

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

<p>INTERVARSITY CHRISTIAN FELLOWSHIP/USA, <i>et al.</i></p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>THE UNIVERSITY OF IOWA, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No.: 18-cv-00080</p> <p style="text-align: center;">PLAINTIFFS’ STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</p>
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1. InterVarsity Graduate Christian Fellowship (“InterVarsity”) is a chapter of InterVarsity Christian Fellowship/USA (“InterVarsity USA”). App. 1947 [Kummer Decl. ¶¶ 1-4].

2. Both groups are Christian ministries with the purpose of establishing and advancing “witnessing communities of students and faculty who follow Jesus as Savior and Lord” and who are “growing in love for God, God’s Word, God’s people of every ethnicity and culture and God’s purposes in the world.” App. 1948 [Kummer Decl. ¶ 6].

3. InterVarsity USA was founded in 1877 at the University of Cambridge, England, and has been active on U.S. campuses since the late 1930s. App. 1948 [Kummer Decl. ¶ 7]. It currently has over 1,000 chapters on more than 600 campuses nationwide. App. 1948 [Kummer Decl. ¶ 9]. Over a dozen of those chapters serve colleges and universities in Iowa, including Iowa State University, the University of Northern Iowa, and the University of Iowa. App. 1948-49 [Kummer Decl. ¶ 10]. Several chapters are at the University of Iowa alone, including the graduate InterVarsity chapter that is a plaintiff in this case. App. 1948-49 [Kummer Decl. ¶¶ 8-10].

4. The graduate InterVarsity chapter had been a registered student organization at the University of Iowa for 25 years. App. 1949-49 [Kummer Decl. ¶¶ 8-10]. It welcomes everyone to

participate in the group's activities, including its weekly Bible studies and its monthly religious services that feature prayer, worship, and religious teaching. It likewise welcomes all students to join as members. App. 1951 [Kummer Decl. ¶ 22]; App. 1982 [Schrock Decl. ¶ 8]. And it has a twenty-five-year history of broadly serving the University community, including via service projects, educational events, interfaith activities, and other forms of campus-wide engagement. App. 1949-51 [Kummer Decl. ¶¶ 14-21]. In fact, the University previously recognized and awarded InterVarsity for its efforts in serving the entire University community. App. 1951 [Kummer Decl. ¶ 21].

5. InterVarsity's service is animated by its faith. Like other InterVarsity USA chapters nationwide, including those at Iowa State University and the University of Northern Iowa, InterVarsity has always required its student leaders to affirm its faith and agree to exemplify its Christian values. App. 1952 [Kummer Decl. ¶ 24].

6. InterVarsity believes that this leadership criteria is necessary because its student leaders fill an important spiritual role for the group, such as leading its religious services and Bible studies; leading and participating in prayer, worship, and religious teaching; determining the religious content of its meetings; selecting guest speakers and identifying religious topics to cover during events; ministering to their peers individually; planning and scheduling ministry events on campus; and determining what kind of outreach and service activities to engage in to advance the group's religious mission. App. 1952 [Kummer Decl. ¶ 25]; App. 1983-84 [Schrock Decl. ¶¶ 20-24].

7. To prepare and support student leaders for their important leadership roles, both InterVarsity and InterVarsity USA provide significant religious training to their student leaders. App. 1953, 1954 [Kummer Decl. ¶¶ 27, 31]; App. 1983 [Schrock Decl. ¶¶ 15-17]. This includes

both religious training retreats before the start of school and regular religious mentoring meetings during the school year. *Id.*

8. InterVarsity's student leaders are the primary embodiment of InterVarsity's faith and Christian message to the University community. App. 1952 [Kummer Decl. ¶ 25]. The vast majority of a student leader's time is spent on ministry; very little is devoted to nonreligious matters such as administrative tasks. App. 1952-53 [Kummer Decl. ¶ 26]; App. 1984 [Schrock Decl. ¶ 25]. InterVarsity believes it is absolutely necessary for its leaders to agree with and live by the organization's beliefs. App. 1987 [Schrock Decl. ¶ 43]. Being led by individuals who deny or reject InterVarsity's faith would undermine the group's religious mission and message, App. 1953 [Kummer Decl. ¶ 29], and would compromise InterVarsity's Christian identity and purpose, App. 1987 [Schrock Decl. ¶ 43].

9. No student has ever filed a complaint with InterVarsity or with the University about InterVarsity's religious leadership requirement. App. 1955 [Kummer Decl. ¶ 35]; App. 1986 [Schrock Decl. ¶ 37].

10. But this summer, for the first time, the University ordered InterVarsity to remove its religious leadership requirement, stated that InterVarsity could not even encourage its leaders to agree with its faith, and warned that the University would deregister InterVarsity unless the requirement was removed. App. 1985-88 [Schrock Decl. ¶¶ 27-44]; App. 1955 [Kummer Decl. ¶¶ 35-37].

11. The University explained that it interprets and applies its Human Rights Policy to forbid any limitations on "the ability to become a member or to hold leadership positions" that are based on the nondiscrimination criteria listed in the Policy, including "religion." App. 1985, 1986 [Schrock Decl. ¶¶ 27, 36]

12. The University stated that it “recognize[d] the wish to have leadership requirements based on Christian beliefs,” but “[h]aving a restriction on leadership related to religious beliefs is contradictory” to the Human Rights Policy’s prohibition on religious discrimination. App. 1987 [Schrock Decl. ¶¶ 39-42].

13. Because InterVarsity did not change its religious leadership requirement, the University de-registered InterVarsity in the summer of 2018. App. 1987-88 [Schrock Decl. ¶¶ 43-44].

14. The University also deregistered several other religious groups, including the Christian Pharmacy Fellowship, the Chinese Student Christian Fellowship, the Geneva Campus Ministry, the Imam Mahdi Organization, the J. Reuben Clark Law Society, the Latter-day Saint Student Association, and the Sikh Awareness Club. App. 1987-88 [Schrock Decl. ¶ 44].

15. After InterVarsity USA and InterVarsity filed the instant lawsuit, the University agreed to temporarily treat InterVarsity and all of the deregistered religious groups as if they had registered status. App. 2021 [Baxter Decl. ¶ 4]. But the University’s position on the Policy has not changed. It still takes the position that InterVarsity may not be a registered student organization if it requires or encourages its leaders to agree with its faith. App. 0319 [Nelson Dep. 255:13-256:5-16]; App. 1987 [Schrock Decl. ¶¶ 39-42].

16. The University does not have an “all-comers policy” that requires all registered student groups to accept all students as members and leaders of the groups. App. 0358 [Nelson Dep. 299:21-300:17]; App. 0102, 0122 [Cervantes Dep. 19:9-11, 99:7-14]; App. 0038 [Baker Dep. 146:8-21].

17. Following the Supreme Court’s decision in *Christian Legal Soc’y v. Martinez*, 561 U.S. 661 (2010), the University expressly considered and rejected changing its policy to an

all-comers policy. App. 0038 [Baker Dep. 146:8-148:4]; App. 0358 [Nelson Dep. 300:14-17]; App. 1334 ¶ 2; App. 1342.

18. University officials are unaware of “any effort by the University to adopt an ‘All Comers’ Policy” since that time. App. 0038 [Baker Dep. 148:8-10]; *see also* App. 0102, 0122 [Cervantes Dep. 19:9-23, 99:7-14]; App. 0573-74 [Redington Dep. 20:7-23:3]; App. 0592.

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

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

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

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

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

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

24. The University’s Human Rights Policy (“Policy”) broadly “prohibits discrimination” by the University, stating that “in no aspect of its programs”—including in “employment, educational programs, and activities”—“shall there be differences in treatment of persons on the basis of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual.” App. 0376; App. 0383-84.

25. The RSO Policy incorporates the University’s Policy, and RSO constitutions are reviewed by the University to ensure they incorporate the Policy. App. 0367, 372.

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

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

App. 0367.

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

Membership and participation in an organization must be open to all students without regard to race, creed, color, religion, national origin, age, sex (*unless the organization is exempt under Title IX*), pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender

identity, associational preferences, or any other classification that deprives the person of consideration as an individual.”

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

28. To date, no similar change has been made to other versions of the Policy, such as in the nondiscrimination statement listed in Chapter 6 of the Community Policies section of the University Operations Manual. See <https://opsmanual.uiowa.edu/community-policies/nondiscrimination-statement>.

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

30. Before its actions in Fall 2017 against another religious registered student organization, Business Leaders in Christ (“BLinC”), the University had never deregistered or refused registration to a student group for requiring its leaders or its members to agree to its mission, purpose, or faith. App. 0353 [Nelson Dep. 278:12-279:5]; App. 1911-13, 1916.

31. Further, the University had reviewed and approved numerous constitutions for registered student organizations that required leaders or members to agree with the groups’ missions, purposes, or beliefs.

32. For instance, the University approved the constitutions of numerous religious groups, including an actual church, that explicitly require their leaders to sign a statement of faith or satisfy other religious criteria. See, e.g., App. 0789-91 (**Love Works**, requiring leaders to sign a statement of faith); App. 0788 (**24-7**, requiring leaders to “sign and affirm the Statement of Faith” and “live their lives in a manner consistent with the Code of Conduct”); App. 0816 (**Athletes in Action**, requiring leaders to “follow Jesus’ example of leadership, teaching by word and by example” and “live in a manner that is consistent with the Biblical teachings”); App. 0717 (**Christian Legal**

Society, requiring “[a]ll officers” to “subscribe to the Christian Legal Society Statement of Faith”); App. 0738 (**Campus Bible Fellowship**, limiting voting membership to individuals “who bear clear testimony of conversion to Jesus Christ”); App. 0864 (**Chi Alpha**, 2012 constitution, requiring leaders to “be in sincere agreement with the Articles of Faith” and to “conform to the Christian standards of conduct of Chi Alpha”); App. 0795 (**Geneva Campus Ministry**, construing Policy as “not preclud[ing] additional religious and moral qualifications for certain leadership positions”); App. 0703, 705-06 (**Imam Mahdi Organization**, Islamic group requiring its leaders to “refrain from major sins (*kaba’ir*)” and requiring both leaders and voting members to “[b]e Muslim, Shia”); App. 0861 (**International Neighbors**, requiring leaders to commit to agree with and abide by group’s Christian faith); App. 0874-75 (**Multiethnic Undergrad Hawkeye Intersarsity**, same); App. 0807 (**Muslim Students’ Association**, allowing only Muslims to be voting members or leaders); App. 0824 (**The Salt Company**, a campus church requiring leaders to be members who “have professed their faith in the Lord Jesus Christ . . . and live according to the tenets of the Bible as explained by the Statement of Faith”); *see also generally* App. 0748 ¶ 3; App. 0773-0890 [Exhibit B-1].

33. The University has approved the constitutions of many organizations that limit their leadership or membership based on non-religious creeds or missions as well. *See, e.g.*, App. 0969 (**Feminist Majority Leadership Alliance**, requiring members to submit “written agreement” with “the Feminist Majority Foundation’s purposes and principles”); App. 1334, App. 1360 (**Feminist Union**, same); App. 1334, App. 1367 (**Iowa National Lawyers Guild**, requiring members to agree with effort to bring about “basic change in the structure of our political and economic system” “to the end that human rights shall be regarded as more sacred than property interests”); App. 0686 (**Korean American Student Association**, requiring members to “exhibit an optimistic attitude

towards Korean culture” and stating that any member with a “negative attitude” will have their membership “revoked”); App. 1104 (**Latina/o Graduate Student Association**, limiting membership to “[a]nyone who supports the purpose of the organization, and is willing to commit to its objectives”); App. 1334 ¶ 6, 1376 (**National Society of Black Engineers**, requiring leaders to “put forth the effort to accomplish the goals” to “assist,” “promote,” and “[i]nform African-American engineers”); App. 1150 (**Organization of Women Law Students and Staff**, open to all “who subscribe to the purposes for the organization” including to “recommend and implement new programs” to meet the “changing needs and problems of women in the legal profession”); App. 1107 (**SistaSpeak**, limiting membership to those “who identify with SistaSpeak’s vision and mission”); App. 1335 ¶ 7, 1378 [Exhibit F] (**Students for the Right to Life**, requiring “that members of this organization hold pro-life beliefs”); App. 0971 (**Spectrum UI**, opening membership “to anyone who supports the mission of the student organization,” which includes “eliminat[ing] homophobia, transphobia, sexism, prejudiced views and discrimination”); App. 1009-10 (**Trans Alliance**, requiring leaders to have “drive to execute the established goals” of “spread[ing] awareness of transgender issues and work[ing] to increase public knowledge of the transgender population”); *see also generally* App. 0773-1165 [Exhibits B-1, B-2, & B-3].

34. And while not explicitly limiting membership, dozens of University-approved constitutions send the same message by adopting a mission or purpose to suggest a preference for one particular creed (secular or religious) over another. *See, e.g.*, App. 0732 (**Cru**, purpose to “introduce students to Christ, help them to grow in faith, encourage them to passionately live life in a manner consistent with belief in the God of the Bible, and inspire commitment to advancing the purposes of God in the world.”); App. 1335 ¶ 8, 1383 (**Hawks for Choice**, purpose “to unite pro-choice students and educate the University of Iowa community on issues related to all peoples’

reproductive freedom”); App. 1061 (**Hindus Against Casteism**, purpose to “raise awareness of the injustice of caste discrimination as well as build a group to help support [their] cause”); App. 1143-46 (**House of Lorde**, purpose “to advocate for the political interests of Black Lesbian et al GBTQPA+ students,” membership can be revoked for actions that “go against the support of Black Queer individuals and our Mission”); App. 0692 (**Students for Life**, purpose “to provide representation for members of the student body who hold pro-life views and to be a voice for the voiceless”); App. 1335 ¶ 9, App. 1389 (**UDems**, purpose “to promote the Democratic Party”); App. 1334 ¶ 10, 1393 (**University of Iowa College of Law Federalist Society**, purpose to “preserve the natural law of human freedom” and “[t]he separation of governmental powers”); *see also generally* App. 0773-1165 [Exhibits B-1, B-2, & B-3].

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

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

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

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

39. It has approved the constitutions of dozens of organizations that explicitly restrict or control access to leadership or membership based on race, national origin, sex, sexual orientation, gender identity, status as a U.S. veteran, and/or military service. *See, e.g.*, App. 1144-45 (**The House of**

Lorde, implementing membership “interview[s]” to maintain “a space for Black Queer individuals and/or the support thereof”); App. 0973-77 (**Chinese Basketball Club**, restricting membership to Chinese students and alumni); App. 0990 (**Chinese Students and Scholars Association**, stating that “[m]embership is only open to enrolled Chinese Students and Scholars”); App. 0908 (**Hawkapellas – Iowa**, “all-female a cappella group” with membership controlled by “vocal auditions”); App. 0921 (**Sigma Alpha Iota – Zeta Epsilon**, membership in organization for “those who share a commitment to music” is “open to any woman student”); App. 0979 (**Tau Sigma Military Dental Club**, restricting “[e]ligibility” to “all full-time, military-sponsored” students); App. 0981 (**UI Veteran’s Association**, restricting membership to “past or current military personnel” and their dependents); *see also generally* App. 0895-0906 (identifying **fraternities and sororities** with membership restricted to men, to women, or to men or women of a certain race, ethnicity, or sexual orientation); *see also* ¶ 17, *supra*.

40. And even without explicitly restricting membership based on protected characteristics, many organizations express preference for individuals of a certain characteristic through their chosen name and/or their mission to promote the interest of one particular group. *See, e.g.*, App. 1129 (**American Association of Women Dentists**, purpose to promote “the advancement and recognition of women in dentistry”); App. 1118 (**Reaching OUT in Business**, promoting “professional development opportunities to LGBTQ+ people and allies”); App. 1141 (**Women in Science and Engineering Ambassadors**, “encourag[ing]” its members to be “a woman, a student in a science or engineering field, or interested in science” and expressing purpose to “expand and improve educational and professional opportunities for women in all fields of science, technology, engineering and math”); *see also generally* App. 0774-1165 (**African Student Association**, **Agape Chinese Student Fellowship**, **American Indian Student Association**, **Arab Student**

Association, Asian American Coalition, Asian Fitness Association, Black Law Student Association, Chabad Jewish Student Association, Chinese Dance Club, Hispanic Dental Association, Hispanic/Latino Law Student Association, Hong Kong Student Association, Indian Student Association, Indonesian Student Organization, Iowa Men’s Hockey, Korean U Iowa Students Association, Latina/o Graduate Student Association, Latino Medical Student Association, Latter-day Saint Student Association, Lutheran Campus Ministry, Malaysian Student Society, Middle Eastern Law Students Association, Newman Catholic Student Center, National Association of Black Journalists, National Organization for the Professional Advancement of Black Chemists & Chemical Engineers, National Society of Black Engineers, Nepalese Student Association, Organization of Women Law Students & Staff, Outlaws, Pakistani Student Association, Persian Student Association, Reaching OUT in Business, Saudi Students Club, Society of Black Graduate & Professional Students, Society of Hispanic Professional Engineers, South Asian Student Alliance, Sri Lankan Students’ Association, Taiwanese Student Association, Thai Student Association, Turkish Student Association, Vietnamese Student Association, Women in Business, Young Women for America at Iowa).

41. There are also many groups that are designed for certain categories of individuals who are not protected by the Policy. *See, e.g.*, App. 1335 ¶ 11, 1399 (**First Generation Iowa**, organization “designed for students who are considered first generation college students,” *i.e.*, those “whose parents or guardians did not graduate from a four-year college or university”); *see generally* App. 0655 ¶ 3; App. 0773-86.

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

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

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

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

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

47. The University devotes significant resources to its Athletics Department. As of FY2013, its Athletics Department budget was \$80 million, and it had over \$700 million in facilities. App. 1337 ¶ 13; App. 1411, 1433. Recent reports put expenses for the department at \$128.9 million. *See*

<https://www.thegazette.com/subject/news/education/university-of-iowa-athletics-reports-budget-surplus-for-2016-2017-20180219>.

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

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

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

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

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

- a. *Scholarships, grants, and awards that discriminate based on race.* The **Advantage Iowa Scholarship** requires eligible students to be “black, Hispanic, Latino, Native American, or . . . Pacific Islander,” *or* to be the first member of the student’s family to attend college *and* to have gone through a federally-funded Upward Bound program App. 0459-60 [Petty Dep. Petty Dep. 13:8-16:1]; App. 1338 ¶ 17, App. 1767-69. The

- Iowa First Nations Tuition Scholarship** allows Native American students who are non-residents of Iowa to receive in-state tuition rates if they are descended from a tribe that was historically a First Nation’s tribe in Iowa. App. 0461 [Petty Dep. 21:15-22:11]; *see also* App. 1338 ¶ 17; App. 1781-82 (listing specific eligible tribes); *see also* App. 0465 [Petty Dep. 37:2-38:25]; App. 0479 (**Robert D. Dockendorff Scholarship**, with “preference given to underrepresented minority undergraduate students (African American, Latino/a, or American Indian heritage)”; *see* App. 1338 ¶ 17, App. 1823-25, 1830 (**College of Public Health Diversity Scholarship**, which factors in whether an applicant is “African American, Hispanic, Native American, Pacific Islander, Multiracial”; the **Iowa Minority Academic Grant for Economic Success (IMAGES)**, which is awarded to “African American, Latino/Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native” applicants; the **Tom Brokaw Scholarship Fund**, for “Native Americans”; the **Ezra L. Totton Scholarship**, with “preference given to Black students”).
- b. *Scholarships and awards that discriminate based upon veteran’s status or service in the U.S. Military. See* App. 1338 ¶ 17; App. 1798-1804, 1832-39 (**Hawkeye Distinguished Veteran’s Award**, provided annually to five Iowa City veterans, one of whom is active student at the University; the **University Armed Forces Award**, which discriminates based on status as a U.S. veteran or service in the U.S. military, offering scholarships up to \$15,000 and eligibility for in-state tuition rates; the **Ernie T. Pascarella Military Veteran Promise Award**, annual \$1,000 award for veteran; the **Paul Larson Military/Veteran Student Scholarship**, up to \$2,000 for veterans and military students).

- c. *Scholarships that discriminate on the basis of sexual orientation and gender identity.* App. 0466 [Petty Dep. 39:1-40:20]; App. 0481 (**Rainbow Scholarship**, annual scholarship limited to “undergraduate student who is gay, lesbian, bisexual, or transgender”); *see also* App. 0465 [Petty Dep. 37:2-38:25]; App. 0479 (**Robert D. Dockendorff Scholarship**, with “preference given to” students “who are active in the Gay, Lesbian, Bisexual, Transgender community”).
- d. *Funds that discriminate based upon disability.* App. 0462 [Petty Dep. 24:7-26:25]; App. 0484, 0486 (**Handicapped Projects Program Fund** and the **Learning Disability Assistant Fund**).
- e. *Awards that discriminate based upon national origin.* *See* App. 1338 ¶ 17, App. 1835-39 (**Iowa MBA India and China Awards**, which offer full or partial tuition to MBA students who have citizenship in India or China).
- f. *Scholarships and awards that discriminate based on sex.* *See* App. 1338 ¶ 17; App. 1809, 1820-21, 1837-38, 1848 (**Iowa MBA Women’s Award**; the **Kathleen Dore Women’s MBA Scholarship**; the **Henry Tippie Women’s MBA Scholarship**; the **M. Gladys Scott Scholarship**, available to “women majoring in Sports Studies”; **C. Pauline Spencer Scholarship** (same); **Lloyd and Gladys Burr Cunningham Nursing Scholarship Fund**, with “preference given to women from Iowa”; the **Margaret P. Benson Memorial Scholarship**, awarded to “[w]omen who are committed to women’s issues”).
- g. *Fraternity and sorority scholarships and awards that discriminate based on sex.* *See* App. 0463-64 [Petty Dep. 30:17-31:6]; App. 0519 (**Dinette L. Myers Quiet Leader Award**, for sorority member); App. 0464 [Petty Dep. 31:8-17], App. 0523 (**Mary**

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

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

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

52. In an accompanying letter to the then-Dean of Students, Phillip Jones, CLS noted that the chapter would require members to embrace its Christian beliefs and its moral code. App. 0752-54.

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

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

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

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

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

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

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

60. Dean Baker wrote down notes regarding the situation, which stated that the University's Policy "doesn't preclude you from asking prospective officers to subscribe to a statement of faith," and that it "doesn't preclude your group from establishing reasonable leadership qualifications consistent with the purpose of your org." App. 0011-13 [Baker Dep. 40:21-47:3]; App. 0077.

61. Baker sent a formal letter on February 20, 2004 stating, *inter alia*, that the Policy "does not prohibit student groups from establishing membership criteria." App. 0014-15 [Baker Dep. 51:20-52:6, 53:18-54:24]; App. 0078-80.

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

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

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

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

66. Dean Baker further noted that a religious group “would not be required, and will not be required, to condone the behavior of student members—after they join your group—that is contrary to the purpose of your organization and its statement of faith.” App. 0016-17 [Baker Dep. 61:19-62:15]; App. 0079; App. 0017 [Baker Dep. 65:17-20].

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

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

69. The University’s April 2004 approval letter reiterated that “organizational leaders may require members to accept the CLS statement of faith as a condition for participation.” App. 0018 [Baker Dep. 66:11-67:4]; App. 0081.

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

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

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

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

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

75. Dr. Nelson was copied on Dean Jones's memo. App. 0765.

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

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

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

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

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

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

82. On February 26, 2009, four registered student groups—Outlaws, Law Students for Reproductive Justice, Iowa Campaign for Human Rights, and American Constitution Society—

wrote a letter “to voice [their] objection” to the “recent decision to fund the Christian Legal Society,” claiming that “its constitution and membership requirements” violated the University’s Human Rights Policy. App. 0020 [Baker Dep. 76:11-22]; App. 0087-88.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The University’s actions against BLinC and 24-7

99. BLinC is a religious student group that was a registered student organization (“RSO”) at the University from 2014 to 2017. App. 1290; App. 0599-0601.

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

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

102. BLinC denied the allegation, explaining that while the student could participate as a member, he could not serve as a leader because he disagreed with fundamental aspects of BLinC’s

faith, including its beliefs regarding the authority of Scripture and Scripture's teaching regarding sexual morality. App. 1297, 1324-26; App. 604.

103. In association with the University's proceedings against BLinC, Associate Dean Tom Baker wrote a memo to Dr. Nelson, stating that "it will be important to clarify how the University Human Rights Policy operates." App. 0090-91. He emphasized that "[t]he Human Rights Policy does not require that [BLinC's] creed be modified." App. 0090-91.

104. During a face-to-face meeting with BLinC's leaders, Dean Baker explained that he had faced a similar situation with CLS in 2004, and that CLS had been allowed to stay on campus as an RSO. App. 1203; App. 0271 [Nelson Dep. 62:16-63:6]; App. 0043 [Baker Dep. 168:12-17].

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

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

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

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

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

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

111. The same student who had filed a complaint against BLinC, also filed a complaint against 24-7 after he applied to lead their freshman bible study group. App. 0114-15 [Cervantes Dep. 67:12-68:4, 69:24-70:3]; App. 0199-211.

112. 24-7's student leaders and voting members are required to sign its Statement of Faith. App. 0179-82.

113. 24-7 also requires applicants for leadership positions to confess any sins involving sexual immorality, including "inappropriate relations with the opposite sex" and "homosexuality." App. 1340; App. 1892-1900.

114. 24-7 stated that because the student espoused a theologically revisionist belief about homosexuality, "it would be difficult" for him to be a leader with 24-7, because he "could not affirm the same beliefs." App. 0126 [Cervantes Dep. 113: 12-22]; App. 0184.

115. Ultimately, however, the University found no "probable cause" against 24-7, because the student never confirmed whether or not he accepted 24-7's religious beliefs. 24-7's leaders thus

never made a final decision about whether the student could serve as a Bible leader. App. 0126 [Cervantes Dep. 114:1-115:17]; *see also* App. 0283-84 [Nelson Dep. 110:13-113:6].

Constance Cervantes

116. Constance Cervantes was designated as a 30(b)(6) witness to testify about the Human Rights Policy in BLinC's lawsuit against the University, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa). App. 1340; App. 1902.

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

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

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

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

121. Ms. Cervantes acknowledged that, according to the memo, the Human Rights Policy "does not prohibit student groups from establishing membership criteria," would not require, for example, "Campus Democrats . . . to admit self-identified Republicans into its membership," and

that “the university is obliged to protect the First Amendment right of [a student group’s] members to espouse the group’s basic tenets.” App. 0127-28 [Cervantes Dep. 119:13-122:9].

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

123. She testified that a pro-life group could require even its members “to hold pro-life beliefs.” App. 0105-06 [Cervantes Dep. 32:2-33:11]; App. 0244-46.

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

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

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

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

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

129. By contrast, Ms. Cervantes conceded that allowing fraternities to exclude women would violate the Policy “on its face.” App. 0113 [Cervantes Dep. 61:14-62:12].

130. Ms. Cervantes likewise admitted that, if the University’s men’s sports teams exclude women, that would violate the Policy, “[u]nless there was some other thing like some NCAA rule or something that would, you know, overrule our rule.” App. 0123 [Cervantes Dep. 102:8-25].

131. Ms. Cervantes was aware that, “as an employee” of a state university, she had “an obligation to respect the First Amendment rights of students” and student groups, including their freedom of speech, freedom of religion, and right to assemble. App. 0101-02 [Cervantes Dep. 16:8-19, 17:13-18:2].

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

Thomas Baker

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

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

135. From that experience, he understood that a Muslim group excluding Christians who could not sign an Islamic statement of faith would not be a violation of the Policy: “the Muslim organization would have had a right under the Human Rights Policy to not accept the Christian as a member.” App. 0023 [Baker Dep. 87:21-88:5]; *see also* App. 0025-26 [Baker Dep. 97:10-

100:15]; App. 0078-80 (agreeing that as early as 2004, the Human Rights Policy was understood to allow religious groups to exclude members who didn't share their religious beliefs).

136. Likewise, it was his understanding that “a religious student organization could require that members agree to the group’s tenets[.]” App. 0023 [Baker Dep. 86:14-21].

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

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

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

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

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

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

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

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

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

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

147. He agreed that students may engage in all kinds of religious exercise, including activities such as praying, worshiping, preaching, and administering sacraments, which could make them the “functional equivalent” of a church. App. 0051-52 [Baker Dep. 201:9-20, 202:1-24]; *see also* App. 0824-26 (constitution of The Salt Company, an on-campus church organization); App. 1950 [Kummer Decl. ¶ 18] (“the Newman Catholic Student Center holds Mass for students several times throughout the week”).

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

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

150. He noted specifically that the situation with BLinC did “raise First Amendment concerns in my mind.” App. 0037, 0041 [Baker Dep. 142:22-143:21, 158:4-13].

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

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

William Nelson

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

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

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

156. Political groups, for example, could require students to sign a statement affirming the group’s political values. App. 0297-98 [Nelson Dep. 168:25-170:1].

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

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

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

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

161. But, “speak[ing] for the University,” Dr. Nelson acknowledged that “student groups are not acting on behalf of the University when they select their leaders” and neither University policy

nor the law “require [the University] to control who student organizations select as their leaders.” App. 0357, 0356, 0357, 0305 [Nelson Dep. 294:4-7, 293:14-17, 294:24-295:2, 197:19-198:9].

Lyn Redington

162. Dean Lyn Redington was the Dean of Students during the BLinC investigation and until May 1, 2018. App. 0569-70. She conceded that University student groups had the right to form around common interests, including interests concerning religion, gender identity, politics, sports, music, drama, and art, and so forth. App. 0575 [Redington Dep. 26:25-27:13].

163. It was her understanding that the University was “obliged to protect the First Amendment right” of students to “espouse [a] group’s basic tenets.” App. 0574 [Redington Dep. 22:15-23:3].

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

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

166. Dean Redington agreed that a religious student group would not violate the Policy if it “allow[ed] everybody to join as a member” and only screened its leaders for “affirmation of the organization’s religious beliefs.” App. 0579-80 [Redington Dep. 44:13-45:9, 46:4-13].

167. She agreed it was problematic to tell a religious group it couldn’t use religion as a factor for selecting its leaders, while allowing an environmental group to use its environmental creed as a factor in selecting its leaders. App. 0585 [Redington Dep 66:5-14]. And she conceded that, under

the University's Policy, it was permissible for any group to restrict its leadership to individuals who shared that group's philosophy or beliefs. App. 0581-82 [Redington Dep. 53:24-54:2].

168. **Error! Bookmark not defined.** Dean Redington agreed that part of learning in the university setting is “to be exposed to new ideas, different ways of thinking,” “[e]ven if those ideas might be offensive,” and that student groups were “absolutely” part of the process of helping “students to engage with difficult ideas and grapple with them and expand their intellectual horizon while at the University.” App. 0572 [Redington Dep. 16:18-17:19].

169. Dean Redington also acknowledged that “general” student organizations, which includes groups like InterVarsity, have “almost no connection” to the University and that the University has structured its RSO program to distance itself from groups' individual messages or purposes. App. 0585-86 [Redington Dep. 69:15-72:18]; 0402, 0388.

The Student Org Clean-Up Effort

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

171. On motion for preliminary injunction, the Court ordered that BLinC's registered status be reinstated, in large part because the record evidence showed that other student organizations were “permitted to organize around their missions and beliefs, though [BLinC] cannot.” Order on Plaintiff's Motion for Preliminary Injunction at 27, Dkt. 36, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Jan. 23, 2018).

172. The Court thus concluded that “on the current record” BLinC had “shown that the University does not consistently and equally apply its Human Rights Policy,” raising “an issue regarding whether BLinC's viewpoint was the reason it was not allowed to operate with

membership requirements that the University had determined violated the Policy, while at the same time [other groups were] not subjected to any enforcement action.” Order on Plaintiff’s Motion for Preliminary Injunction at 28, Dkt. 36, *Business Leaders in Christ v. The University of Iowa*, No. 3:17-cv-00080 (S.D. Iowa Jan. 23, 2018).

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

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

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

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

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

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

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

180. Reviewers were instructed that while registered student organizations could “still have purposes/mission statements related to specific classes or characteristics of the HR Clause,” “membership or leadership” could not “be contingent on the agreement, disagreement, subscription to, etc., of stated beliefs/purposes which are covered in the HR Clause.” App. 0302 [Nelson Dep. 186:1-6]; App. 0410.

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

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

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

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

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

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

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

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

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

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

The University’s Deregistration of InterVarsity

191. In June 2018, Defendant Andrew Kutcher told InterVarsity that language in “Articles II, III, IV and VII” of its constitution contradicted the Policy. App. 0317 [Nelson Dep. 246:25-248:24]; App. 0422; App. 2007, 2015 [Schrock Decl.Ex. D & E].

192. The cited provisions in InterVarsity's constitution simply require InterVarsity's leaders to be Christian. App. 1995-98; App. 1983, 1986 [Schrock Decl. ¶ 19, ¶ 38].

193. InterVarsity's president, Katrina Schrock, responded that it is "important to have Christian leadership in a Christian organization. We do not in any way discourage those who may not subscribe to the basis of faith in Article II from participating in [InterVarsity] as members, but we do recognize that having Christian leadership is important to the fulfillment of our purpose." App. 0256; App. 0422-27; App. 2007, 2015 [Schrock Decl. Ex. D & E].

194. Mr. Kutcher responded that:

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

App. 0256; App. 0422-27; App. 2006, 2014 [Schrock Decl. Ex. D & E].

195. Katrina asked if rather than stating that leaders "must subscribe" to the group's Christian beliefs the constitution could say "something like 'are requested to subscribe . . . ' or 'are strongly encouraged to subscribe . . .'" App. 0256; App. 0422-27; App. 2005, 2013 [Schrock Decl. Ex. D & E].

196. Mr. Kutcher responded that the University would "discuss [that question] with our university attorney." About five hours later, he sent an email stating that he had "just received word that we would not approve the change in language you proposed" because "the University and the Center for Student Involvement and Leadership must enforce our Human Rights Clause when it comes to leadership and membership." App. 0256; App. 0422-27; App. 2013, 2005 [Schrock Decl. D & E].

197. Mr. Kutcher further stated that InterVarsity would be “deregistered” if it failed to submit a constitution with the required change, and that it could only “become reregistered when [it] submit[ted] governing documents compliant with the Human Rights Clause.” *Id.*

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

199. But when questioned about the language in InterVarsity email, he stated that the email must reflect the University’s “official position” because the University officer writing it “said that he received word from the General Counsel’s Office that the language they proposed was not acceptable.” App. 0318-19 [Nelson Dep. 250:14-253:9].

200. Dr. Nelson stated that it “appears that the -- the General Counsel has given . . . the direction,” and concluded that what InterVarsity was told must be “the position of the University.” App. 0319 [Nelson Dep. 255:13-256:5-16].

201. InterVarsity did not remove its requirement that its leaders embrace and exemplify its faith. The University deregistered InterVarsity for that reason, and only for that reason. App. 1987-88 [Schrock Decl.].

202. As a result of the University’s review of student groups, over thirty groups were deregistered. App. 2134-35 (University email identifying the 38 that were deregistered). Several of the deregistered groups were religious groups that required their leaders to agree with their faith. *See, e.g.* ¶ 34, *supra*, (listing **Imam Mahdi Organization**, which required both leaders and voting members to “[b]e Muslim, Shia”; and **Geneva Campus Ministry**, which allowed “religious and moral qualifications for certain leadership positions”).

203. InterVarsity believes that maintaining registered status is very important to its ministry. App. 1989 [Schrock Decl. ¶ 51]; App. 1956-57 [Kummer Decl. ¶¶ 40-46].

204. Registered status makes RSOs eligible to access or apply for many unique benefits, resources, and opportunities. App. 1205-06; App. 0366; App. 0301 [Nelson Dep. 184:8-24]; App. 0404-06; App. 1327-29; App. 1188-93.

205. Without registered status, InterVarsity cannot participate in student orientation activities, including graduate and international student orientations, otherwise access student organization fairs or other University resources that allow groups to communicate about events (such as signs and billboards), or apply for funding. App. 1956-57 [Kummer Decl. ¶¶ 40-46]; App. 1989-90 [Schrock Decl. ¶¶ 51-54]. InterVarsity would also be ineligible for the free campus meeting spaces and dedicated RSO websites available to RSOs. App. 1989-90 [Schrock Decl. ¶¶ 51-53]; App. 1956 [Kummer Decl. ¶ 40]. And InterVarsity would be ineligible to engage in certain opportunities for speech that are available only to RSOs. App. 1956 [Kummer Decl. ¶ 40].

206. Losing registered status would further impose specific harms on InterVarsity because many of its leaders and participants are commuters and international students, for whom the benefits of RSO status are particularly important. App. 1957 [Kummer Decl. ¶¶ 45-46].

207. Even just the short period of deregistration that InterVarsity suffered was damaging. Being publicly deregistered for allegedly violating the nondiscrimination Policy harmed InterVarsity's reputation and made students more tentative to participate in the group. App. 1989-90 [Schrock Decl. ¶¶ 53]; App. 1959 [Kummer Decl. ¶ 54]. The University's action also harmed InterVarsity's ability to find, train, and retain student leaders. App. 1959 [Kummer Decl. ¶ 54].

Current Policy

208. Under the University’s current articulation of its Policy, religious registered student organizations are not permitted to require their leaders to agree with and live by the organization’s religious beliefs. App. 0319 [Nelson Dep. 255:13-256:5-16]; App. 1987 [Schrock Decl. ¶¶ 39-42].

209. Other groups are still permitted to have statements requiring or “encouraging” their leaders and members to be part of a class protected under the Policy. *See* ¶¶ 34, 40, *supra*; App. 0106 [Cervantes Dep. 35:8-23]; App. 0247; *see also* App. 2024-2132 (providing examples of groups with current University-approved constitutions that limit leadership or membership based on characteristics identified in the Policy).

210. For instance, feminist and pro-life groups are permitted to require their leaders and members to sign statements affirming the group’s ideological beliefs. ¶¶ 33, *supra*; App. 0105-06 [Cervantes Dep. 32:2-34:17]; App. 0244.

211. The group Iowa National Lawyers Guild is still a registered student group, and can “exclude people who don’t agree” with its political beliefs, even though Dr. Nelson agreed that would technically constitute discrimination on the basis of creed in violation of the Policy. App. 0319 [Nelson Dep. 253:10-16]; *see also* App. 2061-65 (**Caribbean Student Association**, a registered group that currently has a sex-based restriction on its “Miss CSA” officer, who is the “crowned winner of the Miss CSA Pageant” and “her responsibility” is to help with community service projects and with “teaching the girls” who will be the next year’s pageant contestants).

212. Most of the other groups identified that limit their leadership or membership based on non-religious creeds or missions are still registered student groups. *Compare* App. 2134-35, *with* ¶ 33, *supra*.

213. Even most of the identified religious groups with explicit religious requirements for their leaders, including CLS, 24-7, and Love Works, were never deregistered and remain registered student organizations. *Compare* App. 2134-35, with ¶ 32, *supra*; *see also* App. 2025 (current Love Works constitution available online).

214. And all of the other groups identified that, while not explicitly limiting membership send the same message by adopting a mission or purpose to suggest a preference for one protected class over another or one particular creed (secular or religious) favoring a protected class over another, are still registered student groups. *Compare* App. 2134-35, with ¶ 40, *supra*.

215. The University's own programs that differentiate in recipients and beneficiaries based on protected categories also remain in place. *See* ¶¶ 44-50, *supra*.

216. Several fraternities and sororities at the University state that they were founded to serve individuals from certain races or nationalities and have reported membership composed entirely of individuals from those populations. App. 1944 (listing Alpha Kappa Alpha, Alpha Phi Alpha, Delta Sigma Theta, Phi Beta Sigma as having 100% African American membership); App. 1945 (listing Lambda Theta Nu, Lambda Theta Phi, and Sigma Lambda Beta as having 100% Hispanic/Latino(a) membership); *see also* App. 2087-2110 (University webpages describing historically African-American and Hispanic/Latino chapters).

217. The University's website lists 53 fraternity and sorority chapters on campus, states that fraternities and sororities have been at the University for over 150 years and informs students that fraternities and sororities are the "largest and most successful support networks available to Hawkeye students." App. 1938.

218. The University's filings in the *BLinC* lawsuit have likewise admitted that it does not have an all-comers policy and does not evenly apply its policy to all registered student groups or

University programs. For instance, the University admits that its new policy grants “many exceptions” to “various clubs, sports teams, and even scholarship programs”—as well as to Greek groups—and that it overlooks these “apparent violations” of its policy “for a variety of reasons,” including that “multiple groups provide safe spaces for minorities.” *See* Dkt. 81-1 at 17-18, *Business Leaders in Christ v. University of Iowa*, No. 17-cv-80 (S.D. Iowa); *see also id.* at 30 (admitting “the University’s decision to permit fraternities, sororities, sports teams, and groups and programs meant to assist historically groups which have been historically discriminated against to exist on campus.”); *accord id.* at 36 (noting “the exemptions [the University] has provided to campus groups including sports teams, fraternities, and sororities”). The University also stated that it “freely admits that its review process for student constitutions is inconsistent.” *Id.* at 22. And the University states that it “admit[s] that the University does not require its student groups to comply with an ‘all-comers’ policy.” *Id.* at 11.

Respectfully submitted,

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