IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHRISTIAN LEGAL SOCIETY CHAPTER AT SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW, Plaintiff,	)	
vs.	)	CIVIL ACTION NO.: 05-4070-GPM
JAMES E. WALKER, et al. Defendants.	)	MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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COMES NOW PLAINTIFF, The Christian Legal Society Chapter at Southern Illinois University School of Law, and states as follows in support of its Motion for Preliminary Injunction filed herewith.

STATEMENT OF FACTS

Southern Illinois University School of Law ("SIU School of Law") is a school within and is located on the campus of Southern Illinois University-Carbondale in Carbondale, Illinois, a public university. Verified Complaint, ¶ 3.11. SIU-Carbondale and the SIU School of Law provide for student organizations to become "registered student organizations." Verified Complaint, ¶ 3.12; Exhibit D to same. A true and correct copy of the list of Registered Student Organizations at Southern Illinois University-Carbondale is attached as Exhibit A to the Declaration of Steven H. Aden. ("Aden Dec.") Recognition as an SIU School of Law Registered Student Organization entitles a student organization to numerous benefits and privileges including: opportunities for publicizing the organization and its activities such as access to space on law school bulletin boards, listings in law school publications and on the law school's

website, and email access on the law school's list-serve; eligibility for certain funding through the School of Law; access to storage space; and the use of University buildings, property and facilities for organization meetings and events. Verified Complaint, ¶ 3.13; Exhibit E to same.

Plaintiff Christian Legal Society chapter at Southern Illinois University ("CLS at SIU") is the SIU student chapter of the Christian Legal Society, a national association of Christian lawyers, law students, law professors and judges. Verified Complaint, ¶¶ 3.1, 3.3. Any SIU student is welcome to participate in CLS at SIU meetings and activities without regard to religion, sexual orientation, or membership or non-membership in any other protected class. *Id.*, ¶ 3.5. However, pursuant to its constitution and the rules for CLS student chapters of the national Christian Legal Society, CLS at SIU requires its official voting members and officers to agree with and endeavor to live their lives in accordance with the CLS Statement of Faith, a basic statement of fundamental Christian doctrine considered orthodox in both the Protestant and Catholic faiths. Verified Complaint, ¶¶ 3.2, 3.6; Exhibit B to same. CLS at SIU interprets its Statement of Faith, consistent with the Board of Directors of the National Christian Legal Society, to require its voting members and officers to adhere to orthodox Christian beliefs, including the Bible's prohibition on sexual conduct between persons of the same sex. Verified Complaint, ¶ 3.7; Exhibit C to same. A person who unrepentantly engages in homosexual conduct or adheres to the viewpoint that homosexual conduct is not sinful would not be eligible for voting membership or officership in CLS at SIU. *Id*. However, an individual who has engaged in homosexual conduct but has repented of that conduct, or who professes a sexual affinity for persons of the same sex but does not engage in or affirm such conduct would be fully eligible to serve as a voting member and/or officer of CLS at SIU. *Id*. Hence, CLS at SIU does not restrict its membership or leadership positions on the basis of sexual *orientation*, *per se,* but

simply requires that its official members and officers maintain Biblical standards of conduct and adhere to beliefs it regards as biblically orthodox.

There is no allegation that any SIU student who did not conform to the Statement of Faith has ever applied for or been denied membership or an officer position on that basis. *See* Exhibit H to Verified Complaint; Declaration of Jeremy Richey ("Richey Dec."), ¶ 3. Nevertheless, an individual or individuals who had never applied for or been denied a membership or leadership position at CLS at SIU, or even attended a meeting of CLS at SIU, complained to law school officials concerning the chapter's policies. Verified Complaint, ¶ 4.1. On or about February 16, 2005, Defendant Davis informed Winter Ramsey, then president of CLS at SIU, that the law school had received a complaint that the chapter's membership and leadership policies were in violation of a university policy requiring all student organizations to comply with applicable federal and state nondiscrimination laws. *Id*. Defendant Davis did not reference the university's "Affirmative Action/Equal Employment Opportunity" policy. *Id.*, ¶ 4.6. Defendant Davis also informed Ramsey that she would attend the chapter's meeting at noon the next day, February 17, 2005, to speak with the chapter concerning its membership and leadership policies. *Id*., ¶ 4.1.

On the morning of February 17, 2005, prior to the chapter meeting, legal counsel for the chapter faxed to Defendant Davis a letter on behalf of CLS at SIU requesting that she not attend the chapter meeting in order to provide the chapter an opportunity to discuss the matter. The letter also requested a response by facsimile or telephone to confirm that Defendant Davis would honor this request. Defendant Davis did not respond to this letter. Verified Complaint; ¶ 4.2, Exhibit F to same. In spite of the letter, Defendant Davis did attend the meeting of CLS at SIU and demanded that the chapter's leaders provide her with a statement of its membership and leadership policies. *Id.*, ¶ 4.3. On February 25, 2005, Winter Ramsey emailed Defendant Davis

concerning the membership and leadership policies of CLS at SIU, describing the policies set out above. Verified Complaint, ¶ 4.4, Exhibit G to same.

On March 25, 2005, Defendant Alexander revoked the registered student organization status of CLS at SIU. Verified Complaint, ¶ 4.5, Exhibit H to same. In his letter, Defendant Alexander stated that the membership and leadership policies of CLS at SIU violated the "Southern Illinois University-Carbondale Affirmative Action/ Equal Employment Opportunity Policy," ("Affirmative Action policy") and a policy of the Board of Regents requiring all registered student organizations to "adher[e] to all appropriate federal and state laws concerning nondiscrimination and equal opportunity." ("Board of Regents policy") Exhibit H to Verified Complaint. The Affirmative Action policy, as quoted by Defendant Alexander, states:

> It is the policy of Southern Illinois University at Carbondale to provide equal employment and education opportunities for all qualified persons without regard to race, color, religion, sex, national origin, age, disability, status as a disabled veteran or a veteran of the Vietnam era, sexual orientation, or marital status.

Id. Defendant Alexander's letter did not state, and Plaintiff has not been notified by Defendants of any federal or state law that would govern its membership and leadership decisions. *Id*. Indeed, although counsel for CLS at SIU informed Defendant Davis that it was unaware of any such law approximately six weeks prior to Defendant Alexander's letter, none of the Defendants have ever provided a citation to any such law. Verified Complaint, ¶ 4.2, Exhibit F to same.

The March 25, 2005 letter from Defendant Alexander was also the first instance in which any SIU or SIU School of Law official notified CLS at SIU that its membership and leadership policies were subject to the University's "Affirmative Action/Equal Employment" policy or any policy other than the Board of Regents policy. Verified Complaint, ¶ 4.6. CLS at SIU employs no one and has no employment policies of any kind. *Id.*, ¶ 4.7. Nor was CLS at SIU an "education opportunity" or program of SIU School of Law by virtue of its status as a registered

student organization. SIU's "Comprehensive General and Professional Liability" insurance policy, Section 5.3.1, states that it covers "each trustee, officer, employee, student appointee; and any students … *who are agents of the University in the performance or delivery of its programs or services* …." Exhibit B, Section 5.3.1, to Declaration of Steven H. Aden (emphasis added). However, the handbook for registered SIU law school organizations specifically states that registered student organizations are *not* covered by the University's insurance policy. Exhibit E to Verified Complaint, p. 11. Hence, such student organizations are not agents of SIUC or SIU School of Law "in the performance or delivery of its programs or services," Exhibit B, Section 5.3.1, to Declaration of Steven H. Aden, and the Affirmative Action policy cannot apply to them.

Further, Defendants cannot deny that other student organizations presently registered by SIU-Carbondale have the same or similar membership and/or leadership policies as those of CLS at SIU, but nonetheless continue to enjoy the status of a registered student organization and the benefits of that status. *See generally* Exhibits A-F to Richey Dec. The Constitution of the Southern Illinois University Chapter of Intervarsity Christian Fellowship requires that all officers "subscribe to the basis of faith of the Inter-varsity Christian Fellowship." (listing a "basis of faith" identical in substance to the CLS Statement of Faith). *See* Article III, Section B to Exhibit A to Richey Dec. The Bylaws of Chi Alpha Christian Fellowship state, "All elected officers must be born-again Christians who regularly attend and are active in Assemblies of God churches." *See* Article II, Section 2 of Bylaws of Chi Alpha Christian Fellowship, Exhibit B to Richey Dec. The Constitution of the Muslim Students' Association states that membership is open to "all Muslims." *See* Article IV of Exhibit C to Richey Dec. The Constitution of the SIU Apostolic Life Campus Ministries states that all officers must "conduct him or herself in a manner that glorifies the living God Jesus Christ according to teachings in the scriptures." *See* Article III,

Section 3 of Exhibit D to Richey Dec. The Constitution of Adventist Campus Ministries states that all "ordinary members shall be students who profess the Seventh Day Adventist faith" and states that officers must be "ordinary members." *See* Article II, Section 2 and Article III, Section 5 of Exhibit E to Richey Dec. The Constitution of the Young Women's Coalition limits membership "to all women students…" *See* Article 2.1.1 of Exhibit F to Richey Dec.

In revoking CLS at SIU's status as a registered student organization, Defendant Alexander specifically stripped the chapter of certain benefits, including the use of the bulletin board in the Lesar Law Building at SIU School of Law to advertise chapter meetings and events, the ability to use the name of SIU School of Law in the name of the organization, the ability to have the chapter's information included on the SIUC School of Law website and other publications and the ability to use certain law school facilities for its meetings and events without charge. Verified Complaint, ¶ 4.9, Exhibit H to same. Pursuant to Defendant Alexander's instructions, Defendant Davis also ordered Winter Ramsey to remove all of CLS at SIU's information from the bulletin board in the Law Building. Verified Complaint, ¶ 4.10. Ramsey was subsequently ordered to remove all items belonging to CLS at SIU from storage lockers available for use by registered student organizations. Declaration of Winter Ramsey, ¶3. CLS at SIU has complied with these demands. *Id.*, ¶ 4.

The 2005-2006 SIU School of Law academic year is scheduled to begin on August 22. Richey Dec., ¶ 8. Absent preliminary injunctive relief from this Court, Defendants will continue to deny CLS at SIU the status and benefits of a registered student organization at CLS at SIU, including access to channels of communication available to all other registered organizations such as the use of bulletin boards and notices in law school publications to advertise its meetings to incoming students. Exhibit H to Verified Complaint.

I. PLAINTIFF EASILY SATISFIES THE STANDARD FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION.

In the Seventh Circuit, parties are entitled to preliminary injunctive relief if they demonstrate that: "(1) they are reasonably likely to succeed on the merits; (2) no adequate remedy at law exists; (3) they will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the respondent will suffer if the injunction is granted; and (4) the injunction will not harm the public interest." *Joelner v. Village of Washington Park, Illinois*, 378 F.3d 613, 619 (2004). It is well established that "'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,' and money damages are therefore inadequate." *Joelner*, 378 F.3d at 620, *quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976). Further, "it is always in the public interest to protect First Amendment liberties." *Joelner*, 378 F.3d at 620. Therefore, "[w]hen a party seeks a preliminary injunction on the basis of a potential First Amendment violation, the likelihood of success on the merits will often be the determinative factor." *Joelner*, 378 F.3d at 619. Because CLS at SIU clearly satisfies the other prerequisites for preliminary injunctive relief, we focus on the critical question, whether it is "reasonably likely to succeed on the merits" of its claims. *Id*.

II. THE DEFENDANTS' REVOCATION OF PLAINTIFF'S STATUS AS A REGISTERED STUDENT ORGANIZATION VIOLATES THE PLAINTIFF'S FIRST AMENDMENT RIGHT OF EXPRESSIVE ASSOCIATION.

The Supreme Court has "long understood as implicit in the right to engage in other activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). *See also Marshall v. Allen,* 984 F.2d 787, 800 (7th Cir. 1993) ("the right to associate is cut from the same cloth as the other rights contained in the First Amendment" and these First Amendment rights are "inseparable.")

(internal citations omitted). This right of association presupposes a right *not* to associate with those who do not share the organization's views. *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000); *see also Democratic Party v. Wisconsin*, 450 U.S. 107 (1980) (stating that the freedom of association "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people").

A. Plaintiff is Engaged in Protected Expressive Activity.

A group seeking to assert the right of expressive association must demonstrate that it "engage[s] in some form of expression, whether it be public or private." *Boy Scouts*, 530 U.S. at 648. But an organization's speech is constitutionally protected even where it lacks a "narrow, succinctly articulable message." *Hurley v. Irish-American Gay, Lesbian, Bisexual Group of Boston*, 515 U.S. 557, 570 (1995). In *Boy Scouts*, the Supreme Court held that the Boy Scouts were an expressive association because its leaders spent time with members, instructing and engaging them in outdoor activities in an effort to instill traditional moral values, including the viewpoint that homosexual conduct is not a healthy form of behavior. 530 U.S. at 649-50.

Like the Boy Scouts, Plaintiff seeks to affirm and instill certain viewpoints in its members. In Plaintiff's case, these include the orthodox Christian beliefs articulated in the group's Statement of Faith and the Bible's admonition against sexual conduct outside of traditional marriage. The Plaintiff's mission is to "maintain a vibrant Christian Law Fellowship on the School's campus which enables its members, individually and as a group, to love the Lord with their whole beings—hearts, souls, and minds and to love their neighbor as themselves." Chapter Constitution, ¶ 2, attached as Ex. B to Verified Complaint. In furtherance of this mission, the chapter "cultivat[es] spiritual growth through communal prayer, fellowship, and worship; learning to share one's faith; and devotional study of the Bible and classic Christian

works." *Id*. The chapter also strives to "[Show] the love of Christ to the campus community and the community at large by proclaiming the gospel in word and in deed, such as through a life of integrity and charitable good works; as Martin Luther put it, 'to be Christ to our neighbor.'" *Id*. Moreover, by filing this action and addressing the media concerning this case, the Plaintiff has also taken a public position on the university's actions against it and its members and the rights of religious student organizations to determine membership and select leadership in accordance with their religious beliefs. The chapter's expressive activities are entitled to the protection afforded by the First Amendment. *See Boy Scouts*, *supra* at 649-50.

B. By Revoking Plaintiff's Registered Status, Defendants Have Abridged Plaintiff's Right of Expressive Association.

Since Plaintiff plainly engages in protected expressive activity, the Court must next determine "whether the forced inclusion of" persons who do not share its theological beliefs will "significantly affect" the organization's ability "to advocate public or private viewpoints." *Boy Scouts*, 530 U.S. at 650. Government violates an organization's right to expressive association by "intrusion into the internal structure or affairs of an association" such as a "regulation that forces the group to accept members it does not desire." *Roberts*, 468 U.S. at 623. Such intrusion into an organization's membership and leadership policies "impair[s] the ability of the original members to express only those views that brought them together." *Roberts*, 468 U.S. at 623. Therefore, the Court "must … give deference to [Plaintiff's] view of what would impair its expression." *Id*. at 653.

Forcing Plaintiff to accept members and leaders who disagree with the religious beliefs it was created to foster and affirm clearly abridges Plaintiff's expressive association. Plaintiff is a small Christian student organization with a membership of fewer than twelve. Richey Dec., ¶ 4. The Plaintiff's Statement of Faith and its intricately-related requirement that members and

leaders share the organization's theological beliefs about sexual conduct, is the means by which it ensures that it will continue to exist as a theologically orthodox Christian fellowship on the law school campus. Requiring the Plaintiff to accept as members and invite to leadership those who disagree with or actively oppose its foundational beliefs would unquestionably affect its ability to foster, affirm, and advocate its orthodox Christian beliefs both publicly and privately. In *Hurley*, the Supreme Court explained that the forced inclusion in a parade of persons whose message conflicted with the parade's organizers impaired the organizer's speech:

> [A] contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals … The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out of the parade. But whatever the reason, it boils down to the choice of the speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control.

Id. at 574-75. The forced inclusion of persons who disagree with Plaintiff's Statement of Faith and its theological views about sexual conduct outside of traditional marriage would affect Plaintiff's expression at least as substantially as in *Hurley*.

The Seventh Circuit has also observed that the right of expressive association protects a private association's right to control its own membership and leadership. In *Welsh v. Boy Scouts of America,* 993 F.2d 1267 (7th Cir. 1993), the Seventh Circuit held that the Boy Scouts could not be forced to admit into membership persons who refused to acknowledge a belief in God as required by Scout bylaws. While the court decided the case on statutory grounds, holding that Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, which prohibits religious (among other) discrimination in public accommodations did not apply to the Boy Scouts, the Court also noted, "[o]bviously the discussion of the Boy Scouts' purpose and its right to determine whom to

admit into membership impacts a constitutional right to Freedom of Association." *Id.,* at 1277. Even the dissenting judge in *Welsh*, after stating that he believed Title II did apply to the Boy Scouts, observed, "This does not necessarily mean that the Boy Scouts could be forced to admit atheists, however, because the First Amendment protects organizations from having to accept those who do not share its most elementary beliefs." *Id.* at 1279 (Cummings, J, Dissenting).

The revocation of Plaintiff's registered student organization status because it refuses to surrender its right to define its membership and leadership according to its theological beliefs clearly and substantially burden's Plaintiff's associational rights. "There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right." *Healy v. James*, 408 U.S. 169, 181 (1972). *See also Gay Lib v. University of Missouri*, 558 F.2d 848, 856 (8th Cir. 1977) (holding that the denial of university recognition and its benefits to a homosexual student organization was unconstitutional absent a likelihood of "imminent lawless action"); *Gay Alliance of Students v. Matthews*, 544 F.2d 162, 167 (4th Cir. 1976) (holding that the denial of recognition of a homosexual student organization violated the First Amendment).

C. Defendants' Revocation of Plaintiff's Registered Student Organization Status is Not Justified by a Sufficiently Compelling Government Interest.

The Defendants' substantial infringement on Plaintiff's expressive association right to require adherence to its religious beliefs by members and leaders must be subjected to "the closest scrutiny." *Marshall v. Allen,* 984 F.2d 787, 799 (7th Cir. 1993). "Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest." *Clingman v. Beaver,* 2005 WL 1200451, 4 (U.S. May 23, 2005).[1] *See also Boy Scouts*,

[1] Justice Thomas distinguished the minimal burden on associational rights the Court found in *Clingman* from the more substantial burdens the Court had previously held to infringe associational rights, specifically noting that the law at issue in that case did not compel the disclosure of "the names of the [association's] members," "interfere with

530 U.S. at 659 (rejecting an intermediate standard of review and holding that New Jersey's interest in preventing sexual orientation discrimination in public accommodations was insufficient to justify "the severe intrusion on the Boy Scouts' rights to freedom of expressive association"). Although Defendants may assert an interest in preventing religious and sexual orientation "discrimination" by students and student organizations, this interest is insufficient to justify the severe intrusion into Plaintiff's membership and leadership decisions.

The Supreme Court has rejected the notion that the elimination of alleged discrimination is a sufficiently compelling interest to justify infringement of a private association's right of expressive association. In *Boy Scouts of America v. Dale*, 530 U.S. at 659, the Supreme Court held that New Jersey violated the Boy Scouts' right of expressive association by applying an antidiscrimination law to require the Boy Scouts to retain a homosexual scoutmaster. In so holding, the Court observed that even where it had previously recognized that a state had a compelling interest in eliminating discrimination against some class of persons, it had upheld the application of such laws to private associations only where the enforcement of the laws "would not materially interfere with the ideas that the organization sought to express." *Id*. at 657. In *Roberts*, the Court upheld the application of an antidiscrimination law to require the Jaycees to admit women as members not because the state's compelling interest outweighed the Jaycees' expressive association rights, but because the inclusion of women would not impose "any serious burdens on the male members' freedom of expressive association." 468 U.S. at 626. Similarly, in *Board of Directors of Rotary International v. Rotary Club of Duarte*, the Court held that the application of an antidiscrimination law to require a Rotary Club to accept women as members did not interfere with the group's expression:

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the [association] by restricting activities central to its purpose," "disqualify the [association] from public benefits and privileges," or "compel [its] association with unwanted members or voters." (internal citations omitted).

> [I]mpediments to the exercise of one's right to choose one's associates can violate the right of association protected by the First Amendment. In this case, however, the evidence fails to demonstrate that admitting women to Rotary Clubs will affect in any significant way the existing members' ability to carry out their various purposes.

481 U.S. 537, 548 (1987) (internal citations omitted). Unlike these cases, the forced inclusion of members and officers who do not share (or may even oppose) Plaintiff's religious beliefs, including its theological views about sexual conduct outside of marriage between a man and a woman, would substantially interfere with Plaintiff's public and private expression. *See Boy Scouts*, 530 U.S. at 659 ("[A] state requirement that the Boy Scouts retain Dale as an assistant scoutmaster would significantly burden the organization's right to oppose or disfavor homosexual conduct"). Thus, Defendants lack any compelling interest to justify forcing Plaintiff and other religious student organizations to formally associate with students who disagree with or oppose Plaintiff's religious views.

D. Defendants' Application of Its Policies To Prevent Plaintiff From Requiring That Its Members and Officers Agree With Its Religious Beliefs Is Not Narrowly Tailored to Serve Any Valid Governmental Interest.

True "discrimination" is prohibited by our laws because the prohibited characteristic is deemed legally irrelevant to the protected individuals' ability to, for instance, own a home, Fair Housing Act, 42 U.S.C. § 3604(a) (making it unlawful to sell or rent a home to a person on the basis of race, color, religion, sex, familial status or national origin), or be a capable employee, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. (prohibiting employment discrimination on the basis of race, color, religion, sex or national origin). *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 214 (1995), *quoting Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) ("'racial discriminations are in most circumstances *irrelevant and therefore prohibited*'") (emphasis added); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 911

(1986), *quoting Zobel v. Willaims*, 457 U.S. 55, 70 (1982) (Brennan, J., Concurring) ("'*Permissible discriminations* between persons' must be correlated to 'their *relevant characteristics.*'") (emphasis added). While one's religious beliefs may be irrelevant to one's ability to serve as a member or leader of a club sports team or a student political group, these religious views are highly relevant, and indeed critical to, an individual's ability to serve as a faithful member or leader of a religious student organization like Plaintiff. As explained above, Plaintiff's requirements that its formal voting members and leaders affirm its Statement of Faith and endeavor to live in accordance with the viewpoints it expresses concerning sexual purity are critical to ensure that Plaintiff's public and private expression is not altered, confused or diluted.

The Supreme Court has recognized that expressive associations may restrict their membership and leadership to those who share the group's religious or other views:

> If a club seeks to exclude individuals who do not share the views that the club's members wish to promote, the Law erects no obstacle to this end… [A]n association might be able to show that it is organized for specific expressive purposes and that it will not be able to advocate its desired viewpoints nearly as effectively if it cannot confine its membership to those who share the same sex, for example, *or the same religion*.

New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 13 (1988) (italics added).

Federal and state laws prohibiting religious discrimination also recognize that religious criteria that are irrelevant in most circumstances and hence prohibitable may be highly relevant to religious organizations, and hence permissible, and such laws routinely exempt such organizations from their coverage. *See*, *e.g.*, 42 U.S.C. § 2000e-1(a) (exempting "religious corporation[s], association[s], educational institution[s] or societ[ies]" from Title VII's coverage as to religious discrimination); 775 ILCS 5/2-101(B)(2) (exempting religious corporations and associations from the definition of "employer" for purposes of the Illinois Human Rights Act's prohibition on discrimination in employment). Defendants could advance any interest they may

have in preventing irrelevant and invidious religion and sexual orientation discrimination by SIU students and student organizations while exempting religious student organizations like Plaintiff, for whom religious criteria is wholly relevant to the purpose of the organization, from those portions of its "nondiscrimination" policy. Thus, the application of the policy to Plaintiff is not narrowly tailored serve any such valid interest.

III. DEFENDANT'S REVOCATION OF PLAINTIFF'S STATUS AND BENEFITS AS A REGISTERED STUDENT ORGANIZATION VIOLATES THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT.

Plaintiff's "religious worship and discussion … are forms of speech and association protected by the First Amendment." *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). "[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

A. The Defendants' Revocation of CLS at SIU's Status and Benefits as a Registered Student Organization Discriminates Against CLS at SIU's Religious Viewpoint.

The Free Speech Clause forbids Defendants from singling out religious speech for disparate treatment or censorship. *See Widmar v. Vincent*, *supra*; *Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993); *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819, 832 (1995). In *Widmar*, the Supreme Court held that a university policy prohibiting the use of its facilities for religious worship or religious teaching was unconstitutional because it discriminated against religious student organizations based upon the content of their speech. 454 U.S. at 269. Defendants' application of the religion and sexual orientation provisions of its Affirmative Action policy to deny Plaintiff the right to require that members and officers adhere

to its religious views is just as viewpoint discriminatory as the policy declared unconstitutional in *Widmar*. Religion is the only protected status under the policy that constitutes personal belief and expression about that belief. Consequently, of the hundreds of student organizations at Southern Illinois University, only religious student organizations like Plaintiff are prohibited by university policy from requiring their formal members and officers to agree with the organization's viewpoints. By contrast, student political, environmental or other organizations, or those that affirm homosexual conduct as morally permissible, are not prohibited by university policy from requiring that their formal members and officers share their views. For the reasons explained above, preventing Plaintiff from requiring that its members and officers share its religious beliefs would substantially impair its ability to express and foster in its members its religious views. The University need not agree with or endorse Plaintiff's religious views, and Plaintiff seeks no such endorsement, but the Free Speech Clause of the First Amendment prohibits the Defendants from denying Plaintiff access to the channels for communicating its views to the student body it otherwise provides solely because of its disfavored views.

Defendants' policy, which amounts to no less than a prohibition on registration of student organizations formed on the basis of shared religious views, risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses. *Rosenberger*, 515 U.S. at 836. *See also Gay Students Organization of the University of New Hampshire v. Bonner*, 509 F.2d 652, 662 (1st Cir. 1974) ("[T]he curtailing of expression which [the university] find[s] abhorrent or offensive cannot provide the important governmental interest upon which impairment of First Amendment freedoms can be predicated."); *Boy Scouts of America v. Till*, 136 F. Supp. 2d 1295, 1308 (S.D. Fla. 2001) ("[A local school] Board, in its disapproval of intolerance toward homosexuality, is free to fashion its

own message," but "in expressing its own message and setting its example for students to follow, the School Board cannot punish another group for its own message.") The Defendants' application of the subject policies to prohibit only religious student organizations like Plaintiff from forming and associating around shared views central to the organization's purpose is not narrowly tailored to advance any compelling interest and is therefore unconstitutional.

B. The Defendants' Requirement that Plaintiff Permit Persons Who Disagree with Its Religious Beliefs to Become Voting Members and Leaders Compels CLS at SIU to Express Views Contrary to Its Own Viewpoints.

Defendants' application of its "Affirmative Action/Equal Employment Opportunity" policy and the policy of the SIU Board of Trustees to Plaintiff's membership and leadership decisions also violates the compelled speech doctrine by requiring Plaintiff to admit members and invite to leadership those who do not adhere to (or even oppose) its religious beliefs. "[T]he right to freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714-15 (1977). In *Hurley*, the Supreme Court acknowledged that because every person participating in a parade affects the message of a parade, forcing a private group to include individuals whose messages they did not wish to convey would "violat[e] the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message." 515 U.S. at 573. By forcing Plaintiff to accept members and leaders who disagree with Plaintiff's message, Defendants would require Plaintiff to express approval of religious beliefs contrary to its own and affirm certain forms of sexual conduct as compatible with Plaintiff's religious beliefs. Plaintiff's decision to "decline to foster" religious beliefs and sexual behaviors that "[it finds] morally objectionable" is entitled to First Amendment protection. *Wooley*, 430 U.S. 714-15.

IV. DEFENDANTS' REVOCATION OF PLAINTIFF'S STATUS AND BENEFITS AS A REGISTERED STUDENT ORGANIZATION VIOLATES THE EQUAL PROTECTION CLAUSE.

A. The Defendants' Application of the Subject Policies to Prevent Only Religious Student Organizations Like Plaintiff From Requiring Their Members and Leaders to Agree With the Organization's Beliefs and Purposes Violates the Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment prohibits government from making distinctions based on religious classifications. *See Niemotko v. Maryland*, 340 U.S. 268 (1951) (denial of park use permit for religious group violated the Equal Protection Clause). The application of SIU's subject policies to student organization membership and leadership decisions distinguishes between religious and non-religious student organizations. Although by Defendants' apparent interpretation all student organizations are subject to the "Affirmative Action" policy despite that student organizations generally do not employ anyone, the policy's impact is overwhelmingly borne by religious student organizations like Plaintiff in that all student organizations except religious student organizations may require that their members and leaders agree with their organization's views. Only religious student organizations are singled out for disfavored treatment and denied this right. Verified Complaint, ¶ 4.11. The application of the subject policies to prevent religious student organizations from requiring that their voting members and leaders adhere to the organization's religious beliefs, while permitting other student organizations to require that their members and leaders agree with their organizations' beliefs, violates the Equal Protection Clause.

B. The Defendants' Discriminatory Application of the Subject Policies to Derecognize CLS at SIU While Continuing to Recognize Student Organizations With Substantially Similar Membership and Leadership Policies Violates the Equal Protection Clause.

In addition to the inequality in the application of SIU policies to prohibit only religious student organizations from making member and officer selections on the basis of viewpoint, the

Defendants' decision to single out CLS at SIU for sanction while permitting other student organizations with the same or similar policies to remain registered adds an additional layer of discrimination in violation of the Equal Protection Clause. The Equal Protection Clause prohibits the government from arbitrarily treating one individual differently from others similarly situated. *Village of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000). This is true whether or not the government acts with "subjective ill will" toward the Plaintiff. *Id.* at 565.

Defendants sought out Plaintiff's membership and leadership policies and revoked its status as a registered student organization based on these policies. Yet, a cursory amount of research in SIU's own files revealed that SIU has been and is presently on notice of the same or similar membership and leadership policies for other student organizations, including religious student organizations. *See* Exhibits A-F of Declaration of Jeremy Richey. Each of these organization constitutions containing these membership and leadership policies have been on file with Southern Illinois University for at least four years. *See* Exhibits A-F to Richey Dec. Yet, Defendants have permitted and continue to permit these similarly situated student organizations to continue to enjoy the status and benefits of a registered student organization. This unequal treatment of CLS at SIU is arbitrary, irrational, and unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

V. DEFENDANT'S REVOCATION OF PLAINTIFF'S STATUS AND BENEFITS AS A REGISTERED STUDENT ORGANIZATION VIOLATES THE FREE EXERCISE CLAUSE.

The Free Exercise Clause requires that government, at a minimum, may not "punish the expression of religious beliefs it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma." *Employment Division v. Smith,* 494 U.S. 872, 877 (1990) (internal citations omitted). *See also, McDaniel v. Paty,* 435 U.S. 618, 632 (1978) (Brennan, J.,

Concurring) (stating that the Free Exercise Clause is violated where government "imposes a unique disability upon those who exhibit a defined level of intensity of involvement in protected religious activity"). Further, at least where government intrudes upon a Plaintiff's rights of free exercise *and* its other constitutional rights, such as those of association or speech, the government action is subject to strict scrutiny. *See Employment Division,* 494 U.S. at 881-82 (strict scrutiny for "hybrid rights" claims).

The religion and sexual orientation provisions of the "nondiscrimination" policy impose a special disability on religious student organizations. While other student organizations at Southern Illinois University remain free to require their members and leaders to agree with their beliefs, religious student organizations are denied this right. The SIU Law School Republicans are not prohibited by any policy from restricting their membership and leadership to registered Republicans or adherents to the Republican party platform, and Lesbian and Gay Law Students and Supporters may require that its members and/or leaders accept homosexual conduct as morally acceptable and advocate for homosexual "marriage" laws and other legal advantages for homosexual persons. Verified Complaint, ¶ 4.11. Indeed, every student organization at Southern Illinois University may require that its members and officers agree with the purposes and ideals of the organization except for religious student organizations. Only religious student organizations are denied the right to secure their continued existence and the clarity of their message by requiring that their members and leaders share the organization's views. The imposition of this "special disabilit[y]" upon religious student organizations violates the Free Exercise Clause. This "special disability" upon Plaintiff is only heightened by Defendants' decision to single it out for derecognition while SIU continues to recognize other student organizations with the same or similar policies.

CONCLUSION

Plaintiff has meritorious claims on which it is at least reasonably likely to succeed. Plaintiff is suffering and will continue to suffer irreparable harm to its First and Fourteenth Amendment rights that outweighs any possible harm to the Defendants from the issuance of an injunction restoring Plaintiff's status and benefits as a registered student organization. Plaintiff lacks any adequate remedy at law to redress the ongoing violations of its constitutional rights. Finally, the public interest favors the protection of Plaintiff's constitutional rights. For these reasons, the Court should grant Plaintiff's motion for preliminary injunctive relief.

Respectfully submitted this 7th day of June, 2005.

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