory student activity fees, or to use University-wide communication services—important benefits that are available to all other student groups on campus.

The University's ostensible reason for imposing second-class status on BLinC is that BLinC's "Statement of Faith, on its face, does not comply with the University's Human Rights Policy," which prohibits discrimination on the basis of sexual orientation. Estell Decl. ¶¶ 30, 33, Exs. E, G. The University told BLinC that, to be re-registered and gain equal access to campus, it would have to submit "revisions to [its] Statement of Faith" and submit an "acceptable plan" for selecting its leaders. *Id*. ¶ 30, Ex. E.

University Defendants Lyn Redington (the Dean of Students), Thomas Baker (the Associate Dean of Students), and William Nelson (the Executive Director of the Iowa Memorial Union with responsibility over student organizations)—the final decisionmakers regarding BLinC's status—are all keenly aware that the University's demand for BLinC to modify its religious beliefs is illegal and unconstitutional. That demand is such a gross violation of the most basic protections of the First Amendment that the University and its officials have explicitly admitted that what they are doing is illegal—first in a 2004 letter from Dean Baker to the Christian Legal Society, Colby Decl. ¶ 6, Ex. 1, and second in a face-to-face meeting between Dean Baker, Dr. Nelson, and BLinC's leaders just three months ago. Estell Decl. ¶¶ 12-21. Moreover, the University itself continues to offer scholarships and diversity programs, to operate its sports teams, to support fraternities and sororities, and to allow more than 500 student groups to select their leaders and members in ways that often directly discriminate on the basis of race, sex, religion, sexual orientation, creed, and other categories enumerated in the Humans Right Policy. BLinC alone has been targeted, solely

because the University does not like its religious beliefs and standards for leaders, even though BLinC does not discriminate on any other basis, including sexual orientation.

Because the University's effort to dictate BLinC's religious beliefs and religious leadership selection as a condition of equal campus access violates the First Amendment's guarantees to freedom of speech and religion, BLinC urges the Court to enjoin the University and require it to reinstate BLinC's status as a registered student organization. Absent relief, BLinC is suffering ongoing irreparable harm through the suppression of its constitutional freedoms. And because the University's spring recruitment fairs will take place on January 24 and 25, 2018, BLinC respectfully requests a decision from this Court prior to that time, as its participation in the fairs is critical to its continued existence on campus.

FACTUAL BACKGROUND

The Policy for Registration of Student Organizations

The University of Iowa boasts a robust extracurricular life for its students. Alongside Hawkeye athletics, the University offers top facilities for intramural events, club sports, and personal fitness programs. It provides a rich array of programming in music, art, film, dance, and theater. And it encourages students to form their own groups around any other interests they might wish to pursue. Currently, there are over 500 student groups registered with the University where students engage in a range of activities from celebrating distinct cultures to promoting political causes, from pursuing unique hobbies to worshiping together, from creating service opportunities to pursuing academic excellence, and much more. *See* Center for Student Involvement and Leadership, *Pick One!*, https://csil.uiowa.edu/pickone.

The University's official policy on Registration of Student Organizations trumpets a high ideal of free association for all these groups. *See* Baxter Decl. ¶ 2, Ex. A. It emphasizes that a student

organization may be any "voluntary special interest group organized for educational, social, recreational, and service purposes." *Id.* at 1. And it broadly "encourages the formation of student organizations around the areas of interest of its students." *Id*. Recognizing that students have "interests" in "organiz[ing] and associat[ing] with like-minded" individuals, the policy confirms that "all registered student organizations [are] able to exercise free choice of members" and indicates that organizations may restrict membership to "individuals who subscribe[] to the goals and beliefs" of the organization." *Id*. at 2.

All organizations receive significant benefits for being registered, including: (1) access to a financial account and "purchasing privileges" with the University; (2) "eligibility to apply for funds from mandatory Student Activity fees"; (3) "inclusion in appropriate University publications"; (4) use of the University's OrgSync software, trademarks, meeting facilities, and outdoor spaces; (5) "[e]ligibility" to use University vehicles, staff and programming resources, and—once per semester—the school mass mail services; and also (6) "eligibility to apply" for "office space and/or storage space" on campus. *Id*. at 1.

The University is careful to clarify that "General" student groups like BLinC are not an official arm of the University and that registration "does not constitute an endorsement of [the organization's] program or its purposes." *Id*. Rather, registration "is merely a charter to exist." *Id*.[2]

[2] Select organizations are given additional privileges. "Affiliated" student organizations are "those that serve a specific University interests" and "provide support to University programs and initiatives." RSO at 4. They are subject to direct "oversight" by an assigned University department. *Id*. "Sponsored" student organizations are "those considered critical to the mission and culture of the University and work in partnership with a University department or unit." *Id*. at 5. These student groups receive first priority in utilizing the University's resources. *Id*. at 4-5.

BLinC's Registered Status

BLinC is a small, newly organized group within the University's Tippie School of Business. Thompson Decl. ¶ 3; Estell Decl. ¶ 35. Its "primary mission is to create a community of followers of Christ . . . in order to share and gain wisdom on how to practice business that is both Biblical and founded on God's truth." Baxter Decl. ¶ 6, Exhibit N. Students within and without the business school are welcome to participate in the group. *Id.* BLinC's members meet weekly for prayer, Bible study, and spiritual discussion led by the organization's leaders. Thompson Decl. ¶¶ 10-12. The leaders also frequently invite prominent Iowa business leaders to visit campus and speak to students about how they integrate their faith and careers. *Id*. And they also organize one or two regular service projects each semester, including providing childcare at a local Saturday school program and partnering with an after-school mentoring program for at-risk youth. *Id*. at ¶¶ 13-14. BLinC's ability as a registered organization to reserve space for meetings, to participate in student recruitment fairs, to receive funding from the mandatory activity fees for students, to be listed on the University's OrgSync website, and to utilize campus communications systems is critical to its continued existence and potential for growth. *Id*. ¶¶ 6-8; Estell Dec. ¶¶ 35-42.

The Meeting with the University

In February 2017, a former member of BLinC filed a complaint with the University claiming that, during the previous school year, he had been denied a leadership position in the organization because he was "openly gay." Thompson Decl. ¶ 35. He simultaneously filed a similar complaint against another Christian student group called 24:7. Baxter Decl. ¶ 5, Ex. M. Despite the University's instructions that such complaints should remain confidential, the student immediately told the media about his grievance. *See id.*

In the course of the University's subsequent investigation, Hannah Thompson, the president of BLinC at that time, emphasized that the student was welcome to be a member of BLinC, but was not eligible to serve in BLinC's leadership because he had rejected BLinC's religious beliefs on sexual conduct. Thompson Decl. ¶¶ 16-24, 43, Ex. I. Although the investigator acknowledged Ms. Thompson's statements that the student was ineligible to serve in BLinC's leadership "because of [his] desire to pursue a homosexual . . . *relationship*" in violation of BLinC's religious beliefs, the investigator ultimately concluded that "the basis for BLinC's refusal . . . was his sexual *orientation*." Estell Decl. ¶ 10, Ex. A (emphases added). While BLinC vigorously disputes the investigator's findings, for purposes of this motion, they are irrelevant for purposes of this motion.[3]

The investigator's findings were first submitted to Defendant Nelson, who has responsibility over student organizations, for a determination of an appropriate sanction. Dr. Nelson invited BLinC to meet with him to discuss the investigator's findings. Estell Decl. ¶ 12. BLinC's president and vice president, Mr. Estell and Mr. Eikenberry, attended on BLinC's behalf, along with two of their attorneys. *Id*. ¶ 13. Dr. Nelson and Dean Baker represented the University. *Id*. ¶ 14.

Dr. Baker commenced the meeting by reviewing the University's findings and noting that the University had addressed a similar issue in 2004 involving another Christian student group—the Christian Legal Society ("CLS"). He acknowledged that CLS had been allowed to remain on campus while maintaining similar leadership standards to BLinC and conceded that student groups generally must be free to select leaders who support their mission. *Id*. ¶ 15-17; *see also* Colby Decl. ¶¶ 4-10 and Ex. 1 (attaching letter from Dr. Baker). He analogized to a student environmental

[3] That is true for two reasons. First, BLinC's leaders have unequivocally declared that they have not and will not discriminate on the basis of sexual orientation going forward. Second, as discussed *infra*, the University ultimately chose to derecognize BLinC not because of the incident, but because BLinC's Statement of Faith allegedly violates the Human Rights Policy "on its face." Estell Decl. ¶¶ 30, 33, Exs. E, G.

society established to promote awareness of global warming and emphasized that such a group would be allowed to choose leaders based on that tenet just like BLinC could expect the same of its leaders regarding its tenets. Estell Decl. ¶ 10.

Seeking to confirm the University's unexpected position, BLinC pressed Dr. Baker for assurance that it could screen its leaders based on their *beliefs* and *conduct* on sexual morality, as long as it did not exclude anyone based strictly on *status* (*i.e.* sexual orientation). Dr. Baker and Dr. Nelson both confirmed that this was the University's position. *Id*. ¶¶ 18-21. Mr. Estell and Mr. Eikenberry reiterated and affirmed that BLinC does not discriminate on the basis of any status (other than religion): membership is open to everyone and leadership is open to everyone that embraces and strives to follow BLinC's Statement of Faith. *Id.* ¶¶ 20-22.

Dr. Baker and Dr. Nelson did express concern that students should be made aware of BLinC's religious beliefs before joining, so as to avoid the risk of later being offended upon learning they may not be eligible to serve as leaders. *Id*. ¶ 23. BLinC's officers readily agreed to amend its constitution to expressly set forth BLinC's religious beliefs. *Id*. ¶ 24. The meeting ended with Dr. Nelson turning to the students on his way out the door and commending them as "some of the best students" that the University has. *Id*. ¶ 26.

The University's Discriminatory Animus against BLinC

Shortly thereafter, BLinC submitted an amended constitution expressly incorporating its Statement of Faith, which includes the following provision:

> **DOCTRINE OF PERSONAL INTEGRITY:** All Christians are under obligation to seek to follow the example of Christ in their own lives and in human society. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including pornography. We believe God's intention for a sexual relationship is to be between a husband and a wife in the lifelong covenant of marriage. Every other sexual relationship beyond this is outside of God's design and is not in keeping with God's original plan for humanity. We believe that every person should embrace, not reject, their

> God-given sex. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.

Estell Decl. ¶ 3, Ex. D (emphasis added). Leaders are then asked to sign the Statement of Faith with the following affirmation, emphasizing their willingness to turn from conduct that BLinC believes to be sin:

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

Id.

Upon receiving this requested clarification of BLinC's beliefs, the University pulled a bait-and-switch, asserting that BLinC's Statement of Faith violates the University's Human Rights Policy. In a letter to BLinC dated October 19, 2017, Dr. Nelson attacked BLinC's "Statement of Faith, *on its face*," because it "does not comply with the University's Human Rights Policy since its affirmation, as required by [BLinC's] Constitution *for leadership purposes*, would have the effect of disqualifying certain individuals *from leadership positions* based on sexual orientation or gender identity." *Id*. ¶ 30, Ex. E (emphasis added). Dr. Nelson gave BLinC ten days to "make additional revisions to your Statement of Faith" and submit "an acceptable plan" for selecting leaders or have its registration "revoke[d]." *Id*.

BLinC's appeal to Dean Redington was unavailing. Reflecting the same hostility to BLinC's religious beliefs, she s "affirm[ed] the decision of Dr. Nelson," repeating that BLinC's "Statement of Faith, *on its face*, does not comply with the University's Human Rights policy." *Id*. ¶ 33, Ex. G (emphasis added). Dean Redington then proceeded to "affirm the sanctioning decision of Dr. Nelson to revoke the registration of BLinC." *Id*.

LEGAL STANDARD

On a motion for preliminary injunction, courts must consider the following factors:

> (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.

Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981). The Eighth Circuit takes a "flexible" approach to these factors. *Id.* When "the equities are . . . strongly" in the plaintiff's favor, "the showing of success on the merits can be less." *Id*. And where—as here—the challenge is to "informal rules" that have not been subject to the "democratic processes," an even more relaxed standard applies: the movant is required to show only "a reasonable probability of success, that is, a fair chance of prevailing." *Powell v. Noble*, 798 F.3d 690, 698 (8th Cir. 2015) (citation and internal quotation marks omitted). BLinC easily meets this standard.

ARGUMENT

For purposes of this motion only, BLinC relies on a subset of its claims: its Free Exercise and Establishment Clause Claims (Counts I-V) and its Free Speech Claims (Counts VI-VIII). For the reasons that follow, BLinC is likely to succeed on each of these claims.

I. BLinC is likely to succeed on its First Amendment Claims.

A. The Free Speech Clause prohibits the University from deregistering BLinC.

Universities are not obligated in the first instance to grant official recognition to student-led organizations. But once "a forum generally open to student groups" is created, the case law is overwhelming that universities cannot exclude groups based on the content of their speech or the viewpoints they espouse. *Widmar v. Vincent*, 454 U.S. 263, 267 (1981); *see also Healy v. James*, 408 U.S. 169, 181 (1972) (universities cannot "den[y] official recognition . . . to college organizations" on the basis of their identity or views). In this regime, religious groups are not

second-class citizens—they enjoy at least the same protection as everyone else. *See Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384, 394 (1993); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 831 (1995); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 120 (2001). Indeed, under the First Amendment, religious organizations receive "special solicitude." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012).

1. Denying BLinC recognition violates its freedom of speech.

The Supreme Court and the Eighth Circuit have repeatedly held that a university's denial of official recognition to a student group because of its views violates the First Amendment. In *Healy v. James*, a state college in Connecticut denied recognition to students forming a local chapter of Students for a Democratic Society, barring them from "plac[ing] announcements . . . in the student newspaper," "from using various campus bulletin boards," and "from using campus facilities for holding meetings." 408 U.S. at 176. The college claimed the chapter was affiliated with a national organization that had espoused "violent and disruptive activities" in the past, and that the chapter itself implied that it might resort to such means in the future. *Id*. at 178, 173.

The Supreme Court quickly rejected these arguments, stating that—as an "instrumentality of the State"—a public school can never "deny[] rights and privileges solely because of a citizen's association with an unpopular organization" or "because [the school] finds the views expressed by any group to be abhorrent." *Id*. at 186-89. The Court conceded that student groups may "be bound by reasonable school rules governing conduct." *Id*. at 191. But it emphasized that this referred to "reasonable" time, place, and manner regulations that "in no sense infringe[]" the "freedom to speak out, to assemble, or to petition for changes in school rules." *Id*. at 192-93.

In *Widmar v. Vincent*, the Court emphasized that any restrictions on student conduct must be both content- and viewpoint-neutral. There the Court held that a state university that "makes its facilities generally available" to registered student groups could not "close its facilities" to a "group

desiring to the use the facilities for religious worship and religious discussion." 454 U.S. at 264-65. Because the restriction was based on the "content of a group's intended speech," it could only be justified if the regulation were "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end." *Id*. at 274.

The university claimed an "interest in maintaining strict separation of church and State." *Id*. at 275. But the Court denied the interest as insufficient because neutral treatment of "over 100 recognized student groups" would "not confer any imprimatur of state approval." *Id*. at 276, 277; *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) ("a generally available benefit" may not be withheld "solely on account of religious identity").

Finally, in *Rosenberger v. Rector and Visitors of University of Virginia*, the University of Virginia maintained a Student Activities Fund from which student groups could seek expense reimbursement for their student magazines. 515 U.S. 819, 824 (1995). Reimbursement was precluded, however, for "religious activities." *Id*. at 824-25. When a student group sought the costs of publishing its magazine, which shared a Christian perspective on a wide range of issues, the University denied reimbursement. *Id*. at 826-27. But the Supreme Court again ruled for the students, rejecting the University's rationalization that it was simply declining to subsidize religious activity. The Court, rather, found viewpoint discrimination, noting that "the University does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints." *Id*. at 831. Because the University chose to reimburse publications presenting a secular point of view, it could not deny reimbursement to those addressing the same issues from a religious perspective. *Id.* at 829.

The Eighth Circuit has likewise long held that a public university cannot restrict student speech or assembly simply because it disagrees with the message or viewpoints presented. For example,

more than 40 years ago, when the University of Missouri attempted to exclude an LGBTQ group from campus, the Eighth Circuit ruled that the First Amendment protected the group's rights to association and equal treatment. *Gay Lib v. Univ. of Mo.*, 558 F.2d 848 (8th Cir. 1977). In that case, the University had denied the group recognition and funding. *Id*. at 850. As the Court explained: "[i]t is of no moment, in First Amendment jurisprudence, that ideas advocated by an association may to some or most of us be abhorrent, even sickening. The stifling of advocacy is even more abhorrent, even more sickening. It rings the death knell of a free society." *Id*. at 856; *see also Gay & Lesbian Students Ass'n v. Gohn*, 850 F.2d 361, 368 (8th Cir. 1988) (stating that while "[c]onduct may be prohibited or regulated . . . [the] government may not discriminate against people because it dislikes their ideas").

In another recent speech case, the Eighth Circuit, and this Court, found that Iowa State University ("ISU") violated the First Amendment when it discriminated against a student chapter of the National Organization for the Legalization of Marijuana (NORML-ISU) for advocating the legalization of marijuana. *Gerlich v. Leath*, 861 F.3d 697, 700 (8th Cir. 2017). Under ISU's recognition policy, student groups could apply to use the school's trademarks on their merchandise. NORML-ISU requested and received permission to use the ISU insignia on a pro-marijuana shirt. But following community backlash, the University withdrew its approval. *Id.* at 703. The Eighth Circuit found a First Amendment violation, emphasizing that once the University "create[d] a limited public forum for speech," it could not single out a group for disfavored treatment because of its position on controversial topics. *Id.* at 704-05.

These cases establish unequivocally that the University of Iowa's derecognition of BLinC violates BLinC's freedom of speech. The University's policy regarding Registration of Student Programs creates precisely the type of forum that triggers full constitutional protections. It

"encourages the formation of student organizations around the areas of interest of its students" and grants to student groups freedom to "organize and associate with like-minded individuals." Baxter Decl. ¶ 2, Exhibit A. And the University explicitly states that registration "does not constitute an endorsement of [the organization's] program or its purposes." *Id*. at 4); *see also* Estell Decl. ¶ 33, Ex. G (noting that student organizations are "voluntary special interest group[s]" and "separate legal entities from the University" and "not treated the same as University departments or units"). Having thus created a public forum for student expression and association, the University's refusal to recognize a group because of its religious beliefs and leadership standards is a gross violation of the Free Speech Clause. *Rosenberger*, 515 U.S. at 835 (since "[t]he University declares that the student groups eligible for . . . support are not the University's agents, are not subject to its control, and are not its responsibility," it "may not silence the expression of selected viewpoints").

2. The University's discrimination against BLinC fails strict scrutiny.

Because the University's action restricts protected speech, "it is invalid unless . . . it passes strict scrutiny—that is, unless it is justified by a compelling government interest and is narrowly drawn to serve that interest." *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 799 (2011). This is "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). The University thus bears a "heavy burden" to justify excluding an organization from the full "range of associational activities" it otherwise permits. *Healy*, 408 U.S. at 184. To date, the University has relied upon its Human Rights Policy to justify denying BLinC equal access. But there are at least five reasons why that argument fails, revealing religious animus as the real reason for the University's withdrawal of BLinC's recognition.

a. BLinC is not in violation of the Human Rights policy.

First, by the University's own admission, BLinC's use of its Statement of Faith to screen leaders is not prohibited by the Human Rights Policy. Rather, the University guarantees that "all

registered student organizations be able to exercise free choice of members," that they may "organize and associate with like-minded students," and that they may restrict membership to "any individual who subscribes to the goals and beliefs of [the] student organization." Baxter Decl. ¶ 2, Ex. A at 2. Similarly, in a 2004 letter to the Christian Legal Society ("CLS"), Dean Baker emphasized that "a student religious group is entitled to require a statement of faith as a pre-condition for joining the group" and that "[*a*]*sking prospective members to sign the CLS statement of faith would not violate the UI Human Rights Policy*." Colby Decl. ¶ 6, Ex. 1 (emphasis in original). Because the University allows tenet-based restrictions on *members*, it cannot complain about BLinC's tenet-based restrictions on just its *leaders*. And Dean Baker and Dr. Nelson admitted as much at the September 1, 2017 meeting, where they stated that BLinC could select leaders based on its tenets, just like a group promoting awareness of global warming could choose leaders based on its tenets. Estell Decl. ¶ 19.

Moreover, BLinC has repeatedly affirmed that it does not discriminate against members based on *any* protected status (including sexual orientation or gender identity), and that it will not discriminate against potential leaders on any protected status either, *except the basis of religion*. Thompson Decl. ¶¶ 41, 43, Exs. H, I; Estell Decl. ¶¶ 9, 11, 20-21 and Exhibit B. BLinC maintains that the complaining student was passed over for a leadership position solely because he rejected BLinC's religious beliefs concerning marriage and sexuality. In fact, Ms. Thompson was happy for him to take a leadership role if he could have embraced BLinC's beliefs and agreed to comply with the Statement of Faith. Thompson Decl. ¶ 15. Moreover, regardless of the basis for the decision regarding the complaining student, both Ms. Thompson and BLinC's current leadership have reiterated that students will not be denied a leadership position on the basis of sexual orientation going forward. Thompson Decl. ¶¶ 41-44, Exs. H, I; Estell Decl. ¶¶ 9, 11, 20-21.

At the parties' September 1, 2017 meeting, the University repeatedly assured BLinC that it was permissible to distinguish leaders' *status* (including sexual orientation) from their *beliefs* and *conduct*. Estell Decl. ¶¶ 19-21. Because BLinC screens its leaders solely on the basis of their religious beliefs and conduct, and not any other protected category, it is not in violation of the Human Rights Policy. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 574-75 (1995) (distinguishing excluded parade participants' sexual orientation from parade organizers' choice "not to propound a particular point of view").

b. Applying the Human Rights policy against BLinC in this context would constitute religious discrimination.

The Human Rights Policy—including its prohibition against religious discrimination—first and foremost binds the University itself. The University's own Statement of Religious Diversity notes that "[r]eligious history, religious diversity, and spiritual values have formed a part of The University of Iowa's curricular and extracurricular programs since [its] founding" and that "[a]s a public institution," the University cannot "discriminate[] against students, staff, or faculty on the basis of their religious viewpoints." Baxter Decl. ¶ 2, Ex. B. Additionally, the University's policy on Registration of Student Organizations states that "[t]he reasons for denying or withdrawing registration of a student organization shall not violate the University Policy on Human Rights," including by discriminating on the grounds of "creed" or "religion." Baxter Decl. ¶ 2, Ex. A at 1.

This explains why, in his 2004 letter to CLS, Dean Baker reiterated that student groups with traditional views on marriage and sexuality did not need an exemption from the "sexual orientation[] and gender identity" non-discrimination requirements because "the Human Rights Policy protects groups such as your CLS student clients from discrimination [by the University] on the basis of creed" and that, "[o]nce recognized, the University is obliged to protect the right of CLS members to espouse the group's basic tenets." Colby Decl. ¶ 6, Ex. 1, at 2. It also explains

why Dean Baker, early in the meeting with BLinC's officers on September 1, 2017, stated that the University recognized its obligation to respect the right of student groups, and particularly religious student groups, to select leaders who shared their group's mission and beliefs. Estell Decl. ¶¶ 17-21. Because the Human Rights Policy itself prohibits the University from engaging in religious discrimination, the University cannot claim that it has an interest under the Human Rights Policy in compelling BLinC to change its Statement of Faith or associated leadership standards.

c. The Human Rights Policy does not trump BLinC's constitutional rights.

Third, even if the Human Rights Policy could be broadly construed to prohibit discrimination on *beliefs* concerning sexual orientation, as opposed to just *status*, that would be an insufficient basis for overriding BLinC's constitutionally protected freedom of expression. In *Hurley*, for example, the non-governmental organizer of a large St. Patrick's Day parade was sued under Massachusetts' antidiscrimination law for excluding a gay-rights group that wanted to march "to celebrate its members' identity as openly gay, lesbian, and bisexual descendants of the Irish immigrants." 515 U.S. at 570. The Supreme Court held that the State's sexual-orientation nondiscrimination provision could not override the parade organizer's First Amendment right to set its own limits on the parade's message, at least where the organizer "disclaim[ed] any intent to exclude homosexuals as such." *Id.* at 570, 572. Similarly, in *Boy Scouts of America v. Dale*, the Supreme Court held that New Jersey's antidiscrimination law could not override the Boy Scouts' right to exclude openly gay scout leaders, which would "surely interfere with the Boy Scouts' choice not to propound a point of view contrary to its beliefs." 530 U.S. 640, 654 (2000); *see also Cuffley v. Mickes*, 208 F.3d 702, 708 (8th Cir. 2000) (holding that nondiscrimination law could not justify excluding a group that discriminated "on the basis of race, religion, color, and national origin" from participating in Missouri's Adopt-A-Highway program).

Here, BLinC does not exclude on grounds of sexual orientation, but only on grounds of its beliefs—beliefs that are motivated by what the Supreme Court has called "decent and honorable religious . . . premises" and that must be given "proper protection" under the First Amendment. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602, 2607 (2015). Thus, even if the Human Rights Policy were misconstrued to prohibit BLinC's Statement of Faith, it would still not override BLinC's First Amendment rights.[4]

d. The University applies the Human Rights Policy arbitrarily.

Finally, even if an antidiscrimination policy in some contexts could justify overriding First Amendment rights, it cannot do so here, because the University does not apply the policy fairly or uniformly. Such "[u]nderinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. Here, the University's application of its Human Rights Policy is highly arbitrary, demonstrating that it has no compelling interest in applying it against BLinC.

First, the University itself obviously does not follow the Human Rights Policy in multiple contexts. To take an obvious example, the policy forbids differential treatment on the basis of "sex." But the University's large and lucrative sports program—its annual operating budget recently passed the $100 million mark—is divided into men's and women's teams.[5] *See* University

[4] The Supreme Court's decision in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010), is not to the contrary. There, the student group derecognized by the University of California had stipulated that the University had a neutral "all-comers" policy that required all student-led clubs to "open eligibility for membership and leadership to all students," without any exceptions. *Id.* at 668, 675 (emphasis added). In light of that concession, a 5-4 majority of the Court held that the policy was "a reasonable, viewpoint-neutral condition on access to the student-organization forum." *Id.* at 669. Here there is no such stipulation and no such policy.

[5] A review of the individual teams' rosters does not reveal any exceptions. For instance, the 2017 men's football team had over 115 spots on its roster—all of them filled by men. University of Iowa Athletics, *2017 Football Roster*, http://www.hawkeyesports.com/roster.aspx?path=football. Same for the 16

of Iowa Athletics, *Iowa Administration*, http://hawkeyesports.com/sports/2016/6/13/administration-athletic-director-html.aspx. Nor does Iowa even offer the same programs for both sexes—there are no women's football, baseball, or wrestling teams, for instance, nor are there men's volleyball, softball, or field hockey teams.

There are other examples of the University not applying the Human Rights Policy to its own programs. For instance, the Policy bans "differences in the treatment of persons because of race, . . . status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, [and] associational preferences." Baxter Decl. ¶ 3, Ex. C. Yet there are University programs that discriminate on all of those bases. Several University scholarships, including the Advantage Iowa Award, discriminate based on race.[6] The University's Armed Forces Award discriminates based on status as a U.S. veteran or service in the U.S. military.[7] And the University's annual "Rainbow Scholarship" discriminates on the basis of sexual orientation and gender identity, while its "Rainbow Graduation" discriminates on both of those bases and on the basis of associational preferences.[8]

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slots filled on the men's basketball team. University of Iowa Athletics, *2017-18 Men's Basketball Roster*, http://www.hawkeyesports.com/roster.aspx?path=mbball.

[6] *See* University of Iowa, *Advantage Iowa Scholars*, https://diversity.uiowa.edu/awards/advantage-iowa-award (scholarship open only to "African American, Hispanic, Native American, Pacific Islander, [and] Multiracial" students); *see also* University of Iowa, *Iowa First Nations Tuition Program*, https://diversity.uiowa.edu/awards/iowa-first-nations-tuition-program (broadly "invit[ing] members of the Tribes/Nations historic to Iowa" to obtain in-state tuition costs, "regardless of where they live").

[7] *See* University of Iowa, *U.S. Armed Forces Award*, https://diversity.uiowa.edu/awards/us-armed-forces-award (granting award of $17,000, plus eligibility for in-state tuition, to veterans and active-duty service members).

[8] *See* University of Iowa LGBTQ Staff & Faculty Assoc., *The Rainbow Scholarship 2016-17*, https://lgbtqsf.org.uiowa.edu/sites/lgbtqsf.org.uiowa.edu/files/wysiwyg_uploads/Rainbow.pdf (scholarship is "for a regularly enrolled University of Iowa undergraduate student who is gay, lesbian, bisexual or transgender"); *see* University of Iowa, *Rainbow Graduation*,

Second, the University does not extend the same stringent standard that it has set for BLinC's *leadership* to even the *membership* requirements of other student organizations. The most obvious example is the University's many large fraternities and sororities. Those groups are subject to the University's Policy but nonetheless restrict both membership and leadership on the basis of sex.[9] As explained on the official website to which the University directs its students, fraternities are "for men" and sororities are "for women." *See* Iowa FSL, *Terminology*, http://uiowafsl.com/terminology. An individual's sex is thus a non-negotiable eligibility requirement.[10] There is no evidence that the University has enforced the Human Rights Policy against these organizations. Indeed, far from derecognizing these groups, the University *advertises* for them, telling students that the "44 Greek organizations on campus . . . provide[] a welcoming social structure" and that "[b]eing a member of a fraternity or sorority provides one of the best ways to becoming an involved student at Iowa."[11]

Third, the University does not equally enforce its policy against other registered student organizations. Many organizations are permitted to use mission-based restrictions to screen their members. The Korean American Student Association requires members to "exhibit an optimistic attitude towards Korean culture" and reserves the right to exclude any member who "possesses a

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https://csil.uiowa.edu/multicultural/rainbowgrad/ ("annual event" to honor "graduating gay, lesbian, bisexual, transgender, and/or queer student[s], or a graduating ally").

[9] *See* Dean of Students, *Registration of Student Organizations*, University of Iowa, https://dos.uiowa.edu/policies/registration-of-student-organizations/ ("[u]ndergraduate social fraternities" must operate "consistent with the University Policy on Human Rights").

[10] *See* Sigma Lamba Beta, *Requirements and Next Steps*, http://sigmalambdabeta.com/requirements-next-steps/ ("Membership is only available for collegiate men"); *Bylaws of the Panhellenic Council at the University of Iowa,* (Oct. 26, 2017) http://uiowafsl.com/Websites/iowafsl/images/UPDATED%20PHC%20Bylaws%20(10-26-17).pdf (noting that all member sororities must be for "women").

[11] *See* University of Iowa, *Center for Student Involvement & Leadership*, https://csil.uiowa.edu/pickone; Tom Rocklin, Iowa Fraternity & Sorority Life 2016-2017, at 2, http://iowafsl.publishpath.com/Websites/ iowafsl/images/1426-1_-_FSL_2016-2017_Booklet_Updates.pdf.

negative attitude." Baxter Decl. ¶ 4, Ex. E. Students for Life requires its members to be "Pro-Life." *Id*., Ex. F. And the Association of Women Dentists requires members to support the advancement and recognition of women in dentistry. *Id*., Ex. G.

Further, many campus groups besides BLinC require leaders to ascribe to religiously motivated conduct standards yet still retain registered status. For instance, Imam Mahdi, a Sunni Muslim student organization, declares that its "[o]fficials . . . shall refrain from major sins (*kaba'ir*) and endeavor to avoid minor sins (*saga'ir*)." *Id*., Ex. H. CLS continues to exist on campus despite its beliefs on marriage and sexuality that are similar to BLinC's. Colby Decl. ¶¶ 4-15. And perhaps most ironically, Love Works, a pro-LGBT campus ministry founded by the student who filed the complaint against BLinC, requires its leaders to "sign and agree to [its] Mission and Statement of Core Beliefs," which includes a "Jesus-centered" affirmation of "those in the LGBTQ+ community who have been pushed aside from many other faith communities." Baxter Decl. ¶ 4, Ex. J. Because the University fails to enforce its Human Rights Policy in all these contexts, it cannot have a compelling interest in targeting BLinC. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) ("[A] law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.")

e. The University has not employed the least restrictive means.

Even if the University could show that it has a compelling interest in punishing BLinC for its speech, complete derecognition is not narrowly tailored to accomplishing that interest. The least restrictive means requirement is "exceptionally demanding." *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2780 (2014) (citing *City of Boerne*, 521 U.S. at 532). If a less restrictive alternative would serve the government's purpose, "the legislature *must* use that alternative." *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000) (emphasis added). Here, the fact that the University has managed to accommodate its own mission and the missions of other student groups

without sacrificing the overall interests promoted by the Human Rights Policy is alone sufficient evidence that both diversity and freedom of speech on religious issues can coexist.

* * * *

The University's discrimination burdens BLinC's religious speech and association without a compelling justification and thus violates the Free Exercise Clause. On this basis alone, then, this Court should rule find that BLinC has a likelihood of success on the merits.

B. The Religion Clauses prohibit the University from deregistering BLinC.

The Religion Clauses also forbid the University's attempt to control the content of BLinC's beliefs and the selection of its leaders.

1. The Religion Clauses protect BLinC's selection of leaders.

Government interference with a religious group's leadership selection "runs headlong into the Religion Clauses of the First Amendment." *Scharon v. St. Luke's Episcopal Presbyterian Hosps.*, 929 F.2d 360, 361 (8th Cir. 1991). As the Supreme Court unanimously affirmed in 2012, "[t]he Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." *Hosanna-Tabor*, 565 U.S. 171, 184 (2012).

This constitutional doctrine, known as the "ministerial exception," guarantees that a religious group's "selection of its ministers is unfettered." *McNeil v. Missouri Annual Conference of United Methodist Church*, 412 F. App'x 912, 913 (8th Cir. 2011) (citing *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 961 (9th Cir. 2004)). It is a "structural limitation imposed on the government" that "categorically prohibits federal and state governments from becoming involved in religious leadership disputes." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015). Even as against "undoubtedly important" government interests in enforcing nondiscrimination statutes, "the First Amendment has struck the balance" in favor of allowing a

religious group to be "free to choose those who will guide it on its way." *Hosanna-Tabor*, 565 U.S. at 196 (barring disability discrimination claim); *see also Cooper–Igwebuike v. United Methodist Church,* 160 F. App'x 549 (8th Cir. 2005) (barring race discrimination claim).

The ministerial exception applies if (1) the entity in question is a "religious group," and (2) the position in question is for "one of the group's ministers." *Hosanna-Tabor*, 565 U.S. at 177, 196; *see also Scharon*, 929 F.2d at 362 (considering the nature of the "institution" and the "position"). Both factors are met here: BLinC is a religious group, and its leaders fill a ministerial position.

a. BLinC is a religious organization.

A group is a religious organization for purposes of the ministerial exception if its "mission is marked by clear or obvious religious characteristics." *Conlon*, 777 F.3d at 834 (quoting *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 310 (4th Cir. 2004)); *see also Scharon*, 929 F.2d at 362 (finding an entity fit within the exception because of its "substantial religious character"). Courts have found that the exception covers a broad variety of religious organizations, including schools, a nursing home, and a hospital that was "primarily a secular institution." *See Scharon*, 929 F.2d at 362 (hospital); *Hosanna-Tabor*, 565 U.S. at 171 (school); *Shaliehsabou*, 363 F.3d at 310 (nursing home). The Sixth Circuit recently applied the ministerial exception to the InterVarsity Christian Fellowship, a national religious group for college students which has over 600 campus chapters, including one at the University, and whose chapters are substantially similar to BLinC. *Conlon*, 777 F.3d at 831. The Court emphasized that since "InterVarsity *Christian Fellowship* is a Christian organization, whose purpose is to advance the understanding and practice of Christianity in colleges and universities," the ministerial exception protected the group. *Id.* at 833-34.

BLinC likewise qualifies as a religious group. It is a voluntary private organization whose name marks it as "in Christ." Estell Decl. ¶¶ 1, 3. It was founded by Christian students to help each other and fellow University students grow in their faith and integrate their faith into their studies and careers. *Id*. ¶ 4. Its official statement of purpose in its constitution is to "help students learn about how to continually keep Christ first in the fast-paced business world." *Id*. ¶ 29, Ex. D at 1. And BLinC accomplishes that mission by having its members meet together for regular prayer, Bible study, community service, and religious guidance from Christian business leaders. *Id*. ¶¶ 6-8. BLinC also holds itself out to the University community as a religious group. Its official University webpage states that its "primary mission is to create a community of followers of Christ within the Tippie College of [B]usiness in order to share and gain wisdom on how to practice business that is both Biblical and founded on God's truth." *See* Baxter Decl. ¶ 6, Exhibit N. Similarly, BLinC's Facebook page, facebook.com/TippieBelievers, prominently features the text of a scripture verse—Colossians 3:23—superimposed on a New York City skyline. Finally, as particularly relevant here, BLinC ensures that it protects and maintains its religious mission by requiring its leaders to affirm and live by its Statement of Faith.

Thus, BLinC has the requisite "substantial religious character," *Scharon*, 929 F.2d at 362, because it "is a Christian organization, whose purpose is to advance the understanding and practice of Christianity" at the University. *Conlon*, 777 F.3d at 833-34. BLinC's ministerial decisions are accordingly protected by the ministerial exception.

b. BLinC's leaders hold ministerial roles.

BLinC's leaders also qualify as ministers for purposes of the ministerial exception because they hold positions that require them to engage in important religious functions.

The term "'ministerial exception' is judicial shorthand"; the doctrine "protects more than just 'ministers.'" *Rweyemamu v. Cote*, 520 F.3d 198, 206-07 (2nd Cir. 2008) (noting the doctrine's application to a "press secretary," "staff of [a] Jewish nursing home," and an "organist/music director"). Rather, the "point of the ministerial exception" is ensuring that a religious group may "select and control" those who "minister to the faithful" and "personify its beliefs." *Hosanna-Tabor*, 565 U.S. at 188, 194-195. To this end, courts have held that ministerial status ultimately "depend[s] . . . upon the function of the position" in question. *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985); *accord Fratello v. Archdiocese of N.Y.*, 863 F.3d 190, 205 (2d Cir. 2017) ("'courts should focus' primarily 'on the function[s] performed by persons who work for religious bodies.'") (quoting *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., joined by Kagan, J., concurring)). And the core functions to evaluate are whether the position in question has an important role in "conveying the [ministry's] message and carrying out its mission." *Hosanna-Tabor*, 565 U.S. at 192; *see Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 177 (5th Cir. 2012) (music director was "minister" because he "furthered the mission of the church and helped convey its message"); *accord Preece v. Covenant Presbyterian Church*, No. 8:13CV188, 2015 WL 1826231, at *3, *5 (D. Neb. Apr. 22, 2015) ("Courts evaluating the propriety of the ministerial exception for employees explore the individual's functional role" in "conveying the defendant's message and carrying out its mission"). Selecting "whose voice speaks for the church is *per se* a religious matter" and courts have agreed that they "cannot imagine an area of inquiry less suited" to government control. *Scharon*, 929 F.2d at 363 (quoting *Minker v. Baltimore Annual Conf. of United Methodist Church*, 894 F.2d 1354, 1356-57 (D.C. Cir. 1990)).

BLinC's elected officers are the central means by which BLinC conveys its religious message and carries out its mission. Leaders open BLinC's weekly meetings in prayer, choose and express

the content of religious study, and help guide the group in determining how to apply religious principles to their lives. Thompson Decl. ¶ 10-11; Estell Decl. ¶ 6. The leaders are also responsible for evaluating and selecting Christian business leaders to speak to students about how they integrate their faith and careers. Thompson Decl. ¶ 12; Estell Decl. ¶ 7. And BLinC's leaders organize religious service projects on and around campus, such as providing childcare at a religious private school's Saturday-school program. Thompson Decl. ¶¶ 13-14; Estell Decl. ¶ 8. The leaders are thus primarily responsible for the content of all religious teaching and prayer within BLinC, and all of its external ministry activity.

To ensure that BLinC's leaders guide the group consistent with its faith, BLinC's constitution emphasizes that its executive officers are expected to "live BLinC's religious beliefs as set forth in its Statement of Faith" and "must be prepared 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." Estell Decl. ¶ 29, Ex. D at 1-2. Because of the religious importance and sensitivity of BLinC's leadership positions, BLinC requires each of its leaders to "commit to live a life in which I turn from my sin and actively choose the biblical precepts of Godly sanctification and righteousness," to confess sin to each other, and to "choose to receive grace and forgiveness from God." Estell Decl. ¶ 29, Ex. D at 2).

Because of their central, essential role in conveying BLinC's religious beliefs and carrying out its mission, BLinC's leaders qualify as ministers. The University thus violated the Religion Clauses by interfering with BLinC's leadership judgments and "punishing [it] for failing to" make selections that the University approves. *Hosanna-Tabor*, 565 U.S. at 188.

2. The Free Exercise Clause protects BLinC against discrimination by the University because of its Statement of Faith.

The University has violated the Free Exercise Clause in two additional ways. First, the University is punishing BLinC for the content of its internal religious beliefs, which is categorically forbidden by the First Amendment. Second, the University is singling BLinC's religious practices out for censure while allowing numerous other groups to engage in similar religious and secular practices unscathed.

a. The University is impermissibly censoring BLinC's religious beliefs.

Under the Free Exercise Clause, "targeting religious beliefs as such is never permissible." *Trinity Lutheran*, 137 S. Ct. at 2024 n.4 (citations omitted). Rather, "freedom to believe . . . is absolute." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Thus, governmental attempts to control religious beliefs are categorically forbidden, regardless of the government's interest.

This absolute right is not limited to the confines of one's mind. Rather, it extends to cover "the expression of religious doctrines" among coreligionists. *Emp't Div. v. Smith*, 494 U.S. 872, 877 (1990); *McDaniel v. Paty*, 435 U.S. 618, 635 (1978) (Brennan, J., concurring) (First Amendment categorically protects both "the *act* of declaring a belief in religion" and "the act of discussing that belief with others."). Deciding the content of internal matters such as "faith and doctrine" is left to the discretion of religious groups alone. *Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

Here, the University has targeted the content of BLinC's religious beliefs and its attempt to communicate those beliefs to members and potential leaders via its Statement of Faith, saying that BLinC could regain recognition if it would "make additional revisions to [its] Statement of Faith" to comply with the Human Rights Policy. Estell Decl. ¶¶ 30, 33, Ex. E, G. In other words, the University took umbrage not at BLinC's actions, but at its Statement of Faith. That is "never

permissible." *Trinity Lutheran*, 137 S. Ct. at 2024 n.4. Because BLinC is being deprived of access to campus "solely because of [its] religious beliefs," the constitutional inquiry is "at an end," and the University can in no way justify its discriminatory policy. *McDaniel*, 435 U.S. at 626.

b. The University is impermissibly discriminating against BLinC's religious practices.

The University also violates the Free Exercise Clause by discriminating against BLinC's religious conduct. The Free Exercise Clause "'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws" that disfavor religion. *Trinity Lutheran*, 137 S. Ct. at 2019 (quoting *Lukumi*, 508 U.S. at 542-43). Thus, "[l]aws burdening religious practice must be of general applicability." *Lukumi*, 508 U.S. at 542. A law is not generally applicable if it burdens a category of religiously motivated conduct but exempts or does not reach a substantial category of conduct that is not religiously motivated, and which undermines the purposes of the law "in a similar or greater degree than" the restricted religious conduct. *Id.* at 543; *accord Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3rd Cir. 2004) (Alito, J.).

The University's Policy on Human Rights is not generally applicable because, as already discussed with regard to the Free Speech Clause, it is not enforced equally against either the University itself or other student organizations as it is against BLinC. *Lukumi*, 508 U.S. at 545-46 (regulation that "'society is prepared to impose upon [religious groups] but not upon itself'" is the "precise evil . . . the requirement of general applicability is designed to prevent") (quoting *Florida Star v. B.J.F.*, 491 U.S. 524, 542 (1989) (Scalia, J., concurring)); *see also Railway Express Agency v. New York*, 336 U.S. 106, 112 (1949) (Jackson, J., concurring) ("there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally.").

Here, the University's enforcement of its policy is patently selective: it has targeted BLinC while consistently exempting its own operations, its many fraternities and sororities, and other recognized student groups. Such a policy must be subject to "the strictest scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2019 (quoting *Lukumi*, 508 U.S. at 542-43). And as explained above, the University cannot hope to meet that standard.

II. The remaining preliminary injunction factors all weigh in favor of granting injunctive relief.

BLinC need only show "a reasonable probability of success" or "a fair chance of prevailing" on any one of its First Amendment claims to justify a preliminary injunction. *Powell*, 798 F.3d at 698. On a First Amendment claim, once this standard is met, "the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied." *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (citation omitted). Here, BLinC has shown that it has not just a "reasonable probability," but a strong likelihood of succeeding on several First Amendment claims. Thus, without going any further, this Court should grant an injunction. If it does go further, though, the remaining relevant factors all support a preliminary injunction as well.

A. BLinC will suffer irreparable harm absent injunctive relief.

Defendants are actively discriminating against and punishing BLinC because of its religious beliefs, expression, and conduct. That is clear irreparable harm. "The loss of First Amendment freedoms constitutes irreparable injury[.]" *Powell v. Ryan*, 855 F.3d 899, 904 (8th Cir. 2017). That is true even if the deprivation is only for "minimal periods of time." *Johnson v. Minneapolis Park & Recreation Bd.*, 729 F.3d 1094, 1102 (8th Cir. 2013). And it is also true even if official University recognition is a "gratuitous benefit" to which BLinC is not otherwise entitled, since conditioning recognition on "disavowing [BLinC's] religious" beliefs and conduct

"inevitably deter[s] or discourage[s] the exercise of First Amendment rights." *Trinity Lutheran*, 137 S. Ct. at 2022 (quoting *Sherbert v. Verner*, 374 U.S. 398, 405 (1963)); *accord Cuffley*, 208 F.3d at 707. Because BLinC has demonstrated that its constitutional and civil rights are being violated, it has demonstrated irreparable harm.

In addition, BLinC suffers continued irreparable injury because it is now unable to access the benefits of recognized student groups, recruit new student members on an equal basis with other student groups, or otherwise participate equally in University life. Estell Decl. Courts have repeatedly held that such derecognition is a significant and enduring harm to student groups. *See Healy*, 408 U.S. at 183 (emphasizing that "the group's possible ability to exist outside the campus community does not ameliorate significantly the disabilities imposed by the [University's] action")*; Christian Legal Soc'y v. Walker*, 453 F.3d 853, 864 (7th Cir. 2006) (concluding that being "denied university money and access to private university facilities for meetings" irreparably harmed a student group's First Amendment rights). Moreover, by branding BLinC as an outsider, the University is stigmatizing BLinC and its religious beliefs, and sending a message to BLinC's students that they are not equal members of the University. *Cf. Singh v. Carter*, 168 F. Supp. 3d 216, 233 (D.D.C. 2016) ("being subjected to discrimination is by itself an irreparable harm").

B. The balance of harms weighs in BLinC's favor.

Defendants will suffer no or *de minimis* injury from a preliminary injunction. An injunction would simply preserve the status quo, allowing BLinC to continue to operate on campus as it has for the past several years. And it would merely require the university to treat BLinC just as it does numerous other student organizations. By contrast, BLinC will suffer irreparable and severe injury if it continues to be punished for its faith. *See Powell*, 855 F.3d at 904.

C. The public interest favors granting an injunction.

The public interest also strongly favors granting an injunction. Indeed, "it is always in the public interest to protect constitutional rights." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012). Additionally, an injunction would further the University's stated interest in allowing a diversity of student groups to operate on campus. *See Bowman v. White*, 444 F.3d 967, 980 (8th Cir. 2006) (accepting the University of Arkansas' contention that "the fostering of a diversity of uses of University resources" was a significant governmental interest). In contrast, the University's exclusionary policy will have a chilling effect on the willingness of groups like BLinC to express their beliefs on controversial topics, thereby impoverishing the marketplace of ideas at the University of Iowa. An injunction will best preserve and promote the free flow of ideas on campus and is therefore in the public interest.

CONCLUSION

For all the foregoing reasons, BLinC respectfully urges the Court to grant this application for a preliminary injunction. BLinC respectfully requests oral argument on this motion.

Respectfully submitted this 12th day of December, 2017.

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