



CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM

September 9, 2022

Quinn Williams
General Counsel
University of Wisconsin System
1856 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

By email: qwilliams@uwsa.edu

Re: Time Sensitive Matter—Registration of the Christian Legal Society Student Chapter
at University of Wisconsin

Dear Mr. Williams:

I write on behalf of the Christian Legal Society Student Chapter at University of Wisconsin-Madison (“CLS-UW”) to secure confirmation of its re-registration as an official student organization. I respectfully request written confirmation by September 14 that CLS-UW has been re-registered as a registered student organization (“RSO”) for the 2022-2023 academic year with all accompanying RSO benefits.

It is our understanding that student organizations that were registered in the prior academic year retain the privileges of recognized student organizations through October 14 of the new academic year. In other words, CLS-UW retains its RSO privileges until October 14. If that is not correct, please advise immediately.

The recent denial of re-registration: CLS-UW has been a registered student organization at the University of Wisconsin-Madison since at least 1991. CLS-UW allows any student who attends one-third of its meetings to be a member. Only CLS-UW leaders must affirm that they share the group’s religious beliefs. In applying for recognition for the 2022-2023 academic year, CLS-UW used the same constitution with which it has been recognized since 2010. In response to CLS-UW’s application, a “student organization advising specialist” in the Center for Leadership & Involvement sent the attached email, dated August 24, 2022, denying the application.

The denial stated that CLS-UW’s “leadership requirements are in conflict with the UW-System non-discrimination policy.” The email explained that “[y]ou may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion.” This rather confusing statement makes little sense when applied to a religious organization, like *Christian Legal Society* that requires its leaders to agree with

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the basic tenets of the Christian faith, just as other faith groups often require their leaders to agree with their particular faith's core beliefs.

This statement is not only self-contradictory but also contradicts the University of Wisconsin's nondiscrimination policy. We trust this is a relatively new employee's misinterpretation of the University's policy. Such an interpretation would also violate federal regulations and caselaw, as explained below.

Regent Policy Document 30-6 requirement: CLS-UW has been an RSO with religious leadership requirements under Regent Policy Document 30-6 for as long as the policy has existed. Adopted by the Board of Regents in 2006, it states:¹

Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex.

On its face, the policy allows religious and political student organizations to "select their members or officers on the basis of commitment to a set of beliefs." The CLS-UW constitution states that "[m]embership is open to any enrolled University student who is interested in faith and law." To be an active member in good standing who can vote, a student must have "participated in at least 1/3 of the scheduled events." Members are not asked to agree with any beliefs. CLS-UW const., Art. IV, § 1. A leader, but not a member, "must be a Christian, agree to the CLS national set of beliefs (see addendum 1 [the CLS Statement of Faith]), and agree to be living a life consistent with the Christian faith." *Id.*, Art. V, § 7.

¹ The nondiscrimination policy was adopted as Board of Regents' Resolution 9279 in December 2006, apparently as part of the settlement agreement in *InterVarsity Christian Fellowship-UW Superior v. The Regents of the University of Wisconsin System, et al.*, Civ. No. 06-C-0562-S (W.D. Wis., filed Oct. 2, 2006). On April 11, 2007, the federal district court entered an Agreed Order of Settlement, dismissing the complaint with prejudice, in which the Board of Regents and several University officers, who were named defendants, agreed that InterVarsity Christian Fellowship's constitution was fully compliant with. . . all existing University of Wisconsin System nondiscrimination policies, including the Board of Regents' Resolution 9279, adopted in December 2006." Attached to the court's Order as Exhibit 1, the InterVarsity constitution stated that a leader "will be expected to exemplify Christ-like character, conduct and leadership," required leader candidates to describe "your relationship with Jesus Christ and how you have come to faith in him," and asked whether leader candidates "affirm[ed] the IVCF Doctrinal Basis" and "agree[d] to conduct yourself publicly and privately as a person who agrees with each element of the Doctrinal Basis and the standards for Christian Leaders." InterVarsity filed the lawsuit to defend its right to "us[e] religious criteria to select group leaders" and "to formulate religiously-based rules of conduct for those leaders."

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This is, of course, a matter of common sense: Religious organizations should be led by persons who share their religious beliefs, whether they are Christian, Jewish, Muslim, Hindu, Sikh, or any other faith. The nondiscrimination policy embodies this common-sense proposition by protecting the right of religious, as well as political groups, to limit not only officer positions, but also (if they choose) membership and participation, “to students who affirm that they support the organization’s goals and agree with its beliefs.”

Federal regulations and caselaw requirements: Let me briefly review recent legal developments that further reinforce the right of religious student organizations to maintain religious leadership requirements. Federal regulations, Seventh Circuit precedent, and recent federal caselaw in the Ninth and Eighth Circuits confirm the right of religious student organizations to have religious leadership requirements and are briefly summarized as follows:

1. United States Department of Education regulations: Two United States Department of Education regulations, 34 C.F.R. §§ 75.500(d) & 76.500(d), set as a material condition on any grants that the University receives from the Department of Education, either directly or through the State or a subgrantee, that the University not deny a religious student organization recognition or other benefits, including funding, “because of its religious beliefs, practices, policies, speech, membership standards, or leadership standards.”

Specifically, 34 C.F.R. § 75.500(d) states:²

(d) As a material condition of the Department's grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

Under federal law, therefore, University administrators have a duty to recognize CLS-UW and grant it all benefits received by other student groups, or risk the loss of federal Department of Education grants.

2. Seventh Circuit Precedent: The Seventh Circuit restored the status of a Christian Legal Society student chapter as an official student organization after a university revoked the

² 34 C.F.R. § 76.500(d), which regulates Department of Education grants channeled through the State or subgrantee, is basically identical.

chapter's status because it thought that the chapter's membership policies³ violated its nondiscrimination policy. *Christian Legal Society v. Walker*, 453 F.3d 853, 857 (7th Cir. 2006). The court granted the student group preliminary injunctive relief because of "strong evidence that the policy has not been applied in a viewpoint neutral way," pointing to "evidence that other recognized student organizations discriminate in their membership requirements on grounds prohibited by [the university's] policy." *Id.* at 866. As examples, the court pointed to the Young Women's Coalition, which limited membership to women, and the Muslim Students' Association, which limited membership to Muslims. *Id.* The court concluded that CLS's free speech rights had been violated because the university had "applied its antidiscrimination policy to CLS alone, even though other student groups discriminate in their membership requirements on grounds that are prohibited by the policy." *Id.*

The Seventh Circuit also upheld the right of a religious student organization to receive student activity fee funding for its religious speech, including "worship, proselytizing, or religious instruction." *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 777 (7th Cir. 2010). The court reasoned that "withholding support of religious speech when equivalent secular speech is funded is a form of forbidden viewpoint discrimination." *Id.* at 778. The court then concluded that "the University's activity-fee fund must cover" a religious organization's programs "if similar programs that espouse a secular perspective are reimbursed." *Id.* at 781.

3. Recent Ninth Circuit Decision: The Ninth Circuit recently ruled that public school officials likely violated the federal Free Exercise Clause when they derecognized a religious student group because it required its leaders to agree with its religious beliefs. *Fellowship of Christian Athletes, v. San Jose Unified School District Board of Education*, 2022 WL 3712506, --- F.4th --- (Aug. 29, 2022). The Ninth Circuit explained that "in our pluralistic society . . . the Free Exercise Clause requires the government to respect religious beliefs and conduct." *Id.* at *13. The court ordered preliminary injunctive relief for the religious student organization, finding that it "will be irreparably harmed by the denial of full . . . benefits" that accompany recognition given that "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at *18 (quoting *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

As the Ninth Circuit explained, a religious organization's free exercise is violated if "a law [that] is not neutral and generally applicable . . . is selectively enforced against religious entities but not comparable secular entities." *Id.* at 13 (citing *Tandon v. Newsom*, --- U.S. ---, 141 S. Ct. 1294, 1296 (2021)). See also *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2020) (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542-546 (1993)). The Ninth Circuit concluded that the defendant school officials

³ In 2006, members of CLS chapters were required to agree with CLS's statement of faith; however, for over a decade now, only leaders, not members, of CLS student chapters are required to agree with CLS's statement of faith.

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selectively enforced the district's nondiscrimination policies against the religious student group while recognizing some secular student groups despite their facially discriminatory membership criteria. *Fellowship of Christian Athletes*, 2022 WL 3712506, at *14.

Because the University of Wisconsin's Regent Policy Document 30-6 on its face exempts at least three large groups of secular RSOs, the University would violate the federal Free Exercise Clause if it refused to exempt a religious organization because of its religious leadership requirements. *First*, Policy 30-6 exempts political groups that have belief requirements for leaders and members.

Second, Policy 30-6 exempts RSOs that discriminate on the basis of "creed" if the RSOs require "commitment to the beliefs of the organization." Of course, religious organizations are the ultimate example of creedal organizations that require "commitment to the beliefs of the organization." See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 200 (Alito, J., concurring, joined by Kagan, J.) (religious groups' "very existence is dedicated to the collective expression and propagation of shared religious ideals"). Wisconsin fair employment law itself defines "creed" as "a system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views." Wis. Stat. Ann. § 111.32 (3m). And if the University exempted secular creedal RSOs but refused to exempt religious creedal RSOs, that would violate the Free Exercise Clause.

Third, Policy 30-6 exempts fraternities and sororities that require their leaders and members to belong to a specific sex. Title IX's exemption allowing fraternities and sororities to discriminate on the basis of sex only exempts fraternities and sororities from federal Title IX claims. It is not a blanket exemption from state and local nondiscrimination laws, including public universities' nondiscrimination policies. Exempting fraternity and sorority groups' leadership and membership requirements that discriminate on the basis of sex from a university's nondiscrimination policy is precisely the type of selective enforcement that would trigger a religious organization's free exercise right to an exemption for its religious leadership requirements.

4. University Officials' Loss of Qualified Immunity under Federal Caselaw: In 2021, three federal court decisions clearly established that education officials forfeit their qualified immunity if they threaten to derecognize a religious student organization because it requires its leaders to agree with its religious beliefs. In 2021, the Eighth Circuit, in two separate cases, ruled that University of Iowa officials lost their qualified immunity when they violated the First Amendment by derecognizing two religious student groups because they had religious leadership requirements. Derecognition was unconstitutional viewpoint discrimination against the religious student groups. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ ("BLinC") v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021). In the *InterVarsity* case, the University's Vice President for Student Life, the Associate Dean of Student Organizations, and the Coordinator for Student Development forfeited their qualified immunity by derecognizing the religious student groups because of their religious leadership requirements.

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InterVarsity, 5 F.4th at 861. Similarly, in the *BLinC* case, the Eighth Circuit held “that the district court erred in granting qualified immunity to the individual defendants on [the religious student group’s] free-speech and expressive-association claims.” *BLinC*, 991 F.3d at 972. The officials who lost qualified immunity were the Dean of Students, the Assistant Dean of Students, and the Executive Director of the Iowa Memorial Stadium.

Likewise, a Michigan federal district court found that Wayne State University officials forfeited their qualified immunity when they threatened to derecognize a religious student group because of its religious leadership requirements. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). The court held that the Dean of Students and the Coordinator of Student Life were “not entitled to qualified immunity because the rights [of a religious organization’s “internal management, free speech, free association, and free exercise” and under the Establishment Clause] violated were clearly established.” *Id.* at 835.

Conclusion: Federal regulations, Seventh Circuit precedent, and recent federal caselaw in the Ninth and Eighth Circuits confirm the right of religious student organizations to have religious leadership requirements. Because Regent Policy Document 30-6 on its face exempts at least three large groups of secular RSOs, the University would violate the federal Free Exercise Clause if it refused to exempt a religious organization because of its religious leadership requirements. The University also would engage in viewpoint discrimination against religious student organizations if it denied re-registration to CLS-UW because it required its leaders to agree with its religious beliefs, while allowing political and secular creedal organizations to choose their leaders and members according to their beliefs.

Fortunately, for many years, the University has avoided these constitutional violations by interpreting Regent Policy Document 30-6 to allow CLS-UW to be a registered student organization while maintaining its religious leadership requirements. This is the common-sense interpretation of the policy that allows organizations across the religious spectrum—Muslim, Jewish, Christian, Hindu, Sikh, and all others—to contribute their diverse religious perspectives to enrich the University of Wisconsin campus.

Letter to General Counsel Williams

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I look forward to resolving this matter quickly and request a written response by September 14 affirming that the University has re-registered CLS-UW for the 2022-2023 academic year. Going forward, please direct any communication from the University to me rather than to the CLS-UW chapter leaders.

Yours truly,

/s/ Kim Colby

Kimberlee Wood Colby

Of Counsel

Center for Law & Religious Freedom

Christian Legal Society

Attachments:

Email from Wisconsin Involvement Network to REDACTED [CLS Student Chapter President, August 24, 2022

Email from REDACTED [University Center for Leadership & Involvement Student Organization Advising Specialist] to REDACTED [CLS Student Chapter President, August 24, 2022

From: noreply@engage.mail.campuslabs.com <noreply@engage.mail.campuslabs.com> on behalf of Wisconsin Involvement Network <noreply@engage.mail.campuslabs.com>

Sent: Wednesday, August 24, 2022 11:33 AM

To: REDACTED [Email Address of CLS Student Chapter President]

Subject: Your registration request for Christian Legal Society, UW-Madison Chapter has been denied.

The registration that you submitted on behalf of Christian Legal Society, UW-Madison Chapter has not been approved and may require further action on your part.

Please see the reviewer's comments below or view your submission.

Thank you for submitting your application. There are a few things you will need to fix before we can approve your application. Please review our comments below regarding what you will need to fix before we can move forward. DO NOT click the "Re-Register this organization" button on your organization's WIN page as that will give you a new application and you want to make changes to an existing application. To make edits and to resubmit your application, first go to <https://win.wisc.edu/submissions/registrations>, click on the blue eye icon next to the denied submission of your organization's application, and correct the error(s). Then go to the last page in the application and submit. Again, DO NOT start a new application by hitting the "Re-Register this organization" button.

1. You did not pass all of the RSO Canvas quizzes at 100%. I can see that you have used all 3 attempts, so I will send a follow up email with instructions shortly.
2. CONSTITUTION/BYLAWS: Your leadership requirements are in conflict with the UW-System non-discrimination policy. "Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX,

sex.” You may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion. If you have any questions regarding your application, please feel free to contact us by email at cfl@studentaffairs.wisc.edu or phone at (608) 263-0365. We look forward to seeing your resubmission! Thanks, REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist]

[View Registration Submission](#)

You are receiving this email because you are a member of Wisconsin Involvement Network (WIN).
Manage your [email preferences](#).

From: REDACTED [Name and email address of University Center for Leadership & Involvement Student Organization Advising Specialist]

Sent: Wednesday, August 24, 2022 11:43 AM

To: REDACTED [Name and email address of CLS Student Chapter President]

Subject: Registration App for Christian Legal Society

REDACTED [Name of CLS Student Chapter President],

This message is regarding your application to re-register the Christian Legal Society, UW-Madison Chapter.

You should have received another email today explaining why your application has been denied, and

Comment: Thank you for submitting your application. There are a few things you will need to fix before we can approve your application. Please review our comments below regarding what you will need to fix before we can move forward. DO NOT click the “Re-Register this organization” button on your organization’s WIN page as that will give you a new application and you want to make changes to an existing application. To make edits and to resubmit your application, first go to <https://win.wisc.edu/submissions/registrations>, click on the blue eye icon next to the denied submission of your organization’s application, and correct the error(s). Then go to the last page in the application and submit. Again, DO NOT start a new application by hitting the “Re-Register this organization” button. 1. You did not pass all of the RSO Canvas quizzes at 100%. I can see that you have used all 3 attempts, so I will send a follow up email with instructions shortly. 2. CONSTITUTION/BYLAWS: Your leadership requirements are in conflict with the UW-System non-discrimination policy. “Student organizations that select their members or officers on the basis of commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who affirm that they support the organization’s goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex.” You may require leaders or members of your organization to agree with the beliefs of the national organization, but you may not require leaders or members of your organization to identify with any particular faith or religion. If you have any questions regarding your application, please feel free to contact us by email at cfl@studentaffairs.wisc.edu or phone at (608) 263-0365. We look forward to seeing your resubmission! Thanks, REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist] Because you have used all 3 attempts in the Canvas quiz, I will ask you to respond to the questions you missed via email:

1. Amnesty through Responsible Action protects which people from legal repercussions from drinking under the age of 21 (check all that apply)?
 - The victim of a crime
 - The person in need of medical attention
 - A person calling for medical assistance for a friend

- The reporter of a crime
2. Which of the following on-campus spaces can be reserved by RSO leaders through the Wisconsin Union's Campus Events Services Office (CESO)?
- Memorial Union, Union South, and Red Gym
 - Most campus classrooms
 - Outdoor spaces (Lower Bascon Hill, Library Mall)
 - All of the above

For both questions, please respond with the correct answers. Remember that there may be more than one correct answer for question 1, and you should "check all that apply".

After you have responded with the correct answers, you may continue to update the leadership requirements in your constitution and bylaws (see above comments in red) and resubmit your application through WIN (again, see above instructions in red).

If you have any questions, please don't hesitate to let me know.

Warmly,

REDACTED [Name of University Center for Leadership & Involvement Student Organization Advising Specialist]

She/Her/Hers

Student Organization Advising Specialist

Center for Leadership & Involvement

University of Wisconsin-Madison

www.cfli.wisc.edu

*CfLI's office is on the third floor of the Red Gym. We are open **10am-4pm, M-F** to serve our students. Virtual appointments are available by request. For a complete list of services and resources available, please visit "[About CfLI](#)". For continuing information related to UW-Madison, COVID-19, and the status of campus operations please visit: <https://covidresponse.wisc.edu/>.*