

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

INTERVARSITY CHRISTIAN
FELLOWSHIP/USA, *et al.*,

Plaintiffs,

v.

BOARD OF GOVERNORS OF
WAYNE STATE UNIVERSITY,
et al.,

Defendants.

Civil Action No.:
3:19-cv-10375-RHC-SDD
Judge Robert H. Cleland

**PLAINTIFFS' BRIEF IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

**ORAL ARGUMENT
REQUESTED**

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COUNTER-STATEMENT OF MATERIAL FACTS

1. In 1959, Wayne State University (“WSU”) adopted a Nondiscrimination Policy. Historic Policy, Appx. Ex. 1, WSU005323-324. As a general matter, since its inception, the Nondiscrimination Policy has provided that “[i]n the operations and activities of the university there shall be no discrimination on the basis of race, color, religious belief, country of origin, or ancestry.” *Id.* at WSU005323.

RESPONSE: Admitted that the quoted language in Paragraph 1 accurately reflects the language in Defendants’ Appendix Exhibit 1. This original policy, like Wayne State’s current Policy, does not mention student organizations or their membership or leadership selections. ECF No. 45-2, PageID.771-773; ECF No. 47-38, PageID.2071-2073. The original policy, however, differs from the current Policy in that it contained no exception for affirmative action programs. Moreover, the current Policy forbids discrimination based on additional protected characteristics. See ECF No. 47-38, PageID.2072.

2. In 2010, WSU adopted the current version of the policy, now named the Non-Discrimination/Affirmative Action Policy and identified as Ch. 2.28.01 of the Board of Governors Code (the “Non-Discrimination Policy”). Non-Discrimination Policy, Appx. Ex. 2, WSU001371-373.

RESPONSE: Admitted.

3. The Non-Discrimination Policy provides that “Wayne State University is committed to a policy of non-discrimination and equal opportunity in all of its operations, employment opportunities, educational programs and related activities.” *Id.* Specifically, in relevant part Chapter 2.28.01.020 provides:

This policy embraces all persons regardless of race, color, sex (including gender identity), national origin, religion, age, sexual orientation, familial status, marital status, height, weight, disability, or veteran status and expressly forbids sexual harassment and discrimination in hiring, terms of employment, tenure, promotion, placement and discharge of employees, admission, training and treatment of students, extracurricular activities, the use of University services, facilities, and the awarding of contracts.

Id. at WSU001371.

RESPONSE: Admitted that the quoted language in Paragraph 3 accurately reflects the language in the Policy.

4. The Non-Discrimination Policy further makes clear that it “shall not preclude the University from implementing those affirmative action measures which are designed to achieve full equity for minorities and women.” *Id.*

RESPONSE: Admitted that the quoted language in Paragraph 4 accurately reflects the language in the Policy.

5. The Non-Discrimination Policy on its face extends to extracurricular activities. *Id.* Defendant David Strauss (“Strauss”), Dean of Students, testified that WSU understands the Non-Discrimination Policy to apply to student organizations and their leadership and membership decisions. Transcript of the Deposition of David Strauss (“Strauss Dep.”), Appx. Ex. 3, pg. 129.

RESPONSE: Admitted that the Policy mentions “extracurricular activities.” Admitted that Strauss testified that he understood the Policy to apply to student organizations and their membership decisions. ECF No. 47-45, PageID.2141 at 129:12-19. He also testified that the Policy makes no explicit reference to student organizations or to the leadership selection thereof. ECF No. 47-45,

PageID.2141 at 129:3-5. Further, the registered student organization (“RSO”) application forms merely require RSOs to acknowledge “University policies” and do not expressly state that the Policy applies to leadership selection. ECF No. 47-38, PageID.2072; ECF No. 47-18, PageID.1242; ECF No. 47-45, PageID.2150 at 162:12-16, 129:3-19. InterVarsity had been an RSO at Wayne State for decades without being required to remove its religious leadership expectations. IVCF SOMF ¶ 2 (ECF No. 47, PageID.1109).

6. Further, the Student Code of Conduct, which applies to students and student organizations, prohibits failure to comply with published regulations or policies, including “University statutes prohibiting discrimination.” Excerpt of Student Code of Conduct, Appx. Ex. 4, WSU001002.

RESPONSE: Admitted. Students found to have violated the Code of Conduct face probation, a notation on their transcript, suspension, and expulsion. ECF No. 45-5, PageID.810; see also ECF No. 47-45, PageID.2113, 2132, 2156 at 17:18-22, 90:1-11, 189:12-22 (noting that RSOs “fall under the student code of conduct” which is “at [Wayne State’s] disposal” to use against RSOs). RSOs found in violation of the Code of Conduct can be sanctioned by loss of registration. ECF No. 47-45, PageID.2151 at 167:4-19. InterVarsity could be found in violation of the Code of Conduct for its religious leadership policy. ECF No. 47-45, PageID.2152 at 171:1-6.

7. WSU, through the Dean of Students Office, administers a system of registered student organizations. Strauss Dep. at pg. 16-17.

RESPONSE: Admitted that in order to encourage students to “[p]ursue [their] interests, participate in diverse programming and make the most of [their] [Wayne State] experience,” ECF No. 47-20, PageID.1248, Wayne State has created the RSO program providing benefits to “over 500 organizations covering 50 different categories” that have registered with the Dean of Students Office. ECF No. 47-20, PageID.1246.

8. There are currently roughly 550 registered student organizations on campus. Strauss Dep at pg. 119; Transcript of the Deposition of Ricardo Villarosa (“Villarosa Dep.”), Appx. Ex. 5, pg. 41. These organizations cover a wide variety of interests. See Get Involved Website, Appx. Ex. 6, WSU001240.

RESPONSE: Admitted.

9. The mission of the Dean of Students Office, as it relates to student organizations, is to:

- a. “support student organizations as a means of enriching the campus life experience for organization members and the greater campus community;”
- b. “[d]evelop student organizations so that they may provide quality programs, services, and leadership opportunities that enhance classroom learning and compliment the Wayne State experience;” and
- c. “support student intellectual growth and social maturity through promoting ethical development, appreciating diversity, encouraging civic

engagement, providing leadership development, and supporting the establishment of meaningful interpersonal relationships.”

WSU Website: Student organization resources, Appx Ex. 7, WSU000603; Villarosa Dep., Appx. Ex. 5 at pg. 43-44.

RESPONSE: Admitted.

10. In addition, Strauss testified that student organizations serve students and the University by promoting “student involvement [that] leads to feeling – to being connected to campus. And when a student is connected to something or some things or someone on campus, the data will show you that those students retain at a higher rate and graduate at a higher rate.” Strauss Dep., Appx. Ex. 3 at 120-121.

RESPONSE: Admitted.

11. Registered status provides certain privileges to student organizations. WSU Website: Get involved on campus, Appx. Ex. 7; Villarosa Dep., Appx. Ex. 5, pg. 44-45.

RESPONSE: Admitted that RSOs receive benefits otherwise unavailable to non-registered organizations. See IVCF SOMF ¶ 15 (ECF No. 47, PageID.1111).

12. Registered student organizations have the ability to reserve space in the Student Center on campus or other WSU spaces for free or at a discounted rate. WSU Website: Get involved on campus, Appx. Ex. 7, WSU000630-631; Sample Contract, Appx. Ex. 8, WSU001318. Students may also reserve tables in the Student Center for recruiting purposes. Villarosa Dep., Appx. Ex. 5, pg. 53-54.

RESPONSE: Admitted. RSOs also have priority over non-registered organizations when reserving spaces on campus. ECF No. 47-48, PageID.2305 ¶ 44; ECF No. 47-47, PageID.2262 at 62:15-17. Tables can also be used for other information-sharing purposes; InterVarsity used “interactive tables” as a “big part of [its] ministry” of “being a presence on campus.” ECF No. 47-47, PageID.2253, 2256 at 29:6-12, 41:24-25.

13. Registered student organizations may apply for funding from the Student Activities Funding Board. WSU Website: Get involved on campus, Appx. Ex. 9; Villarosa Dep., Appx. Ex. 5, pg. 44-45.

RESPONSE: Admitted.

14. Registered student organizations may participate in campus events, including FestiFall, Student Organization Day, and Winterfest. *Id.* These are campus wide events that allow registered student organizations to set up information tables to meet students. Strauss Dep., Appx. Ex. 3, pg. 21-23.

RESPONSE: Admitted, except that *only* registered student organizations are allowed to fully participate in these events. ECF No. 47-33, PageID.1995 at 200:18-201:8. Moreover, registered student organizations are encouraged to participate in these events because they are valuable to recruitment, ECF No. 47-33, PageID.1957, 1958, at 48:21-49:4, 52:17-19; ECF No. 47-47, PageID.2255 at 34:23-25; ECF No. 47-48, PageID.2203 ¶ 29; and non-registered organizations have to apply to get access and at best are relegated to separate,

less-desirable spaces that cost money, ECF No. 47-47, PageID.2255 at 35:23-36:14; ECF No. 47-33, PageID.1995 at 201:1-8.

15. Registered student organizations have access to lockers in the WSU Student Center. WSU Website: Get involved on campus, Appx. Ex. 7, WSU000603; Villarosa Dep., Appx. Ex. 5, pg. 44-45.

RESPONSE: Admitted.

16. Registered student organizations are also listed as active on the Dean of Students Office's website and have access to certain online functions through Engage, the platform utilized by WSU to manage student organization registrations. Strauss Dep., Appx. Ex. 3, pg. 116-17. Registered student organizations may use Engage to calendar events, manage membership, and communicate with members. *Id.* at 117-18.

RESPONSE: Admitted, except that registered student organizations are not merely listed as "active" on the Dean of Students Office's website but are listed as an RSO and have a dedicated series of Wayne State web pages that explain the purpose of the group, identify the leadership and their contact information, and provide prospective participants information about events and how to join. ECF No. 47-45, PageID.2113, 2138-2139 at 15:2-17:2, 116:6-118:1; Blomberg Decl. [Ex. A], Ex. A1. Non-registered organizations are not listed on the Dean of Students Office's website. Moreover, prior to the use of the Engage platform, Wayne State provided nearly identical benefits through a platform known as "OrgSync." ECF No. 47-33, PageID.1954-1955 at 36:8-38:22.

17. WSU provides all organizations with equal access to the benefits identified above, but, because resources are limited, not every organization receives an equal benefit: for example, there are not enough lockers in the Student Center for each organization, so each registered organization will not receive one. Villarosa Dep., Appx. Ex. 5, pg. 46-47.

RESPONSE: Admitted that certain resources, such as locker space, are limited in some ways. Other resources, such as being listed online on Wayne State’s RSO webpage or participation in student recruitment events such as WinterFest, are not so limited.

18. Social Greek organizations—fraternities and sororities—do not receive benefits in addition to or distinct from those received by other registered student organizations. *Id.*; Strauss Dep., Appx. Ex. 3, pg. 122; Transcript of the Deposition of Ryan Mitchell (“Mitchell Dep.”), Appx. Ex. 10, pg. 32.

RESPONSE: Denied. In addition to the benefits other registered student organizations receive, social Greek organizations also receive their own dedicated Wayne State website with links to numerous Wayne State webpages about Greek groups, benefit from Wayne State uniquely encouraging students to join their organizations and providing unique recruitment information and services, and have dedicated Wayne State employees who serve their interests. ECF No. 47-40, PageID.2078-2079; ECF No. 47-46, PageID.2202 at 8:9-10; Blomberg Decl., Ex. A2. Moreover, members of social Greek organizations

qualify for scholarships not available to other students. See, e.g., ECF No. 47-27, PageID.1823.

19. Organizations must complete the registration process annually. Strauss Dep., Appx. Ex. 3, pg. 48.

RESPONSE: Admitted.

20. To register an organization, students must complete a form, currently submitted through Engage. Villarosa Dep., Appx. Ex. 5, pg. 14-16. In order to successfully register, the proposed student organization's submission through Engage must:

- a. Identify at least two currently registered students who are members of the organization, Students Sharing Success Registration, Appx. Ex. 11, WSU001301-302;
- b. Acknowledge certain WSU policies, including the Non-Discrimination Policy, *Id.* at WSU001308-310; and
- c. Submit a valid operating agreement, *Id.* at WSU001303-306.

RESPONSE: Admitted.

21. Ricardo Villarosa, Coordinator for Student Life, at all relevant times has handled the registration process for student organizations. Villarosa Dep. at pg. 14, 19, 22. As part of the registration process, Mr. Villarosa reviews every student organization submission to ensure that the organization's leadership and membership criteria in the operating agreement comply with the Non-Discrimination Policy. *Id.* at pg. 91-94. Registered student organizations may not

discriminate on the basis of any of the characteristics included in the Non-Discrimination Policy with regards to the selection of leaders or members. *Id.* There is no subsequent monitoring of student organizations for compliance with the policy, unless complaints are brought to the Dean of Students Office. Strauss Dep at pg. 164.

RESPONSE: Admitted that Ricardo Villarosa at all relevant times has handled the registration process for student organizations, and that Wayne State does not subsequently monitor student organizations for compliance with the Policy. Admitted that Villarosa testified that he reviews student organization registration applications for compliance with the Policy. Denied that Wayne State consistently prohibits registered student organizations from discriminating on the basis of characteristics identified in the Policy with regard to membership or leadership. See IVCF SOME ¶¶ 40-58 (ECF No. 47, PageID.1115-1118) (identifying RSOs, including fraternities, sororities, club teams, and many others that do just that).

22. Engage allows Villarosa to deny a potential registration and provide comments to the student organization when the application fails to satisfy the requirements for registration. Villarosa Dep. at pg. 26-27. This process allows students to correct any issues and resubmit the application. *Id.* Villarosa may also meet with the student organization to further discuss the denial, or communicate with them via email. *Id.* at pg. 35-36.

RESPONSE: Admitted.

23. Villarosa consults with Strauss or the Office of General Counsel regarding a student organization's application for registration "if there was a flag, if there was something that didn't seem to be the mechanical or the technical" issue. Villarosa Dep. at 29. As an example, Villarosa testified regarding consulting with Strauss and the Office of General Counsel regarding the registration of an organization called Sister 2 Sister due to "membership requirements [that] seemed to be in violation of our gender discrimination policy." *Id.* at pg. 30.

RESPONSE: Admitted that Villarosa testified that he chooses to consult with Strauss and, in some cases, the Office of General Counsel regarding some registration applications. ECF No. 47-33, PageID.1952 at 29:1-11. Denied that Villarosa testified that he consulted with the Office of General Counsel regarding Sister 2 Sister's application. See ECF No. 47-33, PageID.1954 at 34:6-35-6. Denied that Villarosa always consults with either Strauss or the Office of General Counsel regarding registration applications showing that a student organization makes leadership or membership selection decisions based on criteria listed in the Policy. ECF No. 47-33, PageID.1951-1952, 1984 at 25:16-27:11, 157:8-15.

24. Ultimately, decisions to register a student organization or to refuse to register a student organization fall under the authority of Strauss as the Dean of Students, as the designee of the Provost. Strauss Dep. at pg. 32. Strauss testified that "if there's ever a question, [the Dean of Students Office is] consulting with general counsel before we make a final decision." *Id.*

RESPONSE: Admitted that the ultimate decision whether to register a student organization falls to Strauss. Admitted that the quoted material in Paragraph 24 accurately reflects the first sentence of the relevant portion of Strauss’s testimony. The second sentence is: “It depends on what the question is, but -- we are going to err on the side of consulting with general counsel.” ECF No. 47-45, PageID.2117 at 32:13-15. Denied that Villarosa or Strauss always consults with the Office of General Counsel regarding registration applications showing that a student organization makes leadership or membership selection decisions based on criteria listed in the Policy. ECF No. 47-33, PageID.1984 at 157:8-15; ECF No. 47-45, PageID.2145 at 142:5-13.

25.WSU’s registered student organizations policy recognizes two exceptions to the Non-Discrimination Policy regarding leadership of and membership in registered student organizations. WSU Resp. to Interrogatories, Appx. Ex. 12, pg. 9-10. First, social Greek organizations—in other words, fraternities and sororities—may limit leadership and membership, as well as the benefits associated therewith, by gender identity in accordance with each organization’s respective national charter. Strauss Dep. at pg. 138-140.

RESPONSE: Admitted that Wayne State makes exceptions to its Policy. Denied that any written policy recognizes “two exceptions” to the Policy. Wayne State has stated that there are “no written exceptions” to its Policy, ECF No. 47-14, PageID.1198-1199, and there are no express exceptions for social Greek organizations on the face of the Policy, ECF No. 47-38 at PageID.2072. The

Policy does create an express exemption that allows Wayne State to discriminate in favor of “minorities and women,” *id.*, but Wayne State is not relying on that exemption with respect to social Greek groups or sports clubs and it would not cover fraternities in any event. Admitted that Wayne State allows social Greek groups to discriminate on the basis of sex (including gender identity) in membership, leadership, and other benefits. Wayne State also allows social Greek groups to discriminate on the basis of sex for purposes of participation with the groups. ECF No. 47-33, PageID.1979 at 136:18-20; ECF No. 47-46, PageID.2216 at 65:1-5.

26. As Strauss testified, this exception is based on nationally recognized historical exceptions: “When it comes to social fraternities and sororities, [WSU] subscribe[s] to or follow[s] the policies, the historical – the historical operation of the fraternities and sororities in this country and the practices that are followed at all other higher education institutions that have social Greek organizations.” Strauss Dep. at pg. 142.

RESPONSE: Admitted that the quoted material in Paragraph 26 accurately reflects Strauss’s testimony. Strauss went on to testify, “that is just something that has been a historical understanding” even though “at times this has been challenged.” ECF No. 47-45, PageID.2145 at 142:12-16. Denied that this “exception” to Wayne State’s Policy is “nationally recognized.” Further, the Rule 30(b)(6) witness designated by Wayne State to testify regarding the Policy and its exemptions, including the exemption for social Greek groups, testified

that he was “not aware of any” interest justifying the exemption for social Greek groups other than Wayne State’s mistaken understanding that the exemption was necessary for Title IX compliance. ECF No. 47-3, PageID.1980-1981 at 141:2-144:3; *see also* Blomberg Decl., Ex. A3, at 4-5 (WSU designation of Rule 30(b)(6) witnesses).

27. Social fraternities and sororities must comply with the remainder of the Non-Discrimination Policy. Villarosa Dep. at pg. 261-262.

RESPONSE: Denied. “Greek groups at Wayne State control their own membership” and leadership. ECF No. 47-46, PageID.2209, 2218, 2220 at 35:6-8, 71:14-21, 79:2-4. Their membership policies are “dictated by whatever the national organization says [are] their membership” or “leadership requirement[s].” ECF No. 47-46, PageID.2209 at 35:9-18; *e.g.*, ECF No. 52, PageID.2342, Ex. B6 (row 6, col. Z) (Alpha Phi Alpha Fraternity, “refer to National Website for Membership Criteria”). And as Wayne State states above, it does not “monitor[] ... student organizations for compliance with the policy.” WSU SOMF ¶ 21 (ECF No. 45, PageID.707). Further, Wayne State permits RSOs to discriminate in favor of women and minorities at its discretion. ECF No. 47-38, PageID.2072; ECF No. 47-33, PageID.1975, 1984-1985 at 120:7-20, 157:8-160:4; *see also* WSU SOMF ¶ 39(b) (ECF No. 45, PageID.714) (admitting Wayne State “considers the promotion of certain minority interests” through RSO membership and leadership selection criteria that would

otherwise violate the Policy “to be an affirmative action program permitted under the Non-Discrimination Policy”).

28. Second, club sports may limit membership and leadership, as well as the benefits associated therewith, by gender identity. Strauss Dep. at 148. This limitation is necessary in order to “permit[] them to compete in competitions with other teams at other universities.” *Id.* at 147. Club sports teams compete externally and must follow the policies of the league in which they compete. *Id.* at pg. 154-156.

RESPONSE: Admitted that Wayne State allows club teams to discriminate on the basis of gender identity in membership, leadership, and other benefits, and that certain club leagues may limit participation to teams of a single sex. Wayne State also permits club sports to discriminate on the basis of sex. ECF No. 47-33, PageID.1983, 1984 at 150:22-151:14, 155:7-157:7. Denied that this unwritten exemption is “necessary.” Further, the basis for the exemption is Wayne State’s mistaken understanding that it is required by Title IX. *Id.*

29. Club sports must comply with the remainder of the Non-Discrimination Policy. Sample Club Sport Registration Document, Appx. Ex. 13, WSU001262.

RESPONSE: Denied. Wayne State permits RSOs to discriminate in favor of women and minorities at Wayne State’s discretion. ECF No. 47-38, PageID.2072; ECF No. 47-33, PageID.1975, 1984-1985 at 120:7-20, 157:8-160:4; *see also* WSU SOMF ¶ 39(b) (ECF No. 45, PageID.714). Wayne State does not monitor club teams to ensure compliance with the Policy. *See* WSU SOMF ¶ 21 (ECF No. 45, PageID.707).

30. WSU recognizes these two limited exceptions to the Non-Discrimination Policy consistent with the manner in which the federal government has interpreted Title IX. WSU Resp. to Interrogatories, Appx. Ex. 12, pg. 9-10; Strauss Dep. at pg. 147-148, 153.

RESPONSE: Admitted that “Title IX permits the organization of single-sex social sororities, social fraternities, and club sports teams.” ECF No. 45, PageID.927. Villarosa was unaware whether Title IX “requires the university to observe that exemption,” has “never done deep research” into it, and has never had any training on it. ECF No. 47-33, PageID.1980, 1983, 1984 at 138:3-8, 151:11-14, 154:4-14. Denied that the federal government has interpreted Title IX to require or in any way encourage these exceptions to Wayne State’s Policy, and therefore denied that these exceptions are “consistent” with any federal policy. Moreover, Title IX contains exceptions for religious groups, 20 U.S.C. § 1681(a)(3), and the federal Religious Freedom Restoration Act mandates exemptions from generally applicable federal laws that substantially burdens religious exercise, 42 U.S.C. § 2000bb-1. *See also* United States’ Statement of Interest in Support of Plaintiff’s Motion for Summary Judgment at 5, *Bus. Leaders in Christ v. Univ. of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Jan. 15, 2019), ECF No. 96 (“The United States has a significant interest in the protection of constitutional freedoms in institutions of higher learning.”).

31. WSU consistently applies the Non-Discrimination Policy, read in light of the two exceptions stated above, to all student organizations and has denied registration

to organizations that improperly restrict membership or leadership based on characteristics identified in the Non-Discrimination Policy. Villarosa Dep. at pg. 202, 215.

RESPONSE: Denied. See, e.g., IVCF SOMF ¶¶ 49-58, 68-72 (ECF No. 47, PageID.1116-1118, 1120); see also WSU SOMF ¶ 39(b) (admitting Wayne State “considers the promotion of certain minority interests” through RSO membership and leadership selection criteria that would otherwise violate the Policy “to be an affirmative action program permitted under the Non-Discrimination Policy”); supra Counter-SOMF ¶¶ 25, 28-30; infra Counter-SOMF ¶¶ 35-36, 38-43.

32. For example, in 2016, WSU rejected the request for registration by a student group named International Students Life Organization. Int’l Students Life Org. 2016 Registration, Appx. Ex. 14, WSU001867. The International Students Life Organization registration submission limited membership and leadership to “international students.” *Id.* at WSU001871. Villarosa, denying registration based on the form submitted, commented, “You must revise your membership statement. All WSU students must be eligible for membership.” *Id.* at WSU001867.

RESPONSE: Admitted that the quoted language in Paragraph 32 accurately reflects the source cited. Denied that Villarosa “den[ied] registration” and that “WSU rejected the request for registration” by the International Students Life Organization; nothing in the cited source states whether Wayne State approved or rejected this organization’s registration. Moreover, Wayne State registered

the Iraqi Student Organization, which requires every leader to be “a dedicated Iraqi student.” ECF No. 52, PageID.2342, Ex. C4 (row 40, col. V). Wayne State also offers scholarships to students “from another country” and tuition assistance “for qualifying Native Americans.” IVCF SOMF ¶ 68 (ECF No. 47, PageID.1120).

33. Similarly, WSU denied registration by the Saudi Student Association in 2017. Saudi Student Ass’n 2017 Registration, Appx. Ex. 15, WSU002166. The Saudi Student Association registration submission limited membership and leadership to Saudi students. *Id.* at WSU002171, WSU002173. Villarosa, denying registration, commented “Your membership section is inconsistent with the non-discrimination policy” and indicated the criteria must be revised to “offer full membership rights to current WSU students without any prohibited discrimination based on” the characteristics identified in the Non-Discrimination Policy. *Id.* at WSU002166.

RESPONSE: Admitted that the quoted language in Paragraph 33 accurately reflects the cited source and that the cited source states that the Saudi Student Association registration request was, at least at one point, “denied.” ECF No. 45-16, PageID.976. As Wayne State concedes, this organization also limited its leadership to Saudi students, yet Villarosa did not mention that limitation as a reason for the organization’s denial. *See also supra* Response 32.

34. As a further example, in 2017, WSU denied the request for registration submitted by Sister 2 Sister. Sister 2 Sister 2017 Registration, Appx. Ex. 16, WSU002436. Although the application stated that Sister 2 Sister did not discriminate

on the basis of the characteristics enumerated in the Non-Discrimination Policy, Sister 2 Sister limited active membership to students who attended certain events that “are restricted to women.” *Id.* at WSU002441. Accordingly, Villarosa denied registration because the requirement “result[ed] in full membership being restricted to women is a violation of” the Non-Discrimination Policy. *Id.* at WSU002436.

RESPONSE: Admitted. Villarosa provided no explanation for why Sister 2 Sister was not permitted to discriminate in favor of women under the affirmative action exception to the Policy. He said that Title IX was the sole reason why sororities were able to discriminate on the basis of sex but Sister 2 Sister was not. ECF No. 47-33, PageID.1981 at 143:6-144:3.

35. In 2017, WSU denied the request for registration submitted by the Graduate Indian Student’s Association. GISA 2017 Registration, Appx. Ex. 17, WSU002553. In relevant part, the organization listed the following membership criteria: “Must be an Indian origin [sic].” *Id.* at WSU002558. Villarosa denied registration, stating “Must be an Indian origin--violates University nondiscrimination policy.” *Id.* at WSU002553.

RESPONSE: Admitted that Wayne State’s Appendix Exhibit 17 (ECF No. 45-18, PageID.997), is a registration application for the Graduate Indian Student’s Association, which required members to be of “Indian origin.” ECF No. 45-18, PageID.1002. Admitted that Villarosa posted a comment on the application, dated August 17, 2017, that “You must edit requirements to delete the following: Must be an Indian origin.” ECF No. 45-18, PageID.997. Denied that

Villarosa denied registration; the document states that he wrote to “Please edit and resubmit.” Moreover, the previous school year, the Graduate Indian Student’s Association submitted a registration application with the same membership limitation, and Villarosa did not note any problem with the limitation. Blomberg Decl., Ex. A7. Finally, in the 2018-2019 school year, the Graduate Indian Students Association was registered even though its application stated that it sought to “[c]reate and execute events *for Indian students*” and that its “[p]rimary goal” was “to host events and festivals specific to Indian culture for Graduate *Indian* Students.” ECF No. 52, PageID.2342, Ex. B1 (row 15, cols. L, Q) (emphases added).

36. WSU has also applied the Non-Discrimination Policy to refuse to register religious organizations in addition to InterVarsity-Wayne; for example, in 2016, WSU denied the request for registration submitted by Virtuous 31 “an organization of women striving to be Proverbs 31 women by deepening a relationship with Jesus through fellowship and fun.” Virtuous 31 2016 Registration, Appx. Ex. 18, WSU001848. Although Virtuous 31 indicated that it was “open to all WSU students,” *id.*, Virtuous 31 limited membership (and thus also leadership) to “female” students, *Id.* at WSU001852. Villarosa denied the registration, commenting “the portion that includes ‘female’ as part of the requirement is in violation of the Anti-discrimination policy and is impermissible.” *Id.* at WSU001848.

RESPONSE: Admitted that the quoted portions of Paragraph 36 accurately quote the cited sources. Denied that Villarosa or Wayne State “denied the registration”; instead, Villarosa’s comment, dated Nov. 1, 2016, indicated that the organization could be “approved” upon resubmission. ECF No. 45-19, PageID.1005. And indeed, the organization was approved shortly thereafter, even with a new leadership limitation requiring that its leaders “really love God.” ECF No. 47-21, PageID.1275, 1276 (application dated Nov. 14, 2016); ECF No. 52, PageID.2342, Ex. C3 (row 120, col. AL). Further, Wayne State provides no reason why Virtuous 31 was not eligible for the affirmative-action exemption.

37. Similarly, in January 2017, WSU denied the registration request submitted by Simply Alexis Women’s Ministry, an organization “dedicated to young women between the ages of 18-30 years old.” SAWM Registration 2017 Registration, Appx. Ex. 19, WSU002069. The organization limited membership to “young women between the ages of 18-30,” and leadership was “through selection from the founder ONLY.” *Id.* at WSU002073. Villarosa denied the registration, stating the need “to address issues with your registration request.” *Id.* at WSU002069.

RESPONSE: Admitted that the quoted portions of Paragraph 37 accurately quote the cited sources. Denied that Villarosa “denied the registration”; the only action item was to “contact Ricardo Villarosa . . . to address issues with your registration request.” ECF No. 45-20, PageID.1013). Denied that this action was “[s]imilar[.]” to any action discussed in preceding paragraphs: First,

Villarosa’s comment says nothing about membership or leadership limitations, or the Non-Discrimination Policy. Second, the registration application has many facial deficiencies, including failing to identify any officers, failing to list an advisor, and failing to complete vast swaths of the application. See ECF No. 45-20, PageID.1014-1015.

38.WSU also applied the Non-Discrimination Policy to refuse to register Christians on Campus. COC 2017 Registration, Appx. Ex. 20, WSU002666. Christians on Campus, in its registration, sought to limit leadership by requiring candidates “be a believer in Jesus Christ and uphold the Bible as the complete divine revelation inspired by God through the Holy Spirit.” *Id.* at WSU002671. Villarosa declined to register the organization, commenting “Please contact me regarding your requirements for officers Must be a believer in Jesus Christ and uphold the Bible as the complete divine revelation inspired by God through the Holy Spirit.” *Id.* at WSU002666. Christians on Campus eliminated this requirement, and WSU registered the organization. Spreadsheet of Registrations from Org Sync System for Agreed Upon Student Organizations (“2016-2018 Registrations”), Appx. Ex. 21 at Row 22.

RESPONSE: Admitted that Villarosa commented, “Please contact me regarding your requirements for officers Must be a believer in Jesus Christ and uphold the Bible as the complete divine revelation inspired by God through the Holy Spirit” on ECF No. 45-21, PageID.1020, a registration application for Christians on Campus. Denied that Wayne State “refuse[d] to register” the

organization and that Wayne State would only register the organization if it “eliminated” its religion-based requirement. Wayne State eventually registered Christians on Campus with a leadership limitation of “Christian” and a membership limitation to students “seeking Christian fellowship.” ECF No. 52, PageID.2342, Ex. C4 (row 23, cols. T, V).

39. On very rare occasions, WSU grants registered status to student organizations that limit membership or leadership based on characteristics included in the Non-Discrimination Policy. For the 2016-2018 school years, WSU registered the following organizations despite leadership or membership criteria plausibly in violation of the Non-Discrimination Policy:

a. Ratio Christi at Wayne: WSU registered Ratio Christi at Wayne, which requires leaders, in relevant part, to “profess a personal relationship with Jesus Christ.” 2016-2018 Registrations, Appx. Ex. 21 at Row 85, Column AL. Villarosa attributed the registration of Ratio Christi at Wayne to an inadvertent oversight. Declaration of R. Villarosa, Appx. Ex. 22 at ¶¶ 9-10.

b. WSU Student Veterans Organization: WSU registered the WSU Student Veterans Organization, which states in relevant part that members Must be an honorably discharged Veteran of the Armed Forces of the United States, a dependent of a Veteran or enrolled in the Reserve Officers Training Corps (ROTC) program.” *Id.* at Row 131, Column AJ. Despite this limitation, WSU considers the promotion of certain minority interests, including those of veterans,

to be an affirmative action program permitted under the Non-Discrimination Policy. Villarosa Dep. at pg. 116-118.

RESPONSE: Denied that Wayne State “grants registered status to student organizations that limit membership or leadership based on characteristics included in the Non-Discrimination Policy” only “[o]n very rare occasions.” *See* IVCF SOMF ¶¶ 40-58 (ECF No. 47, PageID.1115-1118) (listing Greek organizations, club teams, and many other student organizations); ECF No. 47-33, PageID.2007-2008 at 249:8-17, 250:13-251:13 (discussing Iraqi Student Organization and Newman Catholic Center).

Admitted that Wayne State registered Ratio Christi at Wayne, which required leaders to “profess a personal relationship with Jesus Christ.” ECF No. 52, PageID.2342, Ex. C3 (row 85, col. AL). Admitted that Villarosa has submitted a declaration stating that “Ratio Christi at Wayne should not have been approved as a registered student organization” “[a]t the time” and that the registration “was an inadvertent oversight.” ECF No. 45-23, PageID.1030-1031 ¶¶ 8-10. Yet Wayne State continued to register Ratio Christi at Wayne in later semesters with the exact same leadership limitation of those who “profess a personal relationship with Jesus Christ.” *See, e.g.*, ECF No. 52, PageID.2342, Ex. C4 (row 70, col. V); *id.* at Ex. B4 (row 7, col. T); *id.* at Ex. B7 (row 71, col. V).

Admitted that Wayne State registered the WSU Student Veterans Organization, which limited membership based on veteran status. Admitted

that Villarosa testified that he considers veterans a “minority group” within the meaning of the Policy’s reference to affirmative action programs for minorities and women. ECF No. 47-33, PageID.1975 at 120:7-20. Nothing in Villarosa’s testimony says that the exemption for minorities and women is “rare[ly]” permitted. Nor is there proof it would be rare. Villarosa testified that he was aware that Wayne State itself exercises the exemption for minorities and women to provide a number of programs, benefits, and opportunities that discriminate based on protected characteristics under the Policy. ECF No. 47-33, PageID.1973-1975 at 111:5-118:6.

40. There are a number of registered student organizations at WSU that state religious missions or are affiliated with national religious organizations or churches. 2016-2018 Registrations, Appx. Ex. 21. For example, for the 2016-2018 school years (the years in which InterVarsity-Wayne had its application rejected, as described *infra*), the following are only a handful of the religious organizations registered on campus and whose applications did not limit membership or leadership on the basis of any characteristic in the Non-Discrimination Policy:

- a. Campus Bible Fellowship
- b. Christians on Campus
- c. Detroit Cru
- d. Jewish Students’ Association
- e. Muslim Students’ Association.

Id.

RESPONSE: Admitted that many registered student organizations at WSU state religious missions or are affiliated with national religious organizations or churches, and that Paragraph 40 lists “only a handful” of them. Denied that the listed organizations do not “limit membership or leadership on the basis of any characteristic in the Non-Discrimination Policy,” even in the school years to which Wayne State arbitrarily limits its discussion. *See* ECF No. 52, PageID.2342, Ex. C3 (row 65, cols. AJ, AN) (Muslim Students’ Association, noting various bases of discrimination forbidden in membership selection but omitting religion, and stating that a leader will be removed for “[v]iolat[ing] an Islamic principle that deems him/her unworthy to serve as a Muslim leader on campus”); *see also, e.g., id.* at Ex. B1 (row 11, col. V) (Campus Bible Fellowship, leaders must “adhere to the values of Campus Bible Fellowship”); *id.* at Ex. B7 (row 17, col. V) (similar); *id.* at Ex. C4 (row 23, col. V) (Christians on Campus, leaders must be “Christian”); *id.* at Ex. C4 (row 30, cols. V, W) (Detroit Cru, leaders must demonstrate “skill in providing spiritual leadership” and “commit to lead the Chapter in a way which is consistent with the mission and faithful to the messages of Cru”; during the leadership selection process, applicants “will be asked about their faith, beliefs and views” and “their willingness to model the Chapter’s core messages through their behavior”); *id.* at Ex. B1 (row 12, cols. V, W) (same); *id.* at Ex. B7 (row 24, cols. V, W) (same); *id.* at Ex. B7 (row 57, col. V) (Muslims Students’ Association, leaders must be “Muslim”).

Paragraph 40’s reference to a “Jewish Students’ Association” is apparently an error, as no group with that name appears in the registration spreadsheets. See *id.* at Ex. B7 (row 47, col. D) (referring to a “Jewish Student Organization”).

41. As a further example, New Life registered as a student organization at WSU. Appx. Ex. 21 at Row 73. New Life states a clearly religious purpose, including “To help students who wish to pursue God [and] develop a deeper understanding and closer relationship with Jesus.” *Id.* at Row 73, Column AG. At the time of registration, New Life was “currently led by students who are members of New Life Church of Detroit, but it is also a separate group from New Life Church of Detroit, governed on its own and not by New Life Church.” *Id.* at Row 73, Column AI. Though the leadership at the time of registration consisted of members of New Life Church of Detroit, the organization’s leadership and membership is open to all students at WSU: “The only requirement at this time is that members must be students of Wayne State University and must make efforts to advance the efforts of the New Life student org.” *Id.* at Row 73, Column AJ; see also *id.* at Row 73, Column AL (stating leadership requirements as “The same as for members”).

RESPONSE: Admitted that the quoted portions in Paragraph 41 accurately quote the cited sources. Denied that this organization is “a further example” of a group that did not have membership or leadership limitations that would appear to violate the Policy, and denied that “the organization’s leadership and membership is open to all students.” According to the requirements quoted in Paragraph 41, membership and leadership is only open to students who “make

efforts to advance the efforts of the New Life student org”; and, according to the cited source, those “efforts” include “help[ing] students who wish to pursue God develop a deeper understanding and closer relationship with Jesus.” ECF No. 52, PageID.2342, Ex. C3 (row 73, col. AG, AJ); *see also id.* at Ex. C4 (row 58, col. V) (leadership limitation that applicants “offer to WSU students the opportunity to pursue God”); *id.* at Ex. B1 (row 40, col. V) (leadership limitation that applicants “advance the interests of New Life and our purpose”); *id.* at Ex. B7 (row 64, cols. T, V) (membership and leadership limitations that students “abide[] by our goals and purposes”).

42. Student organizations may limit membership and leadership based on characteristics not protected by the Non-Discrimination Policy, such a grade point average. Villarosa Dep. at pg. 99-101.

RESPONSE: Admitted.

43. Student organizations may promote issues that tend to benefit specific groups, provided that they do not limit membership or leadership in violation of the Non-Discrimination Policy. Villarosa Dep. at 96-98. In fact, a number of registered student organizations at WSU articulate a mission to serve the interests of a certain group but do not limit leadership or membership to individuals who are members of that group. Registration Spreadsheet, Appx. Ex. 21. For example, the following registered organizations do not limit membership or leadership based on any

prohibited factor, despite a mission that serves to further or promote the interests of a particular group¹:

a. Ahmadiyya Muslim Students Association: The Ahmadiyya Muslim Students Association states its mission is to spread awareness and a general appreciation if [sic] Islam and its doctrines to all Muslims and non Muslims alike.” *Id.* at Row 4, Column AG. Membership in the organization is open to “all students, faculty and staff,” and any member is eligible to become a leader. *Id.* at Row 4, Columns AJ & AL.

b. Albanian American Student Association: The Albanian American Student Association states that, with regards to membership, it “shall conform to university regulations and all non-discriminatory rules. Membership shall not be determined by gender, race, ethnic background, or age.” *Id.* at Row 5, Column AJ. Leadership positions are similarly open to all members who have attended a minimum number of meetings, excluding the role of president, for which preference is shown to prior leaders. *Id.* at Row 5, Column AL.

¹ The organizations described in this and the following paragraph were identified in Plaintiffs’ Complaint as allegedly “organizations which appear to limit membership and/or leadership based upon ‘race, color, sex (including gender identity), national origin, religion’ or other prohibited factors.” (Compl. ¶¶ 99-109.) These are merely a representative sample of organizations that do not limit membership or leadership based on any prohibited factor, despite a mission that serves to further or promote the interests of a particular group. For a more complete list of such organizations as of the 2016-2018 school year, the years in which WSU declined to register InterVarsity-Wayne, see Appx. Ex. 21.

c. Anakh Sherniyan Di: This dance group does not limit membership or leadership based on any protected characteristics. *Id.* at Row 13, Columns AJ & AL.

d. Association of Black Social Workers: The Association of Black Social Workers is open to any student in the School of Social Work “who accepts and adheres to the Constitution and bylaws of the Association of Black Social Workers at Wayne State University.” *Id.* at Row 15, Column AJ. Leadership is open to dues paying members who attend at least half of the organization’s scheduled meetings and who is able to serve for an entire school year. *Id.* at Row 15, Column AL.

e. Association of Latino Professionals for America: Though “focused on the professional development of Latino Students,” *Id.* at Row 16, Column X, membership and leadership are open to all, *Id.* at Row 16, Columns AJ & AL.

RESPONSE: Admitted that Wayne State allows RSOs to “promote issues that tend to benefit specific groups” and that some “registered student organizations at WSU articulate a mission to serve the interests of a certain group but do not limit leadership or membership to individuals who are members of that group.” Wayne State provides no explanation for why the Policy’s assertedly absolute prohibition on discrimination permits RSOs to discriminate regarding a group’s mission, purpose, and intended beneficiaries, but does not allow them to discriminate regarding membership or leadership.

Admitted that Paragraph 43(a) accurately describes the Ahmadiyya Muslim Students Association, except that the organization’s leaders are required to conduct meetings, which “shall begin with a recitation of the Holy Quran followed by a collective prayer”; if a leader does not “fulfill[] his responsibilities” in this regard, he can be removed. ECF No. 52, PageID.2342, Ex. C3 (row 4, cols. AN, AQ)

Admitted that Paragraph 43(b) accurately describes the registration of the Albanian American Student Association during the 2017-2018 school year. *See* Blomberg Decl., Ex. A6 (submission dated Aug. 10, 2017, with no comments from Villarosa). However, when the Albanian American Student Association attempted to register for the following year with the exact same membership statement, Villarosa commented: “The language from your membership requirements ‘The AASO shall conform to university regulations and all non-discriminatory rules. Membership shall not be determined by gender, race, ethnic background, or age.’ should include national origin too. Please adjust and resubmit.” Blomberg Decl., Ex. A5, at WSU003068 (comment dated May 10, 2018). Thus, it appears that the Association had previously been registered in violation of the Policy.

Admitted that the source cited in Paragraph 43(c) does not reflect that Anakh Sherniyan Di limited “membership or leadership based on any protected characteristics.” Denied that Anakh Sherniyan Di did not so limit membership or leadership while a registered student organization at Wayne

State; according to its registration submission, it is an “all girls” group. ECF No. 47-21, PageID.1304. This submission had no comments from Villarosa asking for changes or resubmission.

Admitted that the cited source in Paragraph 43(d) states that the Association of Black Social Workers is open to any student in the School of Social Work “who accepts and adheres to the Constitution and bylaws of the Association of Black Social Workers at Wayne State University.” Denied that this organization did “not limit membership or leadership based on any prohibited factor.” The first goal listed in the submission of the group’s Constitution was to create “interaction *with other individuals of African heritage.*” ECF No. 52, PageID.2342, Ex. C3 (row 15, col. AG) (emphasis added). The group was registered even when it declared that it “is comprised of people of African ancestry.” ECF No. 47-21, PageID.1335; *see also* ECF No. 52, PageID.2342, Ex. B7 (row 101, col. Q); *id.* at Ex. B1 (row 8, col. R) (“Through this Association, Black people will move further into the arena of Black unity”).

Admitted that the Association of Latino Professionals for America stated that it was “focused on the professional development of Latino Students.” *id.* at Ex. C3 (row 16, col. X). Denied that “membership and leadership are open to all.” The only goal or purpose listed in the approved registration was “[t]o connect passionate Latino leaders,” and the membership requirements do not disclaim any bases of discrimination. *Id.* (row 16, cols. AG, AJ).

To the extent that footnote two of Paragraph 43 suggests that no organizations in Wayne State Appendix Exhibit 21 “limit membership or leadership based on any prohibited factor,” denied. Besides the various organizations discussed in this paragraph and the preceding ones, see, *e.g.*, ECF No. 46, PageID.1096, Ex. 21 (row 84, col. AL) (Queer WSU Students of Color, giving a facial leadership preference to “a QPOC” [queer person of color]).

44. Social Greek organizations similarly do not limit membership or leadership based on any prohibited factor, except for gender identity, for which it is exempt from the terms of the Non-Discrimination Policy (*see* SOF ¶¶ 25-27). This exception is permitted by federal law and in accordance with longstanding historical practice nationwide. (*Id.*) For example:

a. Alpha Epsilon Phi: Though a historically Jewish sorority, reflected in the “Jewish heritage events” identified by the organization as typical events, see Appx. Ex. 21 at Row 6, Column V, Alpha Epsilon Phi, a social sorority, is open to all female, full-time students who meet a minimum GPA requirement, *Id.* at Row 6, Column AJ. Leadership is open to all active members who have been a member for at least one semester and who are “in good standing academically, socially, and financially.” *Id.* at Row 6, Column AL.

b. Alpha Epsilon Pi: Though a historically Jewish social fraternity, reflected in its holding of “events involving Judaism,” see *Id.* at Row 7, Column V, Alpha Epsilon Phi membership is open to “Any male student in regular attendance and in good standing at Wayne State University, pursuing a course

leading to a degree or its equivalent, and who is eligible, as provided in the Supreme Constitution, may be elected to Brotherhood in this colony,” *Id.* at Row 7, Column AJ.² Similarly, leadership is open to “active brothers in good standing of the colony” who meet certain requirements regarding length of membership and behavior. *Id.* at Row 7, Column AL.

c. Alpha Gamma Delta: Alpha Gamma Delta, a social sorority, seeks to promote, among other values, “a loving spirit of sisterhood.” *Id.* at Row 8, Column AG. Membership in the sorority is open to “female, full-time undergraduate students of Wayne State University,” and leadership positions are open to any “member in good standing.” *Id.* at Row 8, Columns AJ & AL.

d. Alpha Kappa Alpha Sorority: Membership in Alpha Kappa Alpha, a social sorority, is open to female, full-time WSU undergraduate students who satisfy certain academic requirements. *Id.* at Row 9, Column AJ. Leadership is similarly open to active participating and financial members of the organization, subject to academic requirements. *Id.* at Row 9, Column AL.

e. Alpha Phi Alpha: Alpha Phi Alpha was founded as the “first intercollegiate Greek-letter fraternity established for African Americans.” Appx. Ex. 23, Alpha Phi Alpha Registration Request, WSU004342. Alpha Phi Alpha is open to, and does in fact have, non-African American members. Mitchell Dep., Appx. Ex. 10 at p. 78.

² The Supreme Constitution is available online at <https://www.aepi.org/about/about-aepi/supreme-constitution/>.

f. Alpha Sigma Phi: Alpha Sigma Phi is open to any male student who meets a minimum GPA standard. Appx. Ex. 21 at Row 11, Column AJ. All members who are in “good financial standing” are eligible to run for office. *Id.* at Row 11, Column AL. Alpha Sigma Phi does not articulate any intent to further the interest of any particular group, other than men. *Id.* at Row 11.

RESPONSE: Admitted that social Greek organizations at Wayne State may discriminate on the basis of sex and gender identity. IVCF SOMF ¶ 47 (ECF No. 47, PageID.1116); ECF No. 47-33, PageID.1981 at 144:16-20. Denied that this discrimination is based on an express exemption in the “terms of the Non-Discrimination Policy,” which, as Wayne State has previously said, has “no written exceptions” ECF No. 47-14, PageID.1198. Denied that social Greek organizations may not “limit membership or leadership based on any [other] prohibited factor.” “Greek groups at Wayne State control their own membership” and leadership. ECF No. 47-46, PageID.2209, 2218, 2220 at 35:6-8, 71:14-21, 79:2-4. Their membership policies are “dictated by whatever the national organization says [are] their membership” or “leadership requirement[s].” ECF No. 47-46, PageID.2209 at 35:9-18. Wayne State does not review any of these requirements. ECF No. 47-46, PageID.2212 at 48:4-8.

Admitted that a sex-discrimination exemption for social Greek organizations is not prohibited by federal law. Admitted that Wayne State has claimed that historical practice permits this discrimination.

Admitted that Paragraph 44 accurately describes the cited registration statements for the specific organizations discussed.

45. InterVarsity USA is an organization with chapters at a number of college campuses throughout the United States. InterVarsity Chapter Affiliation Application, Appx. Ex. 24, IVCF Wayne 000013. Its stated mission “is to establish and advance at colleges and universities witnessing communities of students and faculty who follow Jesus as Savior and Lord.” *Id.*

RESPONSE: Admitted.

46. InterVarsity-Wayne is the chapter of InterVarsity USA located at WSU and comprised of WSU students and community members. *See, e.g.*, 03/30/2017 Application, Appx. Ex. 25, WSU002245-246. InterVarsity-Wayne, as a part of InterVarsity USA, requires its leaders to accept a statement of faith because “in order to be a leader in an organization like ours, these are the basic things that we ask our student leaders, not our members, just our leaders to affirm.” Transcript of the 30(b)(6) Deposition of InterVarsity (“InterVarsity Dep.”), Appx. Ex. 26 at pp. 25-26.

RESPONSE: Admitted, except that InterVarsity has explained that it has other reasons to require its leaders to accept its statement of faith. *See, e.g.*, ECF No. 47-47, PageID.2252 at 25:19-21 (“[I]t’s our First Amendment right to be able to select leaders who believe the things that our organization stands for.”); ECF No. 47-47, PageID.2252-2253 at 25:23-26:1 (“[T]he Bible is big, there’s a lot of things that are part of Christianity, so we have narrowed it down to the things

that we think are essential.”); ECF No. 47-48, PageID.2299 ¶ 12 (“Because of [leaders’] important spiritual role, before students may become leaders, they must affirm InterVarsity’s doctrine and purpose statements.”); ECF No. 47-48, PageID.2306-2307 at ¶ 49 (“The reason why we’ve been able to be a consistent religious ministry for 75 years at Wayne State is that our leaders have agreed with our fundamental religious purpose and beliefs. And if we were forced to end that requirement, our group would quickly lose its Christian identity. A house divided against itself cannot stand, and that’s all the more true if the division begins at the top.”).

47. No student who does not share InterVarsity’s beliefs has ever attempted to lead InterVarsity-Wayne. *Id.* WSU has never told InterVarsity-Wayne that it must accept a particular person to be a leader. *Id.*

RESPONSE: Admitted that no students who reject InterVarsity’s beliefs have attempted to lead InterVarsity’s Wayne State chapter, and that Wayne State has not told InterVarsity that a specific person must be a leader. Otherwise denied. Wayne State has ordered InterVarsity that it must be willing to accept persons as leaders who reject InterVarsity’s beliefs.

48. On March 30, 2017, InterVarsity-Wayne applied for registered student organization status at WSU. 03/30/2017 Application, Appx. Ex. 25, WSU002247.

RESPONSE: Admitted that InterVarsity submitted an organization registration request on March 30, 2017. Further stated that InterVarsity was already a registered student organization on March 30, 2017, when it applied

to re-register. *See, e.g.*, ECF No. 47-33, PageID.1990-1991 at 181:15-183:1 (registration typically happens in the fall); ECF No. 47-47, PageID.2251 at 18:25-19:8 (Beyerlein testifying that there were no “issues with the Wayne State Chapter’s ability to operate at Wayne State in the 2016-2017 school year”); ECF No. 47-48, PageID.2302-2303 at ¶ 26 (Garza explaining the same).

49. The application contained the following eligibility requirement to serve as a leader: “Chapter leaders are expected to indicate their agreement with InterVarsity’s Doctrine and Purpose Statements and exemplify Christ-like character, conduct and leadership.” *Id.* at WSU002246.

RESPONSE: Admitted.

50. Villarosa, upon reviewing the registration, sent the following comment through the Engage system: “Neither membership, nor officer requirements may violate the university anti-discrimination policy – please amend the officer requirements accordingly and resubmit.” *Id.* at WSU002241.

RESPONSE: Admitted, except that Villarosa testified that the system in use from fall 2016 to fall 2017 was called OrgSync. ECF No. 47-33, PageID.1955 at 38:20-22.

51. InterVarsity-Wayne did not take any action in response to Villarosa’s comment. InterVarsity Dep. at pg. 18.

RESPONSE: Admitted, insofar as InterVarsity “didn’t see” Villarosa’s comment initially and remained able to function as an RSO at this time. IVCF

ECF No. 47-47, PageID.2251 at 18:15-24; ECF No. 47-48, PageID.2302-2303 at ¶ 26.

52. Despite never successfully registering for the 2016-2017 school year, InterVarsity-Wayne was active on WSU's campus and reserved rooms on campus. InterVarsity Dep. at pg. 18-19. Ann Beyerlein, testifying on behalf of InterVarsity-Wayne, stated that she was not made aware of any issues with InterVarsity's ability to operate at WSU in the 2016-2017 school year. *Id.* at pg. 19.

RESPONSE: Denied that InterVarsity “never successfully registered for the 2016-2017 school year”; the only registration issue Wayne State cites was in a comment from Villarosa on an application submitted near the very end of the 2016-2017 school year, and there is no evidence that Wayne State understood or treated InterVarsity as anything other than a fully registered student organization during the entirety of the 2016-2017 school year. Admitted that InterVarsity was active on WSU's campus and reserved rooms on campus throughout the 2016-2017 school year, and that Ann Beyerlein testified that she was not aware of any issues with InterVarsity's ability to operate at Wayne State in the 2016-2017 school year. *See, e.g.*, ECF No. 47-47, PageID.2251 at 18:25-19:8; ECF No. 47-48, PageID.2302-2303 at ¶ 26. Furthermore, InterVarsity had been an RSO at Wayne State for decades, with initial RSO status over 75 years ago. IVCF SOMF ¶ 2 (ECF No. 47, PageID.1109).

53. On September 15, 2017, InterVarsity-Wayne submitted its application to register as a student organization for the 2017-2018 school year. 09/15/2017 Application, Appx. Ex. 27, WSU0022854.

RESPONSE: Admitted.

54. The application contained the following eligibility requirement to serve as a leader: “Active members of the Chapter who wish to be leaders must sign the Statement of Agreement (Purpose Statement) and Doctrinal Basis, commit to abide by the Statement of Agreement in their conduct, and agrees to devote sufficient time to the Chapter, as indicated by completing and signing the leadership application.” *Id.* at WSU002852.

RESPONSE: Admitted.

55. That same day, Villarosa commented “Please contact me regarding your Membership and Officer requirements.” *Id.* at WSU002847.

RESPONSE: Admitted.

56. In response, on September 18, 2017, Christina Garza, the student president of InterVarsity-Wayne, emailed Villarosa and provided a copy of InterVarsity-USA’s Constitution. 09/18/2017 Email, Appx. Ex. 28, WSU001789.

RESPONSE: Admitted, except that Garza provided InterVarsity’s Chapter Constitution Template and explained that “it is basically the template that has been accepted by universities across the country.” ECF No. 45-29, PageID.1076.

57. Villarosa responded that he would look into the issue. 09/24/2017 Email, Appx. Ex. 29, WSU001780.

RESPONSE: Admitted, except that Villarosa failed to respond to the email cited in Paragraph 56. After Ann Beyerlein emailed him again, flagging the earlier email and noting that she had “tried to call” multiple times, Villarosa sent the response cited in Paragraph 57. See ECF No. 45-30, PageID.1078.

58. On October 3, 2017, Villarosa sent another message to InterVarsity-Wayne through the Engage system, stating “Your currently written officer requirements violate the University Non-discrimination policy. Please adjust and resubmit.” 09/15/2017 Application, Appx. Ex. 27, WSU002847.

RESPONSE: Admitted.

59. Villarosa also sent an email to Garza on the same day, stating “I have confirmation from our office of general counsel. The leadership requirements violate the University Policy on Anti-Discrimination and must be amended.” 10/03/2017 Email, Appx. Ex. 30, WSU001775.

RESPONSE: Admitted, except that the quoted sentence continued: “if the group wishes to be a Registered Student Organization (RSO).” ECF No. 45-31, PageID.1081.

60. Villarosa testified that at no time during this process did he consider the sincerity of the religious beliefs held by the InterVarsity-Wayne student members or leaders. Villarosa Dep. at pg. 194.

RESPONSE: Admitted that Villarosa so testified.

61. On October 17, 2017, Garza requested a letter from WSU's Office of General Counsel clarifying WSU's position and policy with regards to InterVarsity's application. 10/17/2017 Email, Appx. Ex. 31, WSU001774.

RESPONSE: Admitted that on October 17, 2017, Garza sent Villarosa an email requesting a letter from the General Counsel's office "clarifying and explaining your policy." ECF No. 45-32, PageID.1085. The email states: "We'd like to understand why you are applying the non-discrimination policy in this way particularly as it seems to be a violation of our first amendment rights of religious expression (our religious beliefs require these leadership requirements)." *Id.*

62. On October 23, 2017, Sarah Luke, Assistant General Counsel, responded to Garza, stating that WSU's "policy does not transgress First Amendment limitations because the policy is viewpoint neutral and is applied equally to all organizations seeking recognition." 10/23/2017 Letter, Appx. Ex. 32, WSU001716.

RESPONSE: Admitted that the language quoted in Paragraph 62 accurately reflects the cited source.

63. At this time, the Dean of Students Office officially denied InterVarsity-Waynes's request to register. Strauss Dep. at pg. 72-73. WSU informed Garza that all current room reservations for InterVarsity had been cancelled as a result. 10/26/2017 Email, Appx. Ex. 33, WSU001770-771.

RESPONSE: Admitted that three days after the letter referenced in Paragraph 62 was sent, Wayne State denied InterVarsity’s registration and cancelled all its scheduled room reservations.

64. Despite not being a registered student organization, InterVarsity-Wayne continued to operate at WSU, including holding meetings. InterVarsity Dep. at pg. 28-29. InterVarsity was, however, required to pay to reserve rooms and tables to conduct meetings and outreach. *Id.* According to Beyerlein, testifying on behalf of InterVarsity-Wayne, the organization continued to meet three times per week, roughly the same number of weekly meetings the organization would hold as a registered student organization. *Id.* at pg. 29-30. InterVarsity-Wayne could not identify any specific meetings that were cancelled or not held, except that it “cut back” on table space and “special meetings.” *Id.* at pg. 30-31. Despite cutting back, InterVarsity-Wayne still reserved at least two tables the first two weeks of the spring semester. *Id.* at pg. 32.

RESPONSE: Admitted as to the first two sentences. Otherwise, denied: The cited testimony states that “[w]e did hold some meetings; not as many as we normally would have.” ECF No. 47-47, PageID.2253 at 29:6-7. It further identifies specific meetings that were cancelled: “the first week of school often we would do meet-and-greets for a few hours in the student center just for students to come and meet other students. We didn’t do those that January because we just, like I said, weren’t sure how much money we should be spending on that.” *Id.* ECF No. 47-47, PageID.2254 at 31:9-14. The testimony

further states: “there was a lot of table space that we didn’t rent like we would normally have, which is a big part of our ministry, but we didn’t get that table space because it was -- we just, again, we weren’t sure how much table space to rent, how long this was going to be going on, how much money we should be spending, et cetera.” ECF No. 47-47, PageID.2254 at 30:20-31:1. As to the last sentence of Paragraph 64, the testimony states that InterVarsity typically (including in the fall of 2017, when it was still a RSO) reserved “two tables” for the “first two weeks of school,” but that “we cut back in January of 2018” due to the cost of renting tables as a non-RSO. ECF No. 47-47, PageID.2254 at 31:25-33:3. Moreover, several InterVarsity staff members had to divert their time to help the Wayne State chapter overcome the challenges presented by deregistration. *See Blomberg Decl., Ex. A4 ¶¶ 3-9; see also infra Counter-SOMF ¶ 67.*

65. InterVarsity-Wayne also participated at WinterFest as a vendor. *Id.* at pg. 35-36. Though InterVarsity-Wayne was not permitted to participate in the ballroom with other student organizations, WSU allowed InterVarsity-Wayne to rent a table in the student center near the Starbucks. *Id.* InterVarsity-Wayne was the only student organization with a table outside the ballroom. *Id.* at pg. 38-39. When asked to compare the 2016-2017 WinterFest to the 2017-2018 WinterFest, Beyerlein, testifying on behalf of InterVarsity-Wayne, could not recall any difference in the amount of students with whom InterVarsity-Wayne interacted. *Id.* at pg. 37-38.

RESPONSE: Denied that InterVarsity was allowed to “participate[] at WinterFest” in 2017-2018. As stated by Villarosa, WinterFest is “an opportunity for the student organizations to come together to . . . recruit,” and if an organization is not an RSO, it “would not be able to have a reserved table at Winterfest with the students.” ECF No. 47-33, PageID.1957, 1995 at 48:21-49:4, 201:1-3; *see also* ECF No. 47-45, PageID.2115 at 22:13 (Strauss stating that “Winterfest is only for [registered] student orgs”); ECF No. 47-47, PageID.2255 at 36:2-17 (Beyerlein explaining that the InterVarsity table was not in the WinterFest room). Admitted that InterVarsity was allowed to rent a vendor table near Starbucks, on a different floor of the student center from where WinterFest occurred. *Id.* Admitted that two years later, Beyerlein could not recall whether InterVarsity interacted with fewer students. As InterVarsity’s student leaders explained shortly after the relevant WinterFest, “Without full participation at the Winterfest, InterVarsity was unable to reach out to as many students as it normally would have been able to do. Further, Wayne State’s action to segregate us from the other student groups sent a message that InterVarsity is an outsider and not a full or trustworthy member of the campus community. That stigma made our recruiting efforts less effective.” ECF No. 47-48, PageID.2306 at ¶ 47; ECF No. 47-49, PageID.2328 at ¶ 20 (“Missing out on talking to students at WinterFest has made it harder to recruit new members for our chapter.”); *see also* Counter-SOMF ¶ 67, *infra*.

66. In total, InterVarsity-Wayne paid \$3,580 for reservations while it was not a registered student organization at WSU. Payment Chart, Appx. Ex. 34, IVCF Wayne 000056; InterVarsity Dep. at pg. 64-65.

RESPONSE: Admitted.

67. Despite not being a registered organization for several months of the 2017-2018 school year, InterVarsity-Wayne could not identify any loss of membership in the 2017-2018 school year. InterVarsity Dep. at pg. 50-51. Beyerlein, testifying on behalf of InterVarsity-Wayne, stated that for the 2015-2016 and 2017-2018 school years, InterVarsity-Wayne had roughly 20-25 members as a registered student organization. *Id.* at pg. 44, 49. In fact, in an email dated March 10, 2016, Beyerlein stated in an email that for “[t]he last 15 years we have been around 20 to 25 [students] and have felt the influence of more Christian groups around us.” 03/10/2016 Email, Appx. Ex. 35, IVCF Wayne 002192.³

RESPONSE: Admitted that the cited sources state that InterVarsity had roughly 20-35 members in the relevant time periods. ECF No. 47-47, PageID.2259 at 50:7; ECF No. 45-36, PageID.1094. Deny any inference that deregistration did not impact recruiting, membership, or other aspects of InterVarsity’s ministry. The testimony reflects that InterVarsity

certainly didn’t have access to the group of students that we normally would have had or that the other student orgs had access to. And those were the students that were really looking to be

³ Plaintiffs designated Exhibit 35 as Confidential under the Court’s Protective Order. (See ECF No. 38.) Pursuant to the agreement of the parties, Plaintiffs have consented to the removal of the Confidential designation for Exhibit 35, allowing filing of the document on the public record.

involved in a student org, maybe wanted to be leaders of a student org, and we didn't get to talk to them. And if we did, we did have some questions from students about were we a real student organization, and we did have some questions about why we weren't on the list of student organizations from the Dean of Students Office. So students were wondering like what was wrong with us, why we weren't part of the student org fair, why were we in this hallway where the vendors usually are, the people who rent space? And so, yeah, qualitatively, it was a very different experience for us.

ECF No. 47-47, PageID.2259 at 50:21-51:12. Moreover, the record shows that InterVarsity/USA brought in *two* new staff members to assist the InterVarsity Wayne State chapter, with one arriving just before the deregistration problems and the other arriving during deregistration. ECF No. 47-47, PageID.2248, 2261, 2268, 2269 at 9:16-22; 58:12-17; 89:8-13, 91:15-22, 93:11-13. This more than tripled the amount of dedicated InterVarsity/USA staff attention helping the chapter, since the previous lead staff member was also the area director for a region of Michigan universities and thus was only able to come to Wayne State one or two days per week. ECF No. 47-47, PageID.2257 at 44:8-11. That the chapter's membership merely broke even despite such an influx of support indicates that deregistration was harmful to membership efforts. *See, e.g.*, ECF No. 47-47, PageID.2275 at 114:12-19.

Moreover, even if there hadn't been an impact on membership, there was still harm to InterVarsity's ministry because "part of [its] ministry is being a presence on campus." ECF No. 47-47, PageID.2256 at 41:23-25. InterVarsity wants to "be a presence there to encourage students" in their faith and health, such as by reminding them "to go to church, go to synagogue, use the counseling

center.” ECF No. 47-47, PageID.2258 at 47:5-18. InterVarsity maintained this presence by, among other things, hosting “interactive tables on campus,” which “is a big part of [its] ministry,” but there was “a lot of table space” that it could not use because Wayne State’s actions “cut back [its] ministry.” ECF No. 47-47, PageID.2253-2254 at 29:6-33:3.

68. For the 2017-2018 school year, despite not being registered for the majority of the school year, InterVarsity-Wayne still had membership “in that 20 to 35 range.” InterVarsity Dep. at pg. 50.

RESPONSE: Admitted. See also supra Counter-SOMF ¶ 67.

69. On March 8, 2018, WSU informed InterVarsity-Wayne of its decision to register it as a student organization. Strauss Dep. at pg. 83. Strauss made that decision and communicated it to Villarosa in order to activate the group in the Engage system. *Id.* at pg. 84-87.

RESPONSE: Admitted.

70. Following the decision to register InterVarsity-Wayne, WSU reimbursed InterVarsity-Wayne, through payment to InterVarsity USA, the entire \$3,580 paid for reservations. InterVarsity Dep. at pg. 64-65.

RESPONSE: Admitted.

71. Since registering InterVarsity-Wayne on March 8, 2018, and during the pendency of this lawsuit, WSU has permitted religious organizations, including InterVarsity, to register with leadership criteria that otherwise violate the Non-Discrimination Policy by imposing religious leadership criteria. 2018-2020

Organizations Spreadsheet, Appx. Ex. 36 (including Newman Center and Christian on Campus). For example, Strauss testified that organizations requiring leaders to be “Christian,” Strauss Dep. at pg. 97-98, and Catholic, *Id.* at pg. 101-102, have been allowed to register as student organizations.

RESPONSE: Admitted. Villarosa testified that InterVarsity and religious groups like the Newman Catholic Center are presently in violation of the Policy. ECF No. 47-33, PageID.2008, 2009 at 251:9-13, 255:5-10.

INTRODUCTION

Wayne State’s motion for summary judgment admits every fact necessary to deny its motion and grant judgment to InterVarsity. Wayne State admits that it requires InterVarsity to accept leaders “who *refuse* to share InterVarsity’s beliefs”—a requirement that would destroy InterVarsity’s religious identity and mission. Wayne State also admits that it does not impose this crippling requirement on many other registered student organizations, including dozens of fraternities and sororities, sports clubs, political or ideological groups, and (sometimes) groups that are for “minorities and women.” And it admits that its discrimination is based on its judgment that these other groups are more “deserving” of respect for their *secular* beliefs and mission than InterVarsity is for its *religious* beliefs and mission.

Those admissions, coupled with Wayne State’s decision not to even attempt to defend its actions as either compelling or necessary, make this a straightforward case. Wayne State’s actions are not merely unconstitutional; they violate *several* protections of the First Amendment at the same time. This Court should so rule.

ARGUMENT

I. Wayne State’s interference in InterVarsity’s leadership selection violated the First Amendment’s Religion Clauses (Counts 1-2).

The Religion Clauses create a “structural limitation imposed on the government” that “categorically prohibits federal and state governments from becoming involved in religious leadership” decisions. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015). This means that “the government cannot dictate to a religious organization who its spiritual leaders would be.” *Id.* at 835-36. Rooted in

the supreme law of the land, this “federal right w[ill] defeat any Michigan statute that, as applied, violates the First Amendment.” *Id.* at 836.

The undisputed facts show that the federal right applies here. InterVarsity is a protected religious organization, its student leaders function as its spiritual leaders on campus, and Wayne State’s Policy is a Michigan law that unconstitutionally requires InterVarsity to accept leaders “who refuse to share InterVarsity’s beliefs.” WSU Br., ECF No. 45, PageID.759. Wayne State has voluntarily chosen to create a forum that includes full-fledged religious ministries, functioning as ministries and led by ministers. *See* ECF No. 47-33, PageID.1970 at 98:10-99:12; ECF No. 47-21, PageID.1277; ECF No. 52, PageID.2342, Ex. C4 (row 59, col. R) (RSOs may “celebrat[e] sacraments,” hold “religious worship services,” and observe holy days). Having done so, Wayne State cannot now coerce those religious groups into its own image by denying them religious leadership. Thus, summary judgment should be entered for InterVarsity. *See* IVCF Br., ECF No. 47, PageID.1127-1133.

Wayne State’s motion to the contrary makes the same legal argument it made at the motion to dismiss stage: that the Religion Clauses’ protection “operates only as an affirmative defense,” *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 413 F. Supp. 3d 687, 694 (E.D. Mich. 2019) (“*WSU*”), and thus applies only if Wayne State chooses to “sue Plaintiffs in pursuit of a court order” enforcing its Policy. WSU Br., ECF No. 45, PageID.738. That argument hasn’t improved with time. *None* of the controlling authority cited by Wayne State supports its cramped view of the First Amendment. The only citation that does is an out-of-

circuit ruling that this Court already found unpersuasive and that is currently on appeal at the Eight Circuit. *Compare* WSU Br., ECF No. 45, PageID.736 (citing *Bus. Leaders in Christ v. Univ. of Iowa*, 360 F. Supp. 3d 885 (S.D. Iowa 2019) (“*BLinC*”), *with WSU*, 413 F. Supp. 3d at 694.

Wayne State’s argument was dealt a fatal blow this summer. In *Our Lady of Guadalupe School v. Morrissey Berru*, the Supreme Court confirmed that protection for religious leadership is not merely a defense tacked onto employment discrimination laws, but rather rooted in the fundamental “principle of church autonomy,” which guarantees that religious groups have independent authority over internal “matters of faith and doctrine.” 140 S. Ct. 2049, 2061 (2020). A specific “component of this autonomy” is “the selection of individuals who play certain key roles” that are “essential to the institution’s central mission.” *Id.* at 2060. And, in turn, a component of *that* rule is the “so-called ministerial exception,” which can function as an affirmative defense against employment discrimination claims. *Id.* at 2061. Thus, Wayne State’s call to transform this protection into a “narrow defensive doctrine,” WSU Br., ECF No. 45, PageID.738, is directly inconsistent with the “broad principle” of religious autonomy confirmed in *Our Lady*. 140 S. Ct. at 2061.

Even before *Our Lady*, Wayne State’s argument flatly contradicted controlling authority, which has long recognized that affirmative defenses under the Religion Clauses are an *aspect* of the right, not the *entirety* of it. As the Sixth Circuit explained, the Supreme Court’s *Hosanna-Tabor* decision upheld the broad “freedom of a religious organization to select its ministers” and *then* recognized that one

application of this freedom arises as an affirmative defense against “a suit alleging discrimination in employment.” *InterVarsity*, 777 F.3d at 833 (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 705 (2012)). Similarly, the Seventh Circuit agreed that *Hosanna-Tabor* “recognized the right of churches to choose their own ministers (broadly understood) *and* adopted a constitutional ministerial exception to laws regulating employment discrimination.” *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) (emphasis added)). Wayne State is mistaking a tree for the forest.

And the mistake is obvious. The Religion Clauses provide a “federal *right*,” not merely a procedural defense. *InterVarsity*, 777 F.3d at 836 (emphasis added). Every major controlling precedent from the Sixth Circuit and the Supreme Court has identified the Religion Clauses as establishing a “religious group’s *right* to shape its own faith and mission through its appointments,” *Hosanna-Tabor*, 565 U.S. at 188-89 (emphasis added), and this “First Amendment right” receives at least as much respect as other “constitutional rights,” *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 226 (6th Cir. 2007), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. 171.¹ Indeed, it receives *more*, since “the text of the First Amendment itself” gives “special solicitude to the rights of religious organizations.” *Hosanna-Tabor*, 565 U.S. at 189. *InterVarsity* thus may remedy its violation by suing under 42 U.S.C. § 1983, which creates a cause of action for deprivation of “*any* rights, privileges, or

¹ *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986) (“First Amendment rights”); *see also WSU*, 413 F. Supp. 3d at 694 (“religious organizations have a clear constitutional right to choose their own ministers”).

immunities secured by the Constitution.” *Dennis v. Higgins*, 498 U.S. 439, 443-45 (1991) (emphasis added) (Section 1983 “broadly construed” to protect against “all” violations of “federally protected rights”). *InterVarsity* need not await a governmental enforcement lawsuit before vindicating this right. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014).

That should come as no surprise. The Supreme Court has characterized the ministerial exception itself as an example of a “free-exercise *claim*[].” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 708 (2014) (citing *Hosanna-Tabor*) (emphasis added). And the Court has previously applied the Religion Clauses to prohibit interference in religious leadership disputes, vindicating the rights of a plaintiff who raised the issue offensively. *See, e.g., Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 707 (1976) (affirming diocese’s claims against defrocked bishop). Other courts have likewise upheld claims arising under the Religion Clauses’ protection for church autonomy. *See, e.g., Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1256 (10th Cir. 2008) (upholding claims against “intrusive governmental judgments regarding matters of religious belief and practice”); *see also Duquesne Univ. of the Holy Spirit v. NLRB*, 947 F.3d 824, 828 (D.C. Cir. 2020) (collecting cases hearing petitions from religious organizations against agency actions interfering in internal religious affairs).

The Sixth Circuit in *InterVarsity* likewise rejected the idea that the Religion Clauses provide merely a “narrow defensive doctrine,” WSU Br., ECF No. 45, PageID.738, which a party could raise or waive to suit its personal interests. Rather,

the court explained, “[t]his constitutional protection is not only a personal one; it is a structural one that categorically prohibits federal and state governments from becoming involved in religious leadership disputes.” 777 F.3d at 836. Thus, “the Constitution does not *permit*” religious organizations to waive the Religion Clauses’ application, since the government has an independent obligation to avoid overstepping the structural boundaries of its authority. *Id.* (emphasis added). Thus, even if parties disclaim or ignore the Religion Clauses, courts can raise and address them. *EEOC v. R.G. & G.R. Harris Funeral Homes*, 884 F.3d 560, 581 (6th Cir. 2018)(addressing application of Religion Clauses though only raised by amici and rejected by the parties); *accord Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (affirming court raising and resolving issue *sua sponte*).

Wayne State’s theory also suffers from other fatal defects. For instance, the University is wrong that defenses and claims are mutually exclusive. The “designation of a claim as an affirmative defense” does not prevent a party “from asserting that claim in a preemptive action for declaratory or injunctive relief.” 5 Wright & Miller, *Federal Practice & Procedure* § 1274 (3d ed.).

Wayne State also asserts that the Religion Clauses apply only to judicial power. WSU Br., ECF No. 45, PageID.738. But in reality they apply to “any arm” of the government and “defeat” not just court orders but “any . . . statute” violating their protection, including “any . . . discrimination statute.” *InterVarsity*, 777 F.3d at 837.

Further, Wayne State argues that the Religion Clauses apply *only* when the government leaves a religious group “no options” but to “retain an unwanted

minister,’ period, full stop.” WSU Br., ECF No. 45, PageID.738. But the Supreme Court has rejected that line of argument. *Hosanna-Tabor* held that even when the government is not ordering “reinstatement” of an unwanted minister, imposing other pressure “would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order” requiring reinstatement. 565 U.S. at 194. *Our Lady* confirmed that “*any* attempt by government to dictate *or even to influence* such matters would constitute one of the central attributes of an establishment of religion.” 140 S. Ct. at 2060 (emphasis added). And here the influence is pronounced, both because of the burden it places on InterVarsity’s internal affairs and the punishment that InterVarsity’s student leaders face for violating the Policy. *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 861, 861 (7th Cir. 2006) (“no clearer example of an intrusion into the internal structure” of a religious student group); *see also* WSU SOMF ¶ 6 (ECF No. 45, PageID.703) (violation of Policy can lead to expulsion).

In the end, Wayne State’s arguments contradict “first principles of free-exercise doctrine”: the Religion Clauses protect different types of religious exercise differently. *Korte*, 735 F.3d at 676. “[U]sually,” cases arise when the government burdens an individual’s religious conduct, which triggers the standard Free Exercise protections discussed in Section III below. *Id.* But where, as here, the government goes so far as to interfere with the “internal governance” of religious groups in “select[ing] their own leaders,” that violates “the Constitution’s ordering of the relationship between religion and government,” and stronger medicine is required.

Id. at 677-78. It is thus fidelity to the First Amendment, not “judicial activism,” WSU Br., ECF No. 45, PageID.738, that protects InterVarsity here.²

II. Wayne State violated InterVarsity’s free speech, association, and assembly.

Wayne State’s motion mainly attacks InterVarsity’s free speech claim, saying little about association or assembly. But Wayne State is subject to strict scrutiny under each of these guarantees. *See* IVCF Br., ECF No. 47, PageID.1133-1144. And having failed even to attempt satisfying such scrutiny, Wayne State’s motion for summary judgment on all three claims should be denied.

A. Wayne State violated InterVarsity’s free speech rights (Counts 7–8).

Wayne State concedes that the RSO program constitutes a limited public forum and that strict scrutiny applies to any restrictions it places on speech in the forum unless they are both “reasonable in light of the purpose served by the forum” and viewpoint neutral. WSU Br., ECF No. 45, PageID.748-749; *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Neither standard is met.

1. Wayne State’s Policy is not reasonable in light of the forum’s purpose.

The stated purpose of Wayne State’s RSO Program is to encourage students to form interest-based organizations so they will be connected to others on campus. ECF No. 47-20, PageID.1248; ECF No. 47-45, PageID.2139 at 121:1-5. Refusing to

² As pled in Count II, the Religion Clauses also provide independent safeguards for InterVarsity that protect its internal autonomy more broadly. *Our Lady*, 140 S. Ct. at 2061 (autonomy rights not “exclusively concerned with the selection or supervision of clergy”); *accord Overall v. Ascension*, 23 F. Supp. 3d 816, 832 (E.D. Mich. 2014) (“protected zone” not limited to religious leadership, but includes other internal “polity, administration, and community” decisions). Since Wayne State did not address that independent line of doctrine, its arguments against Count II fail.

let groups like InterVarsity select mission-aligned leaders destroys that purpose. *See* IVCF Br., ECF No. 47, PageID.1134-1136. That is why Wayne State allows groups like the Secular Student Alliance, the Wayne African Student Society, Greek groups, and many others to require members and leaders to support their principles. *Id.*; *see* IVCF SOMF ¶¶ 59-64 (ECF No. 47, PageID.1118-1119). Refusing to register InterVarsity, even though its religious leadership requirement promotes the same purpose, is not reasonable. To fulfill the purpose of the forum, all groups must be able to select leaders who embrace their mission.

Nor can Wayne State's discriminatory treatment of InterVarsity be justified under its "affirmative action" exception for women and "minority" groups. "On its face," the word "minority" "has no clear meaning" that can be "objectively applied," giving "too much discretion" to the government. *Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg'l Transp.*, 978 F.3d 481, 494 (6th Cir. 2020) (cleaned up) ("*AFDI*"). Under this provision, Wayne State registered a veteran's group, but refused to register several women's groups, even though the provision expressly refers to women. *See supra* Counter-SOMF ¶¶ 34, 36, 39; *infra* n.8. And Wayne State admitted it doesn't know who qualifies as a "minority," doesn't have an internal guidance on who qualifies as "minority," and makes ad hoc judgments regarding whom to accommodate. ECF No. 47-33, PageID.1975-1976, 1985 at 121:13-122:5, 123:6-17, 158:2-159:18. Wayne State's "haphazard interpretations" have "caused inconsistency" in its application and not "create[d] the workable standards that it needs for 'reasoned application' of its" Policy. *AFDI*, 978 F.3d at

494-95, 497 (quoting *Minnesota Voters All. v. Mansky*, 138 S. Ct. 1876, 1888, 1892 (2018)). Indeed, Wayne State’s shifting rules “suggest[] that the University had no idea what the limits of the policy were and it was essentially making up the rules as it went along.” *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 868 (E.D. Mich. 1989).

2. The Policy and Wayne State’s application are not viewpoint neutral.

Wayne State asserts that its Policy is facially neutral and that “the record evidence establishes neutral application of the RSO Policy.” WSU Br., ECF No. 45, PageID.753. The text of the Policy and the undisputed facts belie both assertions.

a. The Policy is not facially viewpoint neutral.

The Policy is not neutral on its face for at least two reasons.

First, the Policy favors the speech of organizations with political or ideological beliefs over the speech of organizations with religious beliefs. As the Sixth Circuit just reaffirmed, viewpoint discrimination is defined “‘broad[ly]’” and “exists even when the government does not target a narrow view on a narrow subject and instead enacts a more general restriction—such as a ban on all ‘religious’ speech.” *AFDI*, 978 F.3d at 499. By Wayne State’s own admission, the Policy allows a political or ideological group to confine leadership to those who agree with its beliefs but forbids a religious group from doing the same, based solely on the fact that the latter group’s beliefs are *religious*. ECF No. 47-33, PageID.1970 at 99:22-100:8.

This “facial viewpoint bias in the [Policy] results in viewpoint-discriminatory application.” *Iancu v. Brunetti*, 139 S. Ct. 2294, 2300 (2019). If InterVarsity’s standards for leaders were non-religious, it would have been registered. The Secular

Student Alliance requires its leaders to commit to “promot[ing] secular values,” but InterVarsity cannot require its leaders to commit to religious values. IVCF SOMF ¶ 62 (ECF No. 46, PageID.1119); IVCF SOMF ¶¶ 60-64, 67 (ECF No. 47, PageID.1118-1119) (listing examples). Similarly, the Young Democratic Socialists of America can “require [its] leaders” to agree with its goals, including “divest[ing] our schools from fossil fuels” and “defend[ing] immigrants through campaigns for sanctuary campuses,” because the school sees it as “an issue of association” not “discrimination.” ECF No. 47-45, PageID.2156 at 187:17-189:22. Because the Policy thus relies on “the religious views of the group as the rationale for excluding” it, *Rosenberger*, 515 U.S. at 832, it facially discriminates on viewpoint. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001) (unlawful to exclude speech just because “discussed from a religious viewpoint”); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393 (1993) (same).

Second, the Policy is not facially neutral because it contains an express exemption permitting Wayne State to “implement[] those affirmative action measures which are designed to achieve full equity for minorities and women.” ECF No. 47-38, PageID.2072. According to Wayne State, this allows both RSOs and the University itself to express their views through selective criteria involving gender, veteran status, and sexual orientation (among others), while InterVarsity may not do the same based on religion. ECF No. 47-33, PageID.1971-1976 at 102:11-123:17. And there’s no explicit limitation on what measures may be taken to “achieve full equality” or even how to define “minority.” That leaves “the guardianship of the

First Amendment to the tender mercies of [Wayne State's] discriminatory harassment/affirmative action enforcer,” allowing such officials to decide whether an RSO's leadership selection is “offensive or disagreeable.” *Dambrot v. Cent. Mich. Univ.*, 839 F. Supp. 477, 482-84, n.7 (E.D. Mich. 1993), *aff'd* 55 F.3d 1177 (6th Cir. 1995). This is unconstitutional facial viewpoint discrimination. While Wayne State can of course “establish an anti-discrimination policy,” it *cannot* use that policy to “prohibit[] certain speech because it disagree[s] with ideas or messages sought to be conveyed.” *Id.* at 482 (quoting *Doe*, 721 F. Supp. at 863).

To avoid this conclusion, Wayne State renews its reliance on two cases this Court has already distinguished: *Christian Legal Soc'y v. Martinez*, 561 U.S. 661 (2010) and *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790 (9th Cir. 2011). But, unlike the policy in *Martinez*, Wayne State's “policy here is not an ‘all-comers’ policy.” *WSU*, 413 F. Supp. 3d at 698. Thus, “*Martinez* is not controlling and is of limited instructive value here.” *Id.*; *Martinez*, 561 U.S. at 678 (“[t]his opinion, therefore, considers only . . . an all-comers policy”).

Further, *Reed's* facial neutrality analysis is wrong. As this Court has already explained, *Reed's* reasoning on facial neutrality is not the law of this Circuit, *WSU*, 413 F. Supp. 3d at 698, and has in fact been rejected by the Supreme Court. In *Reed*, the Ninth Circuit acknowledged that the university's policy “burden[ed] groups that wish to exclude others on the basis of religion, but does not burden groups that do not exclude or exclude on bases not prohibited by the policy.” 648 F.3d at 801. Yet it held that this was “insufficient to prove viewpoint discrimination, because

Plaintiffs have put forth no evidence that [the university] implemented its nondiscrimination policy for the *purpose* of suppressing Plaintiffs' viewpoint." *Id.* But a benign "purpose" cannot salvage a discriminatory policy. As the Supreme Court subsequently emphasized, "the First Amendment expressly targets the operation of the laws—*i.e.*, the 'abridg[ement] of speech'—rather than merely the motives of those who enacted them," and "a party opposing the government need adduce no evidence of an improper censorial motive." *Reed v. Town of Gilbert*, 576 U.S. 155, 165, 167 (2015) (cleaned up); *see Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117 (1991) (calling "incorrect" the proposition that "discriminatory . . . treatment is suspect under the First Amendment only when the [government] *intends* to suppress certain ideas" (emphasis added)). The point of facial neutrality is to look at whether the law, on its face, improperly restricts speech; the government's motives or intents are irrelevant.³

In any event, *Reed's* ruling on facial neutrality is irrelevant. The Policy here is distinguishable because it has express exceptions, including the amorphous affirmative action exception.

In sum, Wayne State's Policy facially discriminates on the basis of viewpoint. *See* IVCF Br., ECF No. 47, PageID.1150-1155. For that reason alone, summary judgment should be denied to Wayne State and awarded to InterVarsity.

³ Wayne State also relies on the Seventh Circuit's statement at the preliminary injunction stage in *Walker* that a materially different non-discrimination policy appeared to be "viewpoint neutral," WSU Br., ECF No. 45, PageID.750, but that issue was not briefed or analyzed, and nothing in *Walker* suggests that the policy there contained the sort of viewpoint discrimination inherent in the Policy here.

b. The Policy is not viewpoint neutral as applied.

Wayne State’s application of its Policy also discriminates based on viewpoint. “[A] government’s action is viewpoint neutral when it treats everyone the same.” *WSU*, 413 F. Supp. 3d at 699 (quoting *Hartman v. Thompson*, 931 F.3d 471, 480 (6th Cir. 2019)). But Wayne State concedes that it has registered “student organizations with leadership or membership criteria that violate the RSO Policy,” *WSU Br.*, ECF No. 45, PageID.753, while deregistering InterVarsity for that precise reason. “[U]niversity nondiscrimination policies are not viewpoint neutral if they are selectively applied to restrict the leadership and/or membership requirements of some student groups but not others.” *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*, 408 F. Supp. 3d 960, 979 (S.D. Iowa 2019) (“*IVCF-Iowa*”).

Indeed, the Ninth Circuit’s *Reed* decision *rejects* Wayne State’s application of its Policy. *Reed* explained that if “officially recognized groups . . . discriminate on prohibited grounds, in contravention of the policy,” a school cannot discriminatorily deny recognition to a religious group on the grounds that it “restrict[s] membership or eligibility to hold office based on religious belief.” 648 F.3d at 803-04.

Wayne State’s Policy application flunks this test in several ways, including via the political, ideological, and affirmative action exceptions discussed above and via the many exceptions Wayne State gives itself, *IVCF SOMF* ¶¶ 68-72 (ECF No. 47, PageID.1120). Beyond those, the most obvious uneven application is that Wayne State allows dozens of sororities and fraternities to discriminate based on sex for hundreds of membership and leadership positions. *WSU SOMF* ¶ 25 (ECF No. 45,

PageID.708-709); *see also* IVCF SOMF ¶¶ 44-48 (ECF No. 47, PageID.1116). It provides a similar exemption for sports clubs. WSU SOMF ¶ 28 (ECF No. 45, PageID.709); *see also* IVCF SOMF ¶¶ 41-43 (ECF No. 47, PageID.1115-1116). Permitting these groups to express their views on gender through their membership and leadership selections while denying InterVarsity the ability to express its views on religion through its leadership selections is “disparate treatment [that] constitutes viewpoint discrimination against InterVarsity.” *IVCF-Iowa*, 408 F. Supp. 3d at 980.

It is irrelevant that Wayne State’s exemptions for Greek organizations and sports clubs are not *prohibited* by Title IX. WSU Br., ECF No. 45, PageID.735. Title IX does not pretend to control Wayne State’s exemptions from its own nondiscrimination policy. And if Wayne State is going to rely on federal law, Title IX (not to mention RFRA) also permits an exemption for religious organizations. *Supra* Counter-SOMF ¶ 30. The reality is that Wayne State has simply *chosen* to privilege one set of groups over the other. Title IX is just a fig leaf for that choice.

Wayne State’s other arguments provide no better cover. Claiming “longstanding historical practice” (WSU SOMF ¶¶ 44 (ECF No. 45, PageID.718)) to excuse the Greek exemption fails, for InterVarsity likewise operated at Wayne State without complaint for 75 years. And the idea that the First Amendment is less important than allowing club sports teams to “follow the policies of the league in which they compete” (WSU SOMF ¶ 28 (ECF No. 45, PageID.709)) warrants no response. Fundamentally, when it comes to *whether* Wayne State discriminates on viewpoint, it simply does not matter *why* it does. *See Reed*, 576 U.S. at 165, 167.

Finally, Wayne State cannot explain away its admission that it granted RSO status to two additional student groups that registered “with leadership or membership criteria that violate the RSO Policy.” WSU Br., ECF No. 45, PageID.753. The organization that Wayne State argues represented an “oversight” (Ratio Christi) was re-registered in future years with the exact same criteria. *Supra* Counter-SOMF ¶ 39. And just as in *IVCF-Iowa*, “lots” of other registered organizations have similar criteria. 408 F. Supp. 3d at 980; *see, e.g.*, IVCF SOMF ¶¶ 50-58 (ECF No. 47, PageID.1117-1118); *supra* Counter-SOMF ¶¶ 36, 38-41, 43. And as for the other organization (WSU Student Veterans Organization), Wayne State says it falls under the affirmative-action exemption. WSU Br., ECF No. 45, PageID.754. But that’s the problem: WSU applies its policy to permit dozens of RSOs to express views about protected characteristics “by either limiting or encouraging membership and leadership based on those characteristics,” while InterVarsity cannot. *IVCF-Iowa*, 408 F. Supp. 3d at 980. “That is viewpoint discrimination.” *BLinC*, 360 F. Supp. 3d at 899; *accord Walker*, 453 F.3d at 866-67; *Widmar v. Vincent*, 454 U.S. 263, 264-65 (1981) (a university that “makes its facilities generally available” to student groups cannot exclude a “group desiring to use the facilities for religious” purposes).⁴

⁴ While supporting veterans is a laudable goal, this example merely highlights the uneven treatment: Wayne State permitted this veterans limitation but *refused* to permit another organization to limit itself to “women” (WSU SOMF ¶ 34 (ECF No. 45, PageID.711))—an inexplicable result given that its Policy expressly permits “affirmative action measures” for “women” but says nothing about veterans.

B. Wayne State infringed InterVarsity’s association rights (Count 6).

InterVarsity has explained how Wayne State violated its expressive association rights, and Wayne State does not contest any of the determinative elements of the analysis: (1) InterVarsity is an expressive association; (2) is being forced to accept leaders who reject its religious beliefs would impair its expression; and (3) strict scrutiny cannot be satisfied. *See* IVCF Br., ECF No. 47, PageID.1142-1144. Instead, Wayne State argues that InterVarsity’s association and compelled speech claims fail because the University has “not compelled InterVarsity to accept any members or alter its message” but instead “merely conditioned certain benefits on compliance with the non-discrimination policy.” WSU Br., ECF No. 45, PageID.754. Not so.

First, as the Sixth Circuit just reiterated, that is not how the First Amendment works: “the government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit.” *AFDI*, 978 F.3d at 489-90 (cleaned up). And that has long been the law. *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2022 (2017). True, courts have “draw[n] a distinction between policies that require action and those that withhold benefits,” WSU Br., ECF No. 45, PageID.754, but that distinction is relevant only when categorizing the relevant forum—and here, Wayne State concedes that it has created a limited public forum subject to the First Amendment. Its own lead case says that “[t]he fact that a university ‘expends funds to encourage a diversity of views from private speakers’ does not justify it in ‘discriminating based on the viewpoint of private persons whose speech it facilitates.’” *Martinez*,

561 U.S. at 682 n.13 (cleaned up). And that is what Wayne State has done, placing on InterVarsity “pressure to modify” how it speaks and associates. *Id.* at 682; *see Healy v. James*, 408 U.S. 169, 181 (1972) (“denial of official recognition . . . to college organizations burdens or abridges th[eir] associational right”); *accord Walker*, 453 F.3d at 864.

Second, the undisputed facts show that InterVarsity was harmed by Wayne State’s discrimination. Wayne State inflicted thousands of dollars in rental fees and thousands more in diverted staff time, numerous lost meetings and ministry outreach opportunities, lost communication with students, and reputational harm. Counter-SOMF ¶¶ 64-65; ECF No. 47-47, PageID.2260-2261, 2266 at 57:21-58:3, 62:23-63:7, 81:18-24. Being kicked out and called discriminatory by their own University “was a real shock to [InterVarsity’s] students and . . . staff,” created “heartbreak” and “confusion,” and made them feel “marginalized” and “disrespected as a student organization that had been on the campus for decades.” ECF No. 47-47, PageID.2261-2262 at 60:19-63:7. Further, the meetings and outreach InterVarsity managed to hold (for a fee) were disrupted and limited by Wayne State’s discriminatory behavior, forcing InterVarsity into “less convenient smaller room[s]” that were hard to find and that “changed every week.” ECF No. 47-47, PageID.2262 at 62:4-22. And all of this came against the backdrop of InterVarsity’s student leadership facing potential Code of Conduct violations and even expulsion under the Policy. Counter-SOMF ¶ 6.

C. Wayne State infringed InterVarsity’s assembly rights (Count 9).

Wayne State has no independent argument on assembly, instead adhering to its position that it may deny otherwise available benefits without facing constitutional accountability. WSU Br., ECF No. 45, PageID.756. That line fares no better here, and for the same reasons. IVCF Br., ECF No. 47, PageID.1144.

D. Defendants infringed InterVarsity’s speech rights under the Michigan Constitution (Counts 16-19).

For many of the same reasons, the individual defendants, Strauss and Villarosa, have violated the free speech provisions in Article I of the Michigan Constitution. Contrary to Wayne State’s position, WSU Br., ECF No. 45, PageID. 756, federal constitutional protections are the floor, not the ceiling, for rights under the Michigan Constitution. *Woodland v. Mich. Citizens Lobby*, 378 N.W.2d 337, 343 (Mich. 1985) (“[I]t is clear that the Michigan Constitution may afford broader free expression and petition protections against government infringements.”). Regardless, because defendants have violated the federal constitution, they have necessarily violated the Michigan Constitution. And federal qualified immunity will not protect them from state-law violations. *See Gossman v. Allen*, 950 F.2d 338, 341 (6th Cir. 1991).

III. Wayne State violated InterVarsity’s right to freedom from religious discrimination.

A. Wayne State violated InterVarsity’s Free Exercise rights (Counts 3-4).

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; *see also* IVCF Br., ECF No. 47, PageID.1144-1149.

Wayne State does not contest this standard, agreeing that its Policy must be neutral and generally applicable to pass muster. WSU Br., ECF No. 45, PageID.739. But, as shown above, the Policy fails by discriminating both on its face and in its application, rendering it neither neutral nor generally applicable. And again, Wayne State does not even attempt to satisfy strict scrutiny. Most of Wayne State's arguments to the contrary have been addressed above. Two bear mentioning here.

First, Wayne State asserts that InterVarsity must prove that the school “harbored an intent to discriminate or target InterVarsity for its beliefs.” WSU Br., ECF No. 45, PageID.741. This is wrong on several fronts. For one, it does not “make a difference” if “faith-based bigotry did not motivate” the Policy, since “[t]he Free Exercise Clause is not confined to actions based on animus.” *Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020) (quoting *Shrum v. City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006)). And for good reason: if the First Amendment were so confined, “the government could favor religions that are traditional, that are comfortable, or whose mores are compatible with the State, so long as it does not act out of overt hostility to others.” *Weaver*, 534 F.3d at 1260. That is “plainly not what the framers of the First Amendment had in mind.” *Id.* Rather, the “constitutional benchmark is ‘governmental *neutrality*,’ not ‘governmental avoidance of bigotry.’” *Roberts*, 958 F.3d at 415 (quoting *Weaver*, 534 F.3d at 1260)). And neutrality requires equal treatment “between religion and non-religion.” *Id.* Thus, in *Roberts*, even though state COVID limitations were not “motivated by animus” and did not

“single out faith-based practices for special treatment,” they still violated the Free Exercise Clause because they made significant secular exceptions. *Id.* at 413.

Moreover, even when a showing of discriminatory intent *is* required, the showing need be “merely the intent to treat differently.” *Weaver*, 534 F.3d at 1260. That’s what Wayne State admits having: an intent to provide “differential treatment” favoring groups it thought were “deserving”—like Greek groups and sports clubs—and denying similar respect to InterVarsity. WSU Br., ECF No. 45, PageID.740.

This also shows non-neutrality in another way. Where a law “protect[s] secular activities more than comparable religious ones,” *Roberts*, 958 F.3d at 415, it “devalues religious reasons for [acting] by judging them to be of lesser import than nonreligious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993); *IVCF-Iowa*, 408 F. Supp. 3d at 983; *BLinC*, 360 F. Supp. 3d at 902. Wayne State could hardly have made its devaluation clearer: secular groups are “deserving”; InterVarsity is not. That kind of discrimination “must run the gauntlet of strict scrutiny.” *Ward v. Polite*, 667 F.3d 727, 740 (2012).

Second, Wayne State claims that, since InterVarsity “only lost access to certain government provided privileges,” there was no ““substantial burden”” or “penalty” on InterVarsity’s religious exercise, and thus no violation of its Free Exercise rights. WSU Br., ECF No. 45, PageID.741. That claim is wrong on the facts, as shown above: Wayne State’s discrimination caused significant harm to InterVarsity’s ministry, its finances, and its reputation. *See supra* Section II.B.

It is also wrong on the law, and in two ways. For one, religious discrimination is a cognizable burden and irreparable harm all on its own. When government “makes it more difficult for members of one group to obtain a benefit than it is for members of another group,” the injury includes “the denial of equal treatment,” not just “the ultimate inability to obtain the benefit.” *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). Thus, even where discrimination against religion causes fairly minor harm—for instance, just “a few extra scraped knees”—the discrimination itself “is odious to our Constitution all the same, and cannot stand.” *Trinity Lutheran*, 137 S. Ct. at 2025. Accordingly, InterVarsity’s experience of “being subjected to discrimination [wa]s by itself an irreparable harm.” *Singh v. Carter*, 168 F. Supp. 3d 216, 233 (D.D.C. 2016).

InterVarsity also suffered the conceded harm of being denied equal access to public benefits. “[D]ecades of precedent” has “repeatedly confirmed” that “disqualifying otherwise eligible recipients from a public benefit” based on their religious exercise “imposes ‘a penalty on the free exercise of religion that triggers the most exacting scrutiny.’” *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2260 (2020) (quoting *Trinity Lutheran*, 137 S. Ct. at 2021)). This is because placing a “condition on benefits or privileges” that requires giving up religious freedom “inevitably deters or discourages the exercise of First Amendment rights” and “‘punishe[s] the free exercise of religion’ by disqualifying the religious from government aid.” *Id.* at 2256 (quoting *Trinity Lutheran*, 137 S. Ct. at 2022, and *Sherbert v. Verner*, 374 U.S. 398, 405 (1963)). Thus, courts have long recognized

that a “burden is substantial if the government compels an individual to choose between following the precepts of her religion and forfeiting benefits.” *Ave Maria Found. v. Sebelius*, 991 F. Supp. 2d 957, 964 (E.D. Mich. 2014) (internal quotation marks omitted) (citing *Sherbert*). As applied here, the “disabilities imposed” by Wayne State’s deregistration of InterVarsity, including the “denied university money and access to . . . university facilities for meetings,” were a burden on InterVarsity’s constitutional rights. *Healy*, 408 U.S. at 183; *Walker*, 453 F.3d at 864.

B. Wayne State violated the Establishment Clause (Count 5).

Wayne State also violated the Establishment Clause by discriminatorily favoring other religious groups’ leadership selection over InterVarsity’s. That violated the “clearest command of the Establishment Clause”: denominational neutrality. *Larson v. Valente*, 456 U.S. 228, 244 (1982). Wayne State counters that this clear command only applies when a policy discriminates on its face. But that’s what Wayne State’s Policy does: it allows Wayne State to favor “minority” religious leadership and disfavor religious groups it deems non-minorities. And the record shows that Wayne State exercised its discretion to do just that. *See, e.g.*, Counter-SOMF ¶¶ 40, 43.

Next, Wayne State argues that *Lemon v. Kurtzman* controls, not *Larsen*, and that it passes *Lemon*’s three-part test. 403 U.S. 602 (1971). Wayne State is wrong. First, even if *Lemon* controlled, Wayne State still loses. Wayne State’s discriminatory actions did not have a valid secular purpose, inhibited religion, and created impermissible religious entanglement. IVCF Br., ECF No. 47, PageID.1127-1133.

Second, *Lemon* doesn’t control. This Court correctly predicted that *Lemon* was an “infirm foundation,” *WSU*, 413 F. Supp. 3d at 696 n.2, and *Lemon*’s “grand

unified theory of the Establishment Clause” has now been replaced with a “more modest approach that focuses on the particular issue at hand and looks to history for guidance.” *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2087 (2019) (plurality op.); *id.* at 2102 (Gorsuch, J., concurring) (“what matters . . . is whether the challenged practice fits ‘within the tradition’ of this country”). Under this approach, the Establishment Clause “*must* be interpreted ‘by reference to historical practices and understandings.’” *Town of Greece v. Galloway*, 572 U.S. 565, 566 (2014) (emphasis added); *accord Bormuth v. County of Jackson*, 870 F.3d 494, 505-06 (6th Cir. 2017) (en banc) (“a court’s ‘inquiry . . . must be to determine” whether the government action “fits ‘within the tradition’” long followed in this country); *see also Kondrat’yev v. City of Pensacola*, 949 F.3d 1319, 1326-28 (11th Cir. 2020) (collecting cases applying *American Legion* and confirming that “*Lemon* is dead”). Here, the history is clear: from the founding to the present, “it is impermissible for the government to contradict a church’s determination of who can act as its ministers.” *Hosanna-Tabor*, 565 U.S. at 185; *Our Lady*, 140 S. Ct. at 2061. In light of this directly applicable historical practice, *Lemon* is inapplicable. *Smith v. Jefferson Cty. Bd. of Sch. Comm’rs*, 788 F.3d 580, 588 (6th Cir. 2015). Thus, Wayne State’s discriminatory religious leadership Policy is unconstitutional.

C. Defendants violated InterVarsity’s Free Exercise rights under the Michigan Constitution (Count 15).

Wayne State contends that because it should succeed under its federal-constitutional claims, it is also entitled to judgment under the Michigan Constitution’s Article I, § 4. WSU Br., ECF No. 45, PageID.747. But the Michigan

Supreme Court explained that the Michigan provision gives “an expanded and more explicit statement” of the federal provisions. *Advisory Op. re Constitutionality of 1970 Pub. Act 100*, 180 N.W.2d 265, 274 (Mich. 1970). Specifically, claims under the Michigan Constitution are “analyze[d] . . . under the compelling state interest test developed by the United States Supreme Court in *Wisconsin v. Yoder* and *Sherbert v. Verner*.” *McCready v. Hoffius*, 586 N.W.2d 723, 729 (Mich. 1998), *opinion vacated in part on other grounds*, 593 N.W.2d 545 (Mich. 1999). In other words, what matters is that InterVarsity has a sincerely held religious belief that the individual defendants burdened, and that the defendants cannot show that “a compelling state interest justifies the burden imposed” or that there is no “less obtrusive form of regulation available.” *Id.* at 729.

IV. Defendants are not entitled to qualified immunity.

The individual defendants have no escape from liability via qualified immunity. InterVarsity’s right to participate on equal footing in Wayne State’s RSO program has been clearly established under the First Amendment’s free speech, free association, and free exercise principles for decades.

A right is “clearly established” if its contours are “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Baynes v. Cleland*, 799 F.3d 600, 610 (2015) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). This is an “objective” test which does not require “the precise factual scenario” to have been ruled on previously. *Id.* at 610-11. Nor is “a prior case” that is “‘materially’ similar to the present case” required. *Id.* at 613. Rather,

the “*sine qua non* of the ‘clearly established inquiry’” is whether a reasonable official would have had “fair warning that the conduct at issue was unconstitutional.” *Id.*

This test is easily met here. Decades of on-point precedent from multiple, factually identical or highly analogous cases from the Supreme Court, Sixth Circuit, and other federal courts make clear that a religious student group at a public university is entitled to equal treatment in an RSO forum with every other student organization. Indeed, the relevant cases on this issue are unanimous. Defendants have no basis to conclude that their unlawful conduct was justifiable.

Free speech. The requirement of viewpoint neutrality in limited public fora has been established for decades, specifically in cases involving recognition of student groups at public universities. In *Healy*, the Supreme Court held that a state college that allowed student groups to “place announcements . . . in the student newspaper,” “us[e] various campus bulletin boards,” and reserve “campus facilities” could not deny equal access to a student group, even if it held “abhorrent” views and reputedly espoused “violent and disruptive activities” as a political tool. 408 U.S. at 176, 178, 187-88. In *Widmar*, the court extended that ruling to hold that a public university could not deny religious student groups equal access to funding, even if the purpose was to avoid the appearance of violating the Establishment Clause. 454 U.S. at 274. And in *Rosenberger*, the Supreme Court held that, if a public university provides funding for secular student groups to speak on certain topics, it cannot deny funding to religious groups addressing the same topics from a religious perspective. 515 U.S. at 829, 831; *accord AFDI*, 978 F.3d at 500 (“impermissible viewpoint

discrimination” to allow discussion from secular but not religious perspective). Finally, in *Trinity Lutheran*, the Supreme Court reiterated that a government cannot withhold a “generally available benefit” on the basis of religious views or identity. 137 S. Ct. at 2019. These cases alone are sufficient to overcome Defendants’ claim for qualified immunity. *See Kesterson v. Kent State Univ.*, 967 F.3d 519, 525 (6th Cir. 2020) (“For decades, employees at ‘state colleges and universities’ have known that those institutions ‘are not enclaves immune from the sweep of the First Amendment.’” (citing *Healy*, 408 U.S. at 180)); *Apodaca v. White*, 401 F. Supp. 3d 1040, 1059-60 (S.D. Cal. 2019) (agreeing that viewpoint neutrality for university treatment of student groups “has been clearly established” for decades).

The Supreme Court’s decision in *Martinez* reinforces this conclusion. Although the Court there ruled for the university, it did so only because of its unique policy: a true all-comers’ policy that was “textbook viewpoint neutral” because it “require[ed] *all* student groups to accept *all* comers.” 561 U.S. at 695, 694. Absent such a policy, viewpoint neutrality is the ironclad obligation of a limited public forum for student groups at a public university. *Id.* at 667-68, 679, 683-85, 695. In *Ward v. Polite*, the Sixth Circuit—relying on *Martinez*—confirmed that “selective enforcement” of a university policy implicating free speech “will not” satisfy the First Amendment’s requirement of viewpoint neutrality. 667 F.3d 727, 733 (6th Cir. 2012).

Other courts addressing the selective enforcement of a university’s nondiscrimination policy unanimously agree. In *Christian Legal Society v. Walker*, the Seventh Circuit held that deregistering a religious student organization for

selecting leaders and members based on its religious beliefs violated viewpoint neutrality if other groups were allowed to restrict leadership or membership on any protected category. 453 F.3d at 866-67. And in *Reed*, the Ninth Circuit agreed that, even if a university's nondiscrimination policy were "neutral on its face," it would "still be unconstitutional if not applied uniformly." 648 F.3d at 803-04.

Defendants cite two cases against the University of Iowa, relying half-heartedly on the first in some respects while ultimately trying to distinguish both on the merits as having come too late, addressing different policies, and being non-authoritative. WSU Br., ECF No. 45, PageID.765-766. Defendants' arguments are wrong.

First, both Iowa cases confirm that "the broad contours of the relevant law have been established for some time." *IVCF-Iowa*, 408 F. Supp. 3d at 991; *see also BLinC*, 360 F. Supp. at 907 (citing *Martinez* to conclude that "[t]he law is clear" and that it "has been established for some time" that "conditions on the use of a limited public forum" must be "viewpoint neutral").

Second, the relevant nondiscrimination policies at Wayne State and the University of Iowa are similar in all relevant respects. Both policies generally include standard protected categories, both include explicit exemptions for favored groups, and both were subjectively applied even among the non-exempted groups. If anything, Wayne State's Policy is *more* constitutionally infirm since it includes the amorphous affirmative action exemption. Thus, as to the merits, the Iowa court's holdings in both cases that the University of Iowa's selective application of its nondiscrimination policy violated the First Amendment are highly applicable.

Third, *contra* Defendants, this Court may look to courts outside the circuit to conclude that the relevant law is clearly established, especially where there is Supreme Court and Sixth Circuit authority indicating the same. *Daugherty v. Campbell*, 935 F.2d 780, 787 (6th Cir. 1991) (no qualified immunity where “the very action in question has been held unlawful by every circuit considering the issue”).

Finally, although one of the two Iowa cases granted qualified immunity, *BLinC*, 360 F. Supp. 3d at 909, its holding (now on appeal) does not withstand scrutiny. The *BLinC* court itself conceded that the requirement of viewpoint neutrality was “clear” and had “been established for some time.” *Id.* at 907. And it acknowledged that “[c]ertainly” the defendants “should have been aware that their actions implicated *BLinC*’s First Amendment rights” and that “indeed, the record shows that they were.” *Id.* at 908. The court even recognized that “the First Amendment’s restrictions on viewpoint discrimination apply . . . when the viewpoint implicates a nondiscrimination policy.” *Id.* Thus, the court’s ultimate conclusion that the case presented a “close call” justifying qualified immunity, *id.* at 909, did not follow from its own reasoning. Indeed, just eight months later, the same court, in a companion case arising from the same enforcement policy, at the same university, *denied* qualified immunity. It did so, in part because, even if *Martinez* had been “unclear” about “how the First Amendment applied to a nondiscrimination policy that was not an all-comer’s policy[,] . . . appellate courts before and after *Martinez* offered guidance” clarifying the issue. *IVCF-Iowa*, 408 F. Supp. 3d at 992 (citing *Walker* and *Reed*). Here, of course, the Sixth Circuit’s own decision in *Ward* directly

provided such guidance: qualified immunity does not apply where a university grants secular exemptions from a policy, but not exemptions for “religious speech and beliefs,” which would violate “clearly established free-exercise and free-speech rights.” 667 F.3d at 742 (citing *Martinez*); *see also supra* Part II.A.2.a (benign purpose cannot salvage discriminatory policy). Defendants thus ill advise this Court to follow the Iowa court’s outlier ruling on qualified immunity in *BLinC*.

It is hard to imagine a case where there has been clearer guidance that is any more on point. *Healy*, *Widmar*, and *Rosenberger* alone put Defendants on notice that student organizations on public university campuses are entitled to viewpoint neutrality. And *Martinez*, as noted in *Ward*, 667 F.3d at 732, confirmed that the requirement of viewpoint neutrality does not change in the context of a nondiscrimination policy. *Walker* and *Reed* further reinforce this point, as do the two University of Iowa decisions from the Southern District of Iowa. Myriad other cases on highly analogous facts do the same.⁵ In short, Defendants had abundant warning that their deregistration of InterVarsity violated the Free Speech Clause, leaving no reason to shield them via qualified immunity.

Free association. The Supreme Court’s rulings regarding freedom of association have likewise “made it clear” that “antidiscrimination regulations may not be applied” by universities to student groups in an effort to “suppress[] or promot[e] a particular viewpoint.” *Walker*, 453 F.3d at 863. For example, *Hurley v. Irish-*

⁵ *See, e.g., Rewt v. Madison Cty. Sch. Bd.*, 246 F.3d 536 (6th Cir. 2001); *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001); *Hartmann v. Stone*, 68 F.3d 973, (6th Cir. 1995); *Gerlich v. Leath*, 861 F.3d 697 (8th Cir. 2017); *Cuffley v. Mickes*, 208 F.3d 702 (8th Cir. 2000).

American Gay, Lesbian & Bisexual Group of Boston held that a state nondiscrimination policy could not be applied to compel a privately organized St. Patrick's Day parade to include a group who wanted "to march in the parade as a way to express pride in their Irish heritage as openly gay, lesbian, and bisexual individuals." 515 U.S. at 561, 563-64. Compelling participation would have "alter[ed] the expressive content of [the organizer's] parade," *Id.* at 572-73, which was "fatal" to the group's claim, *id.* at 579. And in *Boy Scouts of America v. Dale*, the Court further applied these principles to protect an organization's right to select its own leaders, notwithstanding application of a state nondiscrimination law. 530 U.S. 640 (2000). The Court held that "[t]he forced inclusion of an unwanted person in a group" would "infringe[] the group's freedom of expressive association if the presence of that person in the group affect[ed] in a significant way the group's ability to advocate public or private viewpoints." *Id.* 648.

The Seventh Circuit's *Walker* decision applied *Hurley* and *Dale* to facts similar to those here. *Walker* enjoined a public university from using a nondiscrimination policy to force a Christian student group to admit members who disagreed with its faith. *Walker*, 453 F.3d at 863. The court recognized that membership selection was crucial to the student group's message, since it "would be difficult . . . to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, [the group] must accept members who engage in that conduct." *Id.*

Finally, the Sixth Circuit has likewise held that the right of expressive association "protects 'a group's membership decisions'" and bars "[t]he forced inclusion" of

individuals whose presence would “affect[] in a significant way the group’s ability to advocate public or private viewpoints.” *Miller v. City of Cincinnati*, 622 F.3d 524, 537 (6th 2010). Based on these cases, Defendants thus had clear warning that deregistering InterVarsity for requiring its leaders to embrace its faith would violate the First Amendment right to freedom of association.

Free exercise. Finally, it has also long been established under the Free Exercise Clause that, absent a compelling government interest pursued in the least restrictive way, restrictions on religion must be “neutral” and “generally applicable.” *Trinity Lutheran*, 137 S. Ct. at 2021; *Lukumi*, 508 U.S. at 533, 534. The Free Exercise Clause forbids even “subtle departures from neutrality”; discrimination that is “masked” as well as “overt.” *Id.* And it is clearly established that a law is not generally applicable if it grants exemptions for secular reasons, but not religious ones. *Id.* at 542. There are “plenty” of cases confirming that secular exceptions make a law unconstitutional. *Roberts*, 958 F.3d at 414 (citing, *inter alia*, *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (Alito, J.)).

The Sixth Circuit’s ruling in *Ward* further underscores the clarity of these principles and their application to student participation in a university program. There, the plaintiff—a counseling student in her practicum phase—sought the ability to refer clients who needed counseling on same-sex relationships that she could not give consistent with her religious beliefs. The university denied plaintiff’s request and kicked her out of the program, ostensibly for violating its code of counseling ethics. But the Court found that the code of ethics “expressly permit[ted]” referring

clients who wanted to explore end-of-life options and generally “seem[ed] to permit referrals for secular—indeed mundane—reasons.” *Ward*, 667 F.3d at 739. Refusal to allow plaintiff’s faith-based referrals thus violated her free exercise rights. *See also supra* Part III.A (Free Exercise clause not confined to actions based on animus). This ruling gave Defendants more than fair warning that granting exemptions to Greek groups, sports clubs, political groups, and ideological organizations, all while denying an exemption to InterVarsity, violated its free exercise rights. Defendants have not identified a single free exercise case going the other way or even suggesting that any other outcome is possible. The Sixth Circuit’s unequivocal free exercise analysis in *Ward* thus forecloses qualified immunity for Defendants.

V. Wayne State violated the Equal Protection Clause (Count 10).

Wayne State has singled out InterVarsity for disfavored treatment based on its religion, precluding summary judgment for the defendants and subjecting their actions to strict scrutiny under the Equal Protection Clause. *Bowman v. United States*, 564 F.3d 765, 772 (6th Cir. 2008). Wayne State attempts to sidestep equal-protection liability by claiming that there is no evidence of animus or discriminatory intent. WSU Br., ECF No. 45, PageID.758-759. Because Wayne State has employed a classification based upon religion, InterVarsity need not allege discriminatory intent. *Cf. Johnson v. California*, 543 U.S. 499, 505 (2005) (“[A]ll racial classifications imposed by the government must be analyzed by a reviewing court under strict scrutiny.”). Moreover, InterVarsity has shown discriminatory intent, which can be proved by “a clear pattern” of selective application as well as “[t]he

specific sequence of events leading up to the challenged decision,” or “[d]epartures from the normal procedural sequence.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977).

VI. Wayne State violated the Due Process Clause (Count 20).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Doe v. Miami Univ.*, 882 F.3d 579, 599 (6th Cir. 2018). Review under strict scrutiny is necessary whenever the government’s actions “burden the exercise of . . . liberty interests.” *Seal v. Morgan*, 229 F.3d 567, 574 (6th Cir. 2000). Because “InterVarsity invokes its right to expressive association, it has identified a cognizable liberty interest.” *WSU*, 413 F. Supp. 3d at 700. And, as shown above, Wayne State’s refusal to register InterVarsity burdened its religious association and created the stigma of being branded a “discriminatory” outsider. *Unified Sch. Dist. No. 457 v. Phifer*, 729 F. Supp. 1298, 1304 (D. Kan. 1990) (stigmatic harm combined with the tangible loss of a government benefit can violate procedural due process). Therefore, due process guarantees InterVarsity notice and a “meaningful” hearing that provides the opportunity to “respond, explain, and defend.” *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 635 (6th Cir. 2005) (internal quotation marks omitted). Here, InterVarsity received none of these protections. *Id.* Thus, its Due Process claim survives.

VII. Defendants violated the Elliott-Larsen Civil Rights Act (Count 13).

Defendants contend that InterVarsity is unable to show unlawful retaliation because deregistration occurred before InterVarsity complained. WSU Br., ECF No. 45, PageID.762. But defendants ignore the adverse actions that occurred after Garza’s complaint. Only after Garza emailed Wayne State claiming religious discrimination were all RSO benefits removed and “aggressive measures” threatened. ECF No. 47-47 at 28:4-6; ECF No. 54-5, PageID.2486-2491; ECF No. 47-28, PageID.1841. Hence, InterVarsity has shown that Defendants took retaliatory actions after it complained about religious discrimination. *See Mich. Comp. Laws Ann. §§ 37201, 2302, 2402(e).*

CONCLUSION

For all the foregoing reasons, InterVarsity respectfully urges the Court to deny Wayne State’s motion for summary judgment and grant InterVarsity’s motion.

Respectfully submitted this 19th day of November 2020,

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CERTIFICATE OF SERVICE

I, Daniel H. Blomberg, certify that the forgoing document was filed and served via the Court's electronic case filing and noticing system (ECF) this 19th day of November, 2020, which will automatically send notification of such filing to all attorneys and parties of record registered electronically.

/s/ Daniel H. Blomberg
Daniel H. Blomberg