



Chairman Donald Schaible
Vice Chairman Jay Elkin
Members of the Committee
Senate Education Committee
North Dakota State Capitol
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

Re: Christian Legal Society Supports HB 1503

Dear Chairman Schaible, Vice Chairman Elkin, and Members of the Committee:

Christian Legal Society (“CLS”) is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 law schools. CLS student chapters typically are small groups of students who meet for weekly prayer, Bible study, and worship at a time and place convenient for the students. All students are welcome to participate in CLS meetings. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of faith, signifying the leaders’ agreement with the traditional Christian beliefs that define CLS’s message and mission.

For several decades, like many other religious student groups, CLS student chapters have sometimes been threatened with exclusion from campus because of their religious beliefs, speech, and leadership standards. HB 1503 would ensure that religious student groups of all faiths would be allowed to continue to serve their campuses in numerous positive ways. HB 1503 achieves this result through its proposed § 15-10.4-02(5)(h), which states:

(h) An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization: (1) Adhere to the organization’s viewpoints or sincerely held beliefs; or (2) Be committed to furthering the organization’s beliefs or religious missions.

By protecting religious student groups, HB 1503 will ensure there is a healthy range of ideological diversity, including religious diversity, on North Dakota campuses. For these reasons, CLS wholeheartedly supports HB 1503, especially § 15-10.4-02(5)(h), and hopes the Committee will approve it without delay or changes.

While many colleges and universities protect religious student groups’ right to organize and choose their leaders according to their religious beliefs,¹ other universities have threatened to

¹ Many universities have policies that protect religious groups’ religious leadership criteria. For example, the University of Minnesota provides: “Religious student groups may require their voting members and officers to

exclude religious student groups because they require their leaders to agree with their religious beliefs. For example, CLS has been a recognized student group at the University of Iowa since the 1980s. But in 2018, CLS and 31 other religious groups were told that they would be derecognized because they required their leaders to agree with their religious beliefs. The 32 religious groups threatened with exclusion included Jewish, Muslim, Catholic, Evangelical Christian, Orthodox Christian, Sikh, and other faith groups.²

In 2019, an Iowa federal district court ruled that the University had unconstitutionally excluded one of the religious groups based on its religious viewpoint.³ Six months later, the court ruled in favor of another religious student group.⁴ The second time, however, the district court ruled that three of the college administrators had forfeited their qualified immunity and could be held personally liable for their unconstitutional treatment of the religious student groups.⁵ The issue of qualified immunity in both cases is on appeal to the Eighth Circuit.

The Iowa Legislature enacted Iowa Code § 261H.3(3), to protect religious student groups on public university campuses and to prevent wasteful expenditures of taxpayer funds on litigation resulting from college administrators' exclusion of religious student groups from campus. In doing so, it joined the legislatures of thirteen other states that have enacted laws like HB 1503 to protect religious student groups, including: Arizona (2011), Ohio (2011), Idaho (2013), Tennessee (2013), Oklahoma (2014), North Carolina (2014), Virginia (2016), Kansas (2016), Kentucky (2017), Louisiana (2018), Arkansas (2019), Iowa (2019), South Dakota (2019), and Alabama (2020).⁶ Five of those states have protected only religious students; six

adhere to the organization's statement of faith and its rules of conduct." The University of Florida has a model nondiscrimination policy that reads: "A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy." The University of Texas provides: "[A]n organization created primarily for religious purposes may restrict the right to vote or hold office to persons who subscribe to the organization's statement of faith."

² The 32 religious groups that the University of Iowa intended to exclude were: Agape Chinese Student Fellowship; Athletes in Action; Bridges International; Business Leaders in Christ; Campus Bible Fellowship; Campus Christian Fellowship; Chabad Jewish Student Association; Chi Alpha Christian Fellowship; Chinese Student Christian Fellowship; Christian Legal Society; Christian Medical Association; Christian Pharmacy Fellowship; Cru; Geneva Campus Ministry; Hillel; Imam Mahdi Organization; International Neighbors at Iowa; InterVarsity Graduate Christian Fellowship; J. Reuben Clark Law Society; Latter-day Saint Student Association; Lutheran Campus Ministry; Multiethnic Undergrad Hawkeye InterVarsity; Muslim Students Association; Newman Catholic Student Center; Orthodox Christian Fellowship; Ratio Christi; The Salt Company; Sikh Awareness Club; St. Paul's University Center; Tau Omega Catholic Service Fraternity; Twenty Four Seven; Young Life.

³ *Business Leaders in Christ v. University of Iowa*, 360 F. Supp.3d 885 (S.D. Iowa 2019), appeal docketed, No. 19-1696 (8th Cir. Apr. 3, 2019).

⁴ *InterVarsity Christian Fellowship v. University of Iowa*, 408 F. Supp.3d 960 (S.D. Iowa 2019), appeal docketed, No. 19-3389 (8th Cir. Nov. 5, 2019).

⁵ *Id.* at 990 (quotation marks and citations omitted).

⁶ Ala. Code 1975 § 1-68-3(a)(8) (all student groups); Ariz. Rev. Stat. § 15-1863 (religious and political student groups); Ark. Code Ann. § 6-60-1006 (all student groups); Idaho Code § 33-107D (religious student groups); Iowa Code § 261H.3(3) (all student groups); Kan. Stat. Ann. §§ 60-5311-5313 (religious student groups); Ky. Rev. Stat. Ann. § 164.348(2)(h) (religious and political student groups); La. Stat. Ann.-Rev. Stat. § 17.:3399.33 (belief-based student groups); N.C. Gen. Stat. Ann. § 116-40.12 (religious and political student groups); Ohio Rev. Code § 3345.023 (religious student groups); Okla. St. Ann. § 70-2119.1 (religious student groups); S.D. Ch. § 13-53-52

have protected religious and political, or belief-based, student groups; and three have protected all student groups.

These state laws demonstrate that there is a need for protection for religious student groups on public college campuses. They validate the approach taken by HB 1503. No subsequent problems have arisen in states that have adopted these protections; and to date, there have been no challenges to these laws.⁷ By providing clarity to college administrators, these laws have decreased the likelihood of litigation while preserving religious freedom and promoting religious diversity on their campuses. These laws allow religious student groups to continue to bring positive benefits to their campuses, such as increasing student well-being and satisfaction.

HB 1503 also respects the holdings of the United States Supreme Court in *Widmar v. Vincent*⁸ and *Rosenberger v. University of Virginia*⁹ that the Establishment Clause is not violated when religious student groups are officially recognized, meet on campus, and receive student activity fee funding. Indeed, HB 1503 respects the Court's warnings in *Widmar* and *Rosenberger* that there is a greater risk of violating the Establishment Clause when college administrators interfere with religious groups than when they leave the groups alone to function according to their own understanding of their core religious beliefs.¹⁰

It should be common ground with even the most ardent proponents of strict separation of church and state that government officials, including college administrators, should not penalize a religious group because of its religious beliefs and speech. Nor should government officials interfere in religious groups' internal governance, particularly their choice of their leaders. As the Supreme Court has cautioned, "According to the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions."¹¹

Perhaps most importantly, HB 1503 will increase ideological diversity on college campuses at a time when there is rising concern that our society as a whole is becoming increasingly intolerant of other Americans' differing viewpoints. Colleges must be places where students learn to listen to others' ideas, beliefs, and values if we hope to preserve a healthy civil society that cherishes all Americans' freedoms of speech and religion.

Respectfully submitted,

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(ideological, political, and religious student groups); Tenn. Code Ann. § 49-7-156 (religious student groups); Va. Code Ann. § 23.1-400 (religious and political student groups).

⁷ The Iowa litigation, however, is ongoing.

⁸ 454 U.S. 263 (1981).

⁹ 515 U.S. 819 (1995).

¹⁰ *Widmar*, 454 U.S. at 270 n.6, 272 n.11; *Rosenberger*, 515 U.S. at 845-46.

¹¹ *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188-89 (2012).