

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

COLORADO CHRISTIAN UNIVERSITY, a)
Colorado not-for-profit institution of higher)
education,)
)
Plaintiff,)
)
v.)
)
JUDY P. WEAVER, in her official capacity)
as Chair of the Colorado Commission on Higher)
Education; TERRANCE L. FARINA, in his)
official capacity as Vice Chair of the Colorado)
Commission on Higher Education; JUDITH)
ALTENBERG, RAYMOND T. BAKER,)
MICHAEL FEELEY, RICHARD GARCIA,)
PRESLANO MONTOYA, DEAN L. QUAMME,)
GREG C. STEVINSON, JAMES M. STEWART,)
and WILLIAM VOLLBRACHT, all in their official)
capacities as commissioners of the Colorado)
Commission on Higher Education; and)
RICHARD F. O'DONNELL, in his official)
capacity as Executive Director of the Colorado)
Commission on Higher Education,)
)
Defendants.)
)

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
DEC 9 2007
GREGORY C. LANGHAM
CLERK

CIVIL ACTION NO.: _____

04-RB-2512 (BUB)

COMPLAINT

Plaintiff Colorado Christian University, a Colorado not-for-profit institution of higher education, by and through its undersigned counsel, Gregory S. Baylor, Steven H. Aden, Timothy J. Tracey, and M. Casey Mattox of Religious Liberty Advocates of the Christian Legal Society; L. Martin Nussbaum and Eric V. Hall of Rothgerber Johnson & Lyons LLP; Thomas N. Scheffel of Thomas N. Scheffel & Associates, P.C.; and Benjamin W. Bull, Gary McCaleb, and Jordan Lorence of the Alliance Defense Fund, hereby sues Defendants Judy P. Weaver, Terrance L. Farina, Judith Altenberg, Raymond T. Baker, Michael Feeley, Richard Garcia, Preslano

Montoya, Dean L. Quamme, Greg C. Stevinson, James M. Stewart, William Vollbracht, and Richard F. O'Donnell, all in their official capacities, and alleges as follows:

1.

Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983 and § 1988 for deprivations of Plaintiff's rights secured by the First and Fourteenth Amendments to the United States Constitution. Plaintiff also brings this action for judicial review of agency action pursuant to Colo. Rev. Stat. § 24-4-106.

2.

Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction is also conferred on this Court by 28 U.S.C. § 1331 because the cause of action arises under the Constitution and laws of the United States. This Court is permitted to exercise supplemental jurisdiction over the state claim under 28 U.S.C. § 1367.

3.

Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because the Defendants reside in the district and may be found and served in the district and because a substantial part of the events or omissions giving rise to these claims arose in the district.

4.

Plaintiff Colorado Christian University ("CCU") is a private not-for-profit institution of higher education incorporated under the laws of the State of Colorado as a nonprofit corporation with its principal place of business at 180 South Garrison Street, Lakewood, Colorado 80226.

5.

Defendants Judy P. Weaver, Terrance L. Farina, Judith Altenberg, Raymond T. Baker,

Michael Feeley, Richard Garcia, Preslano Montoya, Dean L. Quamme, Greg C. Stevinson, James M. Stewart, and William Vollbracht are commissioners of the Colorado Commission on Higher Education. Defendant Richard F. O'Donnell is Executive Director of the Colorado Commission on Higher Education. Defendants (referred herein together as "CCHE") are responsible for determining the eligibility of colleges and universities to participate in Colorado's state-funded student assistance programs. Their offices are located at 1380 Lawrence Street, Suite 1200, Denver, Colorado 80204. They are sued in their official capacities.

6.

CCHE is the state policy and coordinating board for Colorado's higher education system. The mission of CCHE is to provide access to high-quality, affordable education for all Colorado residents that is student-centered, quality-driven, and performance-based.

7.

Under Colo. Rev. Stat. § 23-3.3-102, § 23-3.5-103, § 23-3.7-103, and § 23-18-201, CCHE has been directed by the Colorado legislature to administer state-funded financial assistance programs for in-state students attending public and private universities and colleges within the State of Colorado.

8.

Pursuant to this authority, CCHE administers a series of merit-based and need-based grants and scholarships, including the Colorado Leveraging Education Assistance Partnership Program, the Supplemental Leveraging Educational Assistance Partnership Program, Colorado Student Grants, Colorado Graduate Grants, the Governor's Opportunity Scholarship, and the College Opportunity Fund.

9.

For each of these financial assistance programs, CCHE determines which institutions are eligible for participation. Each eligible institution then recommends in-state students to CCHE for receipt of a grant or scholarship.

10.

Any university or college operating within the State of Colorado is eligible for participation in the programs as long as the university or college admits regular students having a certification of graduation from a school providing secondary education; the university or college is accredited by a nationally recognized accrediting agency or association; and the university or college provides an educational program for which it awards a bachelor's degree, a two-year or longer program which is acceptable for full credit towards a bachelor degree, or a six-month or longer program of training to prepare students for gainful employment in a recognized occupation. Colo. Rev. Stat. § 23-3.3-101(3); § 23-3.5-102(3); § 23-3.7-102(3). However, Colo. Rev. Stat. § 23-3.3-101(3)(d), § 23-3.5-102(3)(b), § 23-3.7-102(3)(f), and § 23-18-102(9) specifically exclude so-called "pervasively sectarian" institutions from eligibility for these financial assistance programs.

11.

A college or university is deemed not to be "pervasively sectarian" if it meets the following statutory criteria:

- (a) The faculty and students are not exclusively of one religious persuasion.
- (b) There is no required attendance at religious convocations or services.
- (c) There is a strong commitment to principles of academic freedom.

(d) There is no required course in religion or theology that tend to indoctrinate or proselytize.

(e) The governing board does not reflect nor is membership limited to persons of any particular religion.

(f) Funds do not come primarily or predominantly from sources advocating a particular religion.

Colo. Rev. Stat. § 23-3.5-105; § 23-3.7-104.

12.

CCHE has determined that Regis University is not “pervasively sectarian” as that phrase is defined under Colorado law. In contrast, CCHE has determined that Naropa University and Plaintiff CCU are “pervasively sectarian.” Regis University is Catholic, while Naropa University is Buddhist, and CCU is Evangelical Christian.

13.

The Colorado Educational and Cultural Facilities Authority (“CECFA”) is one state agency that has been authorized to provide tax-exempt bond financing to postsecondary education and cultural institutions. Colo. Rev. Stat. § 23-15-101 *et seq.*

14.

Until May 2003, CECFA was prohibited by statute from providing tax-exempt bond financing to education institutions which were “pervasively sectarian.” Colo. Rev. Stat. § 23-15-103(8)(b) (2003). See also Colo. Rev. Stat. § 23-15-103(6.3) (2003) (prohibiting financing to “cultural institutions” which were “primarily engaged in religious or sectarian activities”), § 23-15-103(7)(b) (2003) (prohibiting financing for “facilities” which would be “used primarily for sectarian instruction or study or as a place for devotional activities or religious worship”).

15.

Prior to 2003, CECFA had found that the following religious organizations were not “pervasively sectarian”: Ave Maria Catholic School Corporation, Catholic Charities of Denver, Inc., J.K. Mullen High School, Naropa University, Regis Jesuit High School, Regis University, Rocky Mountain Shambala Center, and St. Mary’s Academy.

16.

In contrast, prior to the change in the relevant statute, CECFA did not deem Denver Christian Schools and Plaintiff CCU eligible for tax-exempt bond financing because of their religious character. The religious organizations approved by CECFA were Buddhist and Catholic; Denver Christian Schools and Plaintiff CCU are Evangelical Christian.

17.

Moreover, CECFA permitted Naropa University to receive the benefits of tax-exempt bond financing, while CCHE denied Naropa’s application to participate in state-funded student assistance programs, on the ground that it is “pervasively sectarian.” Thus, two different government agencies reached opposite conclusions as to the religious character of the same school.

18.

In the 2003 legislative session, the Colorado legislature amended CECFA’s organic statute, deleting the religious restrictions, including the prohibition against “pervasively sectarian” schools. See Laws 2003, Ch. 323 § 1 (deleting the religious restrictions). See also Colo. Rev. Stat. § 23-15-103(6.3) (2004), § 23-15-103(7)(b) (2004), § 23-15-103(8)(b)(2004).

19.

In September 2003, Plaintiff CCU applied to participate in the state-funded student

financial aid programs. A true and correct copy of the Application is attached as Exhibit A.

20.

In September 2004, Plaintiff CCU applied to participate in the College Opportunity Funding program. A true and correct copy of the application letter is attached as Exhibit B.

21.

As described more fully below, CCHE determined that, as to both programs, Plaintiff CCU was ineligible because it was “pervasively sectarian.”

22.

CCHE Financial Aid Director Diane M. Lindner sent a letter to CCU’s counsel dated February 9, 2004 (hereafter “2-9-04 letter”). A true and correct copy of the letter is attached as Exhibit C. The 2-9-04 letter asked CCU a number of questions, all regarding whether CCU was “pervasively sectarian.”

23.

In a letter dated March 3, 2004 (hereafter “3-3-04 letter”), CCU’s counsel responded to Ms. Lindner’s February 9, 2004, letter. A true and correct copy of the 3-3-04 letter is attached as Exhibit D. That letter outlined the constitutional and other defects of excluding “pervasively sectarian” institutions of higher education from state-funded student assistance programs.

24.

Furthermore, the 3-3-04 letter responded to CCHE’s questions and contended that, as a matter of Colorado law, CCU is not “pervasively sectarian.” As requested, CCU’s counsel enclosed in the 3-3-04 letter to Ms. Linder copies of CCU’s admissions policies and the then-recent syllabi for its required theology and biblical studies courses.

25.

Prior to its 2004 applications to CCHE, Plaintiff CCU had never gathered data about the religious character of its students, faculty, or trustees. In an effort to demonstrate to CCHE that it is not “pervasively sectarian,” CCU conducted a religious demographic survey at the beginning of the 2004-05 school year.

26.

On October 18, 2004, counsel for CCU provided a letter to Defendant O’Donnell reiterating the constitutional defects of the treatment of “pervasively sectarian” institutions of higher education in the Colorado statutory provisions governing state-funded student assistance programs. A true and correct copy of that letter is attached as Exhibit E.

27.

The 10-18-04 letter from CCU’s counsel to Defendant O’Donnell also argued that CCU was not “pervasively sectarian” as that phrase is defined and used in the relevant Colorado statutes, especially when the characteristics of CCU germane to the statutory analysis are compared to the characteristics of Regis University, a private religious institution of higher education deemed eligible by CCHE to participate in state-funded student assistance programs. See Americans United For Separation of Church and State Fund, Inc. v. State of Colorado, 648 P.2d 1072 (Colo. 1982). The statistics gathered by CCU in August and September 2004 were used to provide a point-by-point comparison of CCU and Regis University.

28.

On October 18, 2004, Brian Bissell, CCU’s Vice President for Business Affairs, and Eric Hall, counsel for CCU, met with Defendant O’Donnell, Tony Dill, an Assistant Attorney General from the Education Unit, and other employees of CCHE at CCHE’s offices to discuss the 10-18-

04 letter. The discussion focused on the two points at issue: (1) whether the “pervasively sectarian” test is constitutional and (2) regardless of its constitutionality, whether CCU is “pervasively sectarian” under Colorado law.

29.

On November 5, 2004, Defendant O’Donnell informed Mr. Bissell by telephone that CCHE denied CCU’s applications to participate in state-funded student assistance programs. Mr. O’Donnell explained that CCHE was required by the statutes to exclude “pervasively sectarian” schools from participation in state-funded student assistance programs. He further informed Mr. Bissell that CCHE had determined that CCU was “pervasively sectarian.”

30.

Later on that same day, November 5, 2004, Jennifer Nettesheim, a CCHE employee, sent an email to Mr. Bissell. The body of the email stated: “You will be receiving the signed copies of these letters in the mail, but I wanted to let you know that the Department had made its decisions regarding CCU’s applications for state-funded financial aid and the College Opportunity Fund.”

31.

Attached to Ms. Nettesheim’s November 5, 2004, email to Mr. Bissell were two letters, each from Mr. O’Donnell to Mr. Bissell. In one of the two letters, Mr. O’Donnell stated that CCHE had determined that CCU was not eligible to participate in Colorado’s College Opportunity Fund on the ground that CCU was “pervasively sectarian.” The letter stated that “the Colorado Department of Higher Education’s primary responsibility is one of upholding Colorado law, and the ‘pervasively sectarian’ test is required by current State statute.” A true and correct copy of the letter is attached as Exhibit F.

32.

In the second letter attached to Ms. Nettesheim's November 5, 2004, email to Mr. Bissell, Mr. O'Donnell stated that CCHE had determined that CCU was "pervasively sectarian" and that it was ineligible to participate in state-funded student assistance programs. A true and correct copy of the letter is attached as Exhibit G.

33.

Excluding CCU from participating in state-funded student assistance programs significantly undermines its ability to pursue its educational function.

COUNT I

UNITED STATES CONSTITUTION, AMENDMENT I FREE EXERCISE CLAUSE

34.

CCU restates and realleges each allegation set forth in paragraphs 1 through 33 as if set forth verbatim herein.

35.

The "pervasively sectarian" test itself and Defendants' application of it against CCU to deny it and its students eligibility for state-funded student financial aid programs because of CCU's religious character has violated and will continue to violate CCU's right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution, made applicable to the states and their political subdivisions by the Fourteenth Amendment.

COUNT II

UNITED STATES CONSTITUTION, AMENDMENT I
ESTABLISHMENT CLAUSE

36.

CCU restates and realleges each allegation set forth in paragraphs 1 through 35 as if set forth verbatim herein.

37.

The “pervasively sectarian” test itself and CCHE’s application of it to exclude certain institutions of higher education, including CCU, from state-funded student assistance programs, including the College Opportunity Fund, because of their religious character has violated and will continue to violate the Establishment Clause of the First Amendment of the United States Constitution, made applicable to the states and their political subdivisions by the Fourteenth Amendment.

COUNT III

UNITED STATES CONSTITUTION, AMENDMENT XIV
EQUAL PROTECTION CLAUSE

38.

CCU restates and realleges each allegation set forth in paragraphs 1 through 37 as if set forth verbatim herein.

39.

The “pervasively sectarian” test itself and Defendants’ application of it against CCU to deny it and its students eligibility for state-funded student financial aid programs because of CCU’s religious character has violated and will continue to violate CCU’s right to equal

protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT IV

COLORADO ADMINISTRATIVE PROCEDURE ACT
Colo. Rev. Stat. § 24-4-106

40.

CCU restates and realleges each allegation set forth in paragraphs 1 through 39 as if set forth verbatim herein.

41.

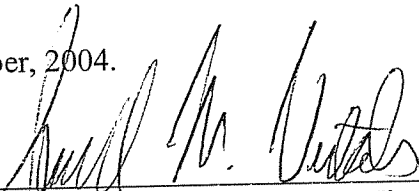
CCHE's denial of CCU's eligibility to participate in state-funded student assistance programs is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, an abuse of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, and otherwise contrary to law.

WHEREFORE, CCU respectfully requests that this Court order the following relief:

- (1) Enter a judgment declaring that the "pervasively sectarian" test itself and Defendants' application of it against CCU has violated and will continue to violate CCU's rights guaranteed by the Free Exercise Clause of the First Amendment, the Establishment Clause of the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment;
- (2) Enter an order enjoining Defendants from discriminating against CCU with respect to eligibility for state-funded financial assistance already available to other private and public colleges and universities;

- (3) Enter a judgment declaring that CCU is not “pervasively sectarian” as a matter of Colorado law, determining that CCHE’s contrary findings violated the Colorado Administrative Procedure Act, and directing CCHE to conform its findings to those of the Court;
- (4) Award CCU its costs and attorneys’ fees in this matter; and
- (5) Award such other relief as the Court deems just and proper.

DATED this 6th day of December, 2004.

 #18030
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ATTORNEYS FOR PLAINTIFF COLORADO
CHRISTIAN UNIVERSITY

Address of plaintiff:
180 South Garrison Street
Lakewood, Colorado 80226

COLORADO COMMISSION ON HIGHER EDUCATION
Institutional Application to Participate
In State-Funded Student Financial Aid Programs.

Criteria for institutional eligibility for state-funded student assistance programs is set forth in 23-3-101, C.R.S. Institutions that wish to participate in the Colorado financial aid programs must file this application before October 1 to participate in the succeeding fiscal year (i.e., July 1 – June 30) to determine eligibility pursuant to the statute.

Legal Name of Institution: **Colorado Christian University ("CCU")**
Address: **180 South Garrison Street**
City/State/Zip: **Lakewood, Colorado 80226**
Contact Person: **Brian Bissell**
Phone: **303-963-3352**

Each eligible institution is expected to participate in all Colorado student aid Programs consistent with the institution's experience in administering federal aid programs. For example, an institution is expected to participate in Colorado work-study if they administer Federal work-study. Similarly, an institution administering Federal Supplement Education Opportunity Grant (SEOG) is expected to participate in both the Colorado Leveraging Educational Assistance Partnership and Colorado Student Grant Programs. Check the state programs in which your institution is applying to participate:

Colorado Leveraging Educational Assistance Program	<u> X </u>
Colorado Student Grant	<u> X </u>
Colorado Work Study	<u> X </u>

1. Institutional Eligibility Criteria

- Your institution must be accredited by, or have candidate status with, a nationally recognized accrediting agency. Describe your accreditation.

CCU is accredited by the North Central Association of Colleges and Schools, 30 North LaSalle Street, Suite 2400, Chicago, IL 60602-2504, phone (312-263-0456).

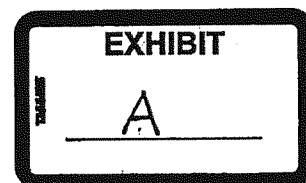
Private vocational schools must submit a copy of regular certificate from The Private Occupational Schools.

- Is your institution a branch of an institution whose principal campus and facilities are located outside of Colorado?

YES NO

- Is your institution a theological institution?

YES NO



- Does the Charter, Articles of Incorporation, or other authorizing document for your institution, make any statement as to the influence of religion on the institution?

YES X NO

If so, provide a copy of that statement.

Please see CCU's Bylaws at Article II, Sections 6-7 (attached), stating that Trustees must assent to CCU's nondenominational Statement of Faith, a copy of which is also attached.

CCU currently operates under Articles of Incorporation adopted February 9, 1945, and filed with the Secretary of State on March 2, 1945. These Articles do not make any statement as to the influence of religion on the institution and have not been amended or restated other than name changes since 1945.

The CCU Board of Trustees, after a multi-year process initiated in 2001, will consider adoption of Amended and Restated Articles of Incorporation at its annual meeting on October 4, 2003. The proposed Amended and Restated Articles do not make any statement as to the influence of religion on the institution. A copy of the Amended and Restated Articles will be provided upon request.

- Governance Structure

1. Describe the organizational structure of your institution.
 - a. Sole proprietorship
 - b. Partnership
 - c. Corporation X
2. What type of body governs the institution?
 - a. Owner
 - b. Board of directors X
 - c. Trustees

CCU is governed by a board of directors. Like many non-profits, it uses the terms "board of directors" and "board of trustees" interchangeably. Thus, there are references in CCU's Bylaws to "Trustees" and the "Board of Trustees."

3. How many persons constitute the governing body?

There are currently nineteen members on the Board of Trustees. The Bylaws prescribe that the Board shall consist of not less than seven persons. See Bylaws at Article II, Section 1.

4. How are the persons governing the institute selected?

The Board of Trustees is self-perpetuating. Trustees are elected at the Board's annual meeting by a majority of the Trustees then in office. The Trustee Affairs Committee recommends candidates for election or re-election to the Board through procedures adopted by the Board. See Bylaws at Article II, Sections 4 and 6.

5. Is membership in the institution's governing group limited to persons of a particular religion? If so, state that limitation.

No, membership on CCU's Board of Trustees is not limited to persons of a particular religious denomination. The Statement of Faith affirmed by Trustees makes clear that CCU "unites with the broad, historic evangelical faith rather than affiliating with any specific denomination." See Statement of Faith (attached).

6. Is religious preference a factor in the selection of persons to participate in governance?

YES X NO _____

If yes, please state the policy by which religious preference is considered and procedures used to implement that policy.

As stated above, CCU's Trustees must affirm a nondenominational Statement of Faith. See Bylaws at Article II, Sections 6-7.

7. Are the persons governing the institution required to subscribe to any statement about the influence of religion on the institution or on their actions as trustees?

If so, please provide a copy of that statement.

Yes, as described above. See Statement of Faith (attached).

8. Governance Composition

List, by name or other institutional identifier, the person who governs the institution, and provide for each person his or her religious preference, and whether or not each considers himself or herself an active member of that religion. Please state the religious preference as precisely as possible. For instance, if the person were known to be Methodist, state "Methodist," not "Protestant" or "Christian."

CCU does not ask for or maintain information about its Trustees' denominational preferences or whether or not they are active members in their respective churches. CCU has no information suggesting that the Trustees are of a single denomination.

This information must be updated at any time more than one-fourth of the governing individuals have been selected since the last report.

- o Governance Process

1. Are decisions concerning the direction of the institution based on the tenets of a particular religion?

YES _____ NO X

CCU does not base its decisions on the tenets of any particular denomination.

2. Are any religious authorities consulted in making governance decisions?

YES _____ NO X

3. Are the faculty or students exclusively of one religious convocations or services?

YES _____ NO X

Although faculty members must affirm CCU's nondenominational Statement of Faith they are not exclusively of one religious denomination. CCU students are not required to affirm CCU's Statement of Faith. In admitting applicants, CCU attempts to assess whether its traditional undergraduate students (approximately 45% of CCU's total student body) would benefit from a liberal arts education in a Christian environment.

4. Does your institution require attendance at religious convocations or services?

YES X (45%) NO X (55%)

CCU does not require attendance at religious services for all of its students. For the majority of its students (about 55%), chapel is not required. In its traditional undergraduate program at its Lakewood campus (about 45%), students are required to attend twenty-five of thirty chapel services each semester. These services are held twice per week and last less than one hour. Exemptions are available for students with a direct, unavoidable work conflict.

5. Does your institution have required courses in religion theology?

YES X (45%) NO X (55%)

Only CCU's traditional undergraduate students who are candidates for a bachelor's degree (approximately 45% of its student body) must successfully complete twenty-four courses in general education requirements and two courses in foreign languages. The general education requirements are organized under eight areas of study: behavioral and social sciences, communication, computers, humanities, mathematics, natural science, integrative studies, and theology and biblical studies. Of the twenty-six required courses, the four listed below are the theology and biblical studies courses. These courses do not tend to indoctrinate or proselytize.

If so, please submit description of those courses.

**BIB 111 History and Literature of Ancient Israel (3 credit hours)
BIB 114 Early Christian Literature (3)
THE 201 Introduction to Theology (3)
THE 303 Christianity in America (3)**

The description for these courses from CCU's undergraduate academic catalog:

BIB 111: History and Literature of Ancient Israel (3). Content, background, message, and significance of the books of the Old Testament. Cross-listed as HIS 111.

BIB 114: Early Christian Literature (3). Content, background, message, and significance of the books of the New Testament. Cross-listed as HUM 114.

THE 201: Introduction to Theology (3). Basic issues, themes, and categories of Christian theology.

THE 303: Christianity in America (3). History of the Christian experience in America from the Colonial era to the present. Examination of the differences in theology and polity among the major denominations. Cross-listed as HIS 303.

6. Do funds for your institution come primarily or predominately from sources advocating a particular religion?

YES _____ NO X

7. Does your institution have a strong commitment to principles of academic freedom?

YES X NO _____

Please describe how that is evidenced.

CCU has adopted the "1940 Statement of Principles of Academic Freedom" of the American Association of University Professors ("AAUP") and the Association of American Colleges. See Faculty Handbook Section 3, Part 3.7, pgs. 2-3 (attached).

II. Institutional Administrative Capability

- The institution must have participated in Federal campus-based student assistance programs for at least two years, have utilized at least 90 percent of federal student dollars, and be able to demonstrate capability to administer the funds property. Please submit a copy of
 - a. Fiscal Operations Report for the prior year
 - b. Application of Funds for the Current year, and
 - c. A copy of the most recent audit of Federal Student Aid Administration at your institution.

A copy of each is attached.

- Has your institution's eligibility to participate in the Federal Stafford Loan Program been suspended, limited, or terminated?

YES _____ NO X

- Provide a resume of the person(s) in charge of financial aid at your institution. This person has been designated to have primary responsibility of the financial aid programs; expected to have experience in student aid administration; and spends the majority of time working with student aid programs. Additional duties required of this person must be described below.

The resume of Steven M. Woodburn, Director of Student Financial Services, is attached.

- Provide a resume for the institution's fiscal officer or business manager.

The resume of Brian T. Bissell, Vice President for Business Affairs and Chief Financial Officer, is attached.

- Provide a copy of the most recent catalog describing the programs of your institution and a statement of requirements students must meet to enroll at your institution.

A copy of CCU's 2002-2003 Academic Catalog is attached.

III. Enrollment Information

State-funded student assistance funds are available primarily to Colorado residents. In order to determine a reasonable allocation of funds for awards to in-state students at your school, enrollment information for the previous fiscal year must be provided on the attached enrollment information sheet (Attachment A).

Enrollment information is attached.

Colorado Christian
UNIVERSITY

September 30, 2004

Mr. Richard Schweigert
Chief Financial Officer
Colorado Department of Higher Education/Colorado Commission on Higher Education
1380 Lawrence Street, Suite 1200
Denver, CO 80204

Dear Mr. Schweigert,

Please consider this letter Colorado Christian University's application to participate in the College Opportunity Funding (COF) program. The COF program will provide additional financial assistance for CCU's undergraduate students from Colorado.

The following is intended to demonstrate that CCU qualifies as a COF program participant, as required in the Request For Information, pages 10-12.

Students:

1. CCU will provide documentation showing that all its qualifying students are classified as "in-state" for tuition purposes, as defined under C.R.S. 23-7-101 to 23-7-107 and verified pursuant to the appropriate forms.
2. CCU will provide documentation showing that all its qualifying students graduated from a Colorado high school or successfully completed a nonpublic home-based educational program as provided in C.R.S. 22-33-104.5. CCU will provide this documentation on standardized institutional forms and will demonstrate that it has a process that monitors this requirement.
3. CCU will provide documentation showing that all its qualifying students have completed a FAFSA, and that these students are eligible for Pell funding based on a valid FAFSA. CCU will keep on file this required documentation for each student and make it available for auditing purposes.

Private Institution:

4. CCU intends to successfully complete a performance contract with the Department as a precondition of participating in the COF program. CCU understands that entering into this performance contract is a key requirement of participation in the COF program.

EXHIBIT

B

5. CCU agrees to provide data to the Department's Student Unit Reporting Data System (SURDS) in the amount and quantity reasonably required by the Department for the implementation of the COF program. CCU understands that it may be responsible for any costs related to the SURDS system.
6. CCU is a "not-for-profit university" and has the required IRS designation. Enclosed with this letter please find the appropriate financial and legal documentation demonstrating this status.
7. CCU is not a "pervasively sectarian" institution, as that term is defined under Colorado law. The Department is well-aware of the ongoing dialogue between itself and CCU on this issue, and CCU incorporates by reference all the documentation that has already been provided to the Department over the course of the past year demonstrating this fact.
8. CCU maintains its primary place of business within the State of Colorado. Enclosed with this letter please find the appropriate documentation, including copies of CCU's Articles of Incorporation and a Certificate of Incorporation from the Colorado Secretary of State.
9. CCU offers general Baccalaureate degrees in the Arts and Sciences; *i.e.*, it offers a broad spectrum of majors in the Arts and Sciences. Enclosed with this letter please find a list of the currently approved majors offered in the Arts and Sciences at CCU.
10. CCU is accredited by The Higher Learning Commission of the North Central Association ("NCA"). Attached to this letter is the most recent "Statement of Affiliation Status" issued by the NCA.

Thank you for your consideration of this application. Please do not hesitate to contact me if CCU can provide any further information to the Department regarding this application.

Colorado Christian University looks forward to partnering with the Colorado Commission on Higher Education as a participant in the College Opportunity Funding program.

Sincerely,



Brian Bissell

Vice President for Business Affairs

STATE OF COLORADO

Department of Higher Education
COLORADO COMMISSION ON HIGHER EDUCATION

Raymond T. Baker, Chair
Terrance L. Farina, Vice Chair
Judith Altenberg
Michael F. Feeley
Richard L. Garcia
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Judy Weaver

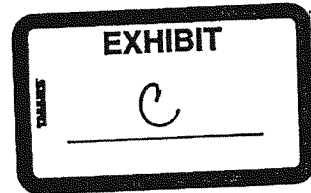


Bill Owens
Governor

Timothy E. Foster
Executive Director

February 9, 2004

Brian T. Bissell
Vice President for Business Affairs and Chief Financial Officer
Colorado Christian University
180 South Garrison Street
Lakewood, Colorado 80226



Dear Mr. Bissell,

I have reviewed the application from Colorado Christian University for state-funded student financial assistance and have a couple of questions that do not appear to be covered in your application documents. These questions came forward based on analysis of your application in relationship to C.R.S.23-3.5-105 defining an institution deemed not to be pervasively sectarian.

- In your application, page four, question # 3: *Are the faculty or students exclusively of one religious type/sic/* Your response is that the CCU students are not required to affirm CCU's Statement of Faith but that in *...in admitting applicants, CCU attempts to assess whether its traditional undergraduate students (approximately 45% of CCU's total student body) would benefit from a liberal arts education in a Christian environment.* To clarify this response, does CCU admit students who are not Christian? Are there students currently enrolled in the undergraduate program referenced who belong to other faiths? Could you please send me the complete admissions policy?
- In the application under the same question, CCU responds that faculty members must affirm CCU's nondenominational Statement of Faith, but that they are not exclusively of one religious denomination. To clarify this response, does CCU hire faculty who are not Christian? Are there currently faculty members teaching in the undergraduate program who subscribe to a religion other than Christianity?
- In regard to the Board of Trustees, in response to Question #5 on page three of the application, you indicate that Board of Trustees must affirm a Statement of Faith, but that the Board of Trustees are *not limited to persons of a particular religious denomination.* Are there Board members who are outside the Christian faith or religion?
- Finally, you listed four required courses for the undergraduate program that are in the area of theology and biblical studies. Could you please send me the most recent syllabi for these courses?

Thank you for your cooperation and timely response to these questions. As Richard Schweigert told you, we are currently on track for the March Commission on Higher Education meeting.

If you have questions about the process or any of the requested materials, feel free to call me at 303-866-2723.

Sincerely,

Diane M. Lindner
Financial Aid Director



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March 3, 2004

Ms. Diane M. Lindner
Financial Aid Director
Colorado Commission on Higher Education
1380 Lawrence Street, Suite 1200
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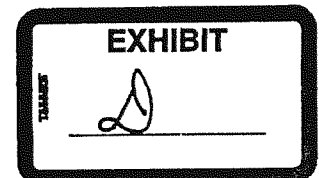
Re: Applying the "Pervasively Sectarian Test" Against Colorado Christian University

Dear Ms. Lindner:

This letter responds to your letter dated February 9, 2004. Colorado Christian University would like to thank you, and the others at CCHE, who have taken the time necessary to move up the review of CCU's application. CCU will continue to cooperate throughout this application process. Like the other colleges and universities which currently benefit from state-funded student financial assistance, CCU's goal is to provide an outstanding education to students in Colorado.

A. Threshold Issues Regarding the Pervasively Sectarian Test.

As I believe Brian Bissell related to you, because your letter addresses the legal issue of the "pervasively sectarian test," CCU has asked us to reply. Three general items should be understood at the outset. First, the pervasively sectarian test was a short-lived doctrine in constitutional law, misguided from the beginning. In 2000, Justice Thomas of the United States Supreme Court noted that it arose from a "period . . . that the Court should regret, and it is thankfully long past." Mitchell v. Helms, 530 U.S. 793, 826 (2000) (Thomas, J. writing for plurality). In the recent case of Locke v. Davey, 540 U.S. ____ (Feb. 25, 2004), Chief Justice Rehnquist explained that there was no constitutional problem with the State of Washington's Promise Scholarship Program "permit[ting] students to attend pervasively religious schools" Slip op. at 5 (Program does not violate Establishment Clause) and 10-11 (quote). In Locke, there is no indication that any of the Justices – either the seven-member majority or the two dissenters – were concerned about the religious character of the sectarian schools which could participate in the Program.



Ms. Diane M. Lindner
March 3, 2004
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It is worth recalling that the "pervasively sectarian test" arose from three cases decided between 1971 and 1976, called the "Tilton trilogy."¹ In 2000, a plurality of the Mitchell Court recognized that, as a factual matter, the test "has a shameful pedigree" because it was "born of bigotry" against Catholics. Id. at 828-29. As a legal matter, the Mitchell plurality found that the "relevance [of the test] in our precedents is in sharp decline." Id. at 826. Indeed, beginning in 1980, the Supreme Court has approved a long series of government programs² in which religious organizations benefit from direct or indirect government aid, without reference to whether the organizations were "pervasively sectarian" or not.³

Second, it should be recognized that the pervasively sectarian test violates the Constitution in two fundamental ways. First, its effect is to discriminate on the basis of religion, which the Constitution forbids. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) ("The First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general."); Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S.

¹The cases are: Tilton v. Richardson, 403 U.S. 672 (1971); Hunt v. McNair, 413 U.S. 734 (1973); and Roemer v. Bd. of Pub. Works, 426 U.S. 736 (1976).

²See Committee of Publ. Educ. and Religious Liberty v. Regan, 444 U.S. 646 (1980) (approving direct reimbursement to religious schools for performing state-mandated standardized tests and record keeping); Mueller v. Allen, 463 U.S. 388 (1983) (approving tuition tax credits); Witters v. Washington Dept. of Services for the Blind, 474 U.S. 481 (1986) (approving use of a vocational training voucher for a student studying at seminary to become a youth minister); Bowen v. Kendrick, 487 U.S. 589 (1988) (approving funds for abstinence based family planning programs to religious social welfare agencies); Hernandez v. Commiss'r of Internal Revenue, 490 U.S. 680 (1989) (approving tax deductions for charitable contributions to religious institutions); Lamb's Chapel v. Center Moriches Union Free Schl. Dist., 508 U.S. 384 (1993) (approval of rental of public school facilities for religious uses, *i.e.*, church's showing of film by Dr. James Dobson); Zobrest v. Catalina Foothills Schl. Dist., 509 U.S. 1 (1993) (approving government-paid sign language interpreter to sign Catholic school activities including religion classes and the words of Catholic Mass); Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995) (approving evangelical student group at a public college to use government funds for a student paper which had the purpose of proselytizing other students); Agostini v. Felton, 521 U.S. 203 (1997) (approving public school remedial education teacher assisting private schools); Mitchell v. Helms, 530 U.S. 793 (2000) (approving loans of educational materials to religious schools, including library and media materials, computer software and hardware); and Zelman v. Simmons-Harris, 536 U.S. 639 (U.S. 2002) (approving vouchers). Moreover, lower courts from around the country are following the United States Supreme Court's lead in disregarding the pervasively sectarian test. See Virginia College Bldg. Authority v. Lynn, 260 Va. 608 (2000) (approving tax exempt bond financing for pervasively sectarian school); Johnson v. Economic Development Corp. of the County of Oakland, 241 F.3d 501 (6th Cir. 2001) (approving tax exempt financing for a K-12 Catholic school); and Steele v. Industrial Development Board of the Metropolitan Government of Nashville and Davidson County, 301 F.3d 401 (6th Cir. 2002) (approving tax exempt financing for a "pervasively sectarian" Church of Christ university).

³Locke v. Davey does not disturb this uniform series of cases. In Locke, the Supreme Court held that, under the facts presented, it was permissible for the State of Washington to choose not to extend the Promise Scholarship Program to the study of devotional theology, *i.e.*, the Free Exercise Clause does not require such an extension. Slip op. at 1. The Court emphasized, moreover, that it would have been constitutional for Washington to choose to include this major, had it wanted to. Slip op. at 5.

Ms. Diane M. Lindner
March 3, 2004
Page 3

819 (1995). It is patently unconstitutional to deny an organization participation in a government program because the organization is “too religious,” *i.e.*, because it is “pervasively sectarian.” Second, the very inquiry by government into an organization’s religious character violates the Constitution. University of Great Falls v. NLRB, 278 F.3d 1335, 1340 (D.C. Cir. 2002) (“[T]he very inquiry by the NLRB into the University’s religious character . . . [violates] the principles of the Supreme Court’s decision in Catholic Bishop”). Yet, the pervasively sectarian test requires government entities, like CCHE, to scrutinize how religious an organization is. Indeed, your February 9 letter is a paradigmatic example of just this sort of government inquiry because its goal is to evaluate whether CCU is “really religious” – *i.e.*, pervasively sectarian – or just “a little religious” – *i.e.*, not pervasively sectarian.

The Department of Justice recently published a final rule in which it analyzes and ultimately finds that the pervasively sectarian test is unconstitutional under current Supreme Court precedent. *See Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of all Justice Department Program Participants*, 69 Fed. Reg. 2832-01, 2004 WL 86118 (F.R.) at *2834 (Jan. 21, 2004) (to be codified at 28 C.F.R. Parts 31, 33, 38, 90, 91, and 93). The Department concludes that, regardless of any anachronistic legislation to the contrary, it “may fund all service providers,” whether they are pervasively sectarian or not, and “without regard to religion and free of criteria that require the provider to abandon its religious expression or character.” *Id.* We believe CCHE should follow the Department of Justice’s example.

In addition, the United States Court of Appeals for the Fourth Circuit agrees that the pervasively sectarian test is no longer good law. In Columbia Union College v. Oliver, 254 F.3d 496 (4th Cir. 2001), it held that a private college was entitled to aid under Maryland’s grant program without resort to examining the college’s pervasively sectarian status. *Id.* at 507. The court disavowed the pervasively sectarian test, citing reasons from the Mitchell plurality and the concurrence of Justices O’Connor and Breyer. *Id.* at 501-04.

The third item to keep in mind is that CCHE, as an arm of the executive branch, has a duty to interpret and follow the Constitution. *See United States v. Nixon*, 418 U.S. 683, 703 (1974) (“In the performance of assigned constitutional duties, each branch of the Government must initially interpret the Constitution . . .”). Like other government bodies, it must interpret and apply statutes in a way to avoid constitutional difficulties. *See Harris v. United States*, 536 U.S. 545, 555 (2002). Thus, just as the Department of Justice did with its new regulation, CCHE must interpret the relevant statute in a way that will not violate the relevant constitutional principles. As discussed below, the Colorado Supreme Court has provided a road map regarding how to do this in the case involving Regis University.

Ms. Diane M. Lindner
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B. Responses to Your Questions.

With the above in mind, permit us to respond to your specific questions. (As requested, please find enclosed a copy of CCU's admissions policy and the most recent syllabi for the required theology and biblical studies courses.)

CCU's mission is "to serve God by providing Christ-centered higher education." Accordingly, it seeks to sustain a university community that exemplifies the Christian faith, while excelling in teaching and learning in the arts, sciences, and professional fields. Fifty-five percent of CCU's students are in the School of Adult and Graduate Studies. Forty-five percent are traditional undergraduates. CCU informs the applicants to its School for Adult and Graduate Studies of CCU's religious character and also that it "warmly welcomes adults of all creeds and faiths."

As regards its traditional undergraduates, CCU attempts to ensure that there is a good match between the university and its students. It, therefore, seeks to admit students who will benefit from a liberal arts education in a Christian environment. Neither those applying nor those admitted to CCU's traditional undergraduate school are required to make or sign a profession of faith. Applicants to the traditional undergraduate school are required to write an essay regarding their personal faith and to provide a letter of reference from someone familiar with their religious involvements. They are also asked if they have activities with a "Church/Christian organization" or a "Denomination." CCU, however, does not require church or denominational membership or Christian profession or Christian affiliation as a condition for admission, and it has admitted non-Christian students. As far as we have been able to determine, CCU does not keep track of each student's faith journey and does not maintain statistical information regarding the religious affiliations of its students. Accordingly, it has no way of determining whether it presently has non-Christian students in its traditional undergraduate program without polling its present students.

In keeping with its mission, CCU requires its faculty and members of its Board of Trustees to affirm its Statement of Faith (enclosed). This Statement of Faith recites that CCU "unites with the broad, historic evangelical faith rather than affiliating with any specific denomination." Moreover, CCU does not attempt to assess whether or where its faculty and trustees worship.

At this point, it is helpful to contrast the leading Colorado case on this issue. In Americans United for Separation of Church and State v. State of Colorado, 648 P.2d 1072 (Colo. 1982), the Colorado Supreme Court examined the religious character of Regis College, a Jesuit university. Jesuits are members of the Society of Jesus, a tightly organized religious order within the Roman Catholic Church founded by Saint Ignatius of Loyola in 1534. The Court related that the majority of the trustees of Regis College were required to be Jesuits, *i.e.*, they were required to be ordained members of one particular religious order of the Roman Catholic Church. *Id.* at

Ms. Diane M. Lindner
March 3, 2004
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1076. The religious preferences of the Regis faculty were: Catholic 20, Episcopalian 7, Methodist 4, Lutheran 2, Congregationalist 1, Jewish 1, Mormon 1, no preference 2, and unknown 11. Id. The religious preferences of Regis students were: Catholic 80%, Episcopalian 2%, Lutheran 2%, Methodist 1%, Baptist 1%, and unspecified religious persuasions 14%. Id. In addition, like CCU, Regis College adhered to the "1940 Statement of Principles on Academic Freedom and Tenure." Id. The Court held that these facts about Regis College did not require a finding that it was "pervasively sectarian." See id. at 1076-77, 1087-88. While CCU does not, as explained above, maintain statistical information regarding the religious affiliations of its traditional undergraduates or its other students, it thinks it is quite likely that its student body is less concentrated in a single denomination than the statistics published in the Regis University case.

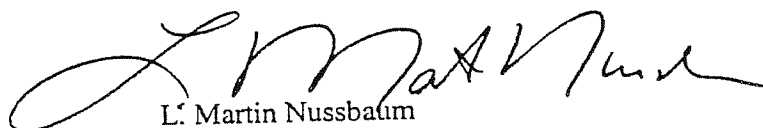
CCU submits that it compares favorably to Regis College.⁴ While Regis College required that a majority of its Trustees belonged to one religious order *within* the Roman Catholic Church, CCU permits a diversity of Christians to serve as Trustees. Likewise, while the student and faculty populations at Regis College were dominated by Roman Catholics, CCU's student body and faculty are likely to be much more denominationally diverse. There was no evidence showing that Regis College had enrolled non-Christian students, and there were only two non-Christian faculty – as compared with 20 exclusively Catholic faculty. Regis College, like CCU, subscribed to the Principles on Academic Freedom.

Accordingly, for all the reasons related in this letter, we believe that CCHE must conclude that CCU may participate in state-funded student financial assistance.

Please do not hesitate to contact me or Brian Bissell if you would like us to provide you with any further information. Mr. Bissell and I will both plan to be present at the appropriate meeting of the Commission so that we might answer any additional questions you or the commissioners might have

Sincerely yours,

ROTHGERBER JOHNSON & LYONS LLP


L. Martin Nussbaum

LMN/ksl
cc: Brian Bissell

⁴At the same time, however, we reiterate that this very process of inquiry into "how religious" a school is violates the First Amendment.



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October 18, 2004

Richard O'Donnell, Executive Director
Colorado Commission on Higher Education
1380 Lawrence Street, Suite 1200
Denver, Colorado 80204

Dear Mr. O'Donnell,

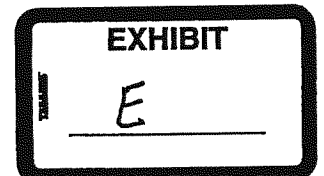
As you know, Colorado Christian University (CCU) has applied to the Colorado Commission on Higher Education (CCHE) to participate in state-funded student financial assistance as well as the College Opportunity Fund program. CCU's goal throughout this process has been to qualify for these programs so that Colorado students who would like to attend CCU have the financial means to obtain a quality education.

It appears there is just one item preventing CCU's acceptance: whether it is "pervasively sectarian," as defined by Colorado law. See Colo. Rev. Stat. § 23-3.5-105. As we explained in our letter dated March 3, 2004, it is unconstitutional for government both to (1) evaluate how religious an institution is and (2) discriminate between institutions that are "somewhat religious" and "too religious," as the pervasively sectarian inquiry requires. Moreover, CCHE, as an arm of the executive branch, has a legal duty to interpret the relevant statutes regarding "pervasively sectarian institutions" in a way to avoid constitutional difficulties. See Harris v. United States, 536 U.S. 545, 555 (2002). Putting aside these constitutional issues, however, we remain convinced that CCU is not "pervasively sectarian" as that term is defined under Colorado law.

This is especially evident if you make a point-by-point comparison of CCU and Regis College (now called "Regis University"¹). As you know, Regis College litigated precisely this issue for seven years between 1977 and 1984.² Despite vigorous opposition, Regis was held to

¹Regis changed its name from Regis College to Regis University in 1991. See www.regis.edu/about Regis/history/timeline.

²See Americans United For Separation of Church and State Fund, Inc. v. State of Colorado, 648 P.2d 1072 (Colo. 1982).



Richard O'Donnell, Executive Director
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not be pervasively sectarian by CCHE (in 1977), by the Denver District Court (in 1981), by the Colorado Supreme Court (in 1982),³ and again by the Denver District Court (in 1984 on remand⁴ from the Colorado Supreme Court).

CCU asked us to research the precise religious character of Regis College between 1977 and 1984, so that this point-by-point comparison would be as careful and thorough as possible. Accordingly, on June 7, 2004, we reviewed the complete records from both the appeal to the Colorado Supreme Court, stored at the Colorado State Archives, and the lower court proceedings, converted to microfiche and saved at the Denver District Court. The facts regarding Regis College presented below are drawn from those materials⁵ and the published Supreme Court opinion.⁶

To complete the comparison, CCU conducted a comprehensive survey of its students, faculty, and board members at the beginning of its 2004-05 school year. The results of that survey are presented in this letter.

As you likely know, the statute defining "pervasively sectarian" has not been amended since its enactment in 1977. See Colo. Rev. Stat. § 23-3.5-105(1) (enacted in 1977 by S.B. 398 § 1). That statute provides, in full:

An institution of higher education shall be deemed not to be pervasively sectarian if it meets the following criteria:

- (a) The faculty and students are not exclusively of one religious

³To be precise, six of seven justices of the Supreme Court affirmed the District Court's finding in every respect except one: "For the purpose of summary judgment the record raises no question of fact as to whether Regis meets most of the statutory criteria However, the record before us does not adequately establish, for the purpose of summary judgment, that the governing board of Regis College does not reflect a particular religion." Americans United, 648 P.2d at 1087-88 (citing Section 23-3.5-105(1)(e)). Justice Rovira dissented as to the majority's caveat; he would have upheld *in toto* the finding that Regis was not pervasively sectarian. Id. at 1088-89.

⁴As described in footnote 3, on remand the district court was to address only the narrow issue of whether Regis's governing board reflected a particular religion. After a two-day bench trial, the court found that it did not. See Judgment dated April 13, 1984 (enclosed with this letter).

⁵These materials are enclosed with this letter.

⁶Americans United, 648 P.2d at 1076-77, 1087-88.

Richard O'Donnell, Executive Director
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persuasion.

- (b) There is no required attendance at religious convocations or services.
- (c) There is a strong commitment to principles of academic freedom.
- (d) There are no required courses in religion or theology that tend to indoctrinate or proselytize.
- (e) The governing board does not reflect nor is the membership limited to persons of any particular religion.
- (f) Funds do not come primarily or predominantly from sources advocating a particular religion.

Colo. Rev. Stat. § 23-3.5-105(1).⁷ Accordingly, this comparison follows the categories from the statute.

A. The students are not exclusively of one religious persuasion.

1. Regis College

Regis submitted the following statistics about its student body, from a survey of 987 students in the Spring 1976-77 semester:⁸

Baptist	1%
Catholic	80%
Episcopalian	2%
Lutheran	2%
Methodist	1%
Presbyterian	0.004%
Unspecified	14%

The district court in 1984, after its two day bench trial, found that “students are not evaluated for admission on the basis of religious preference.” *Judgment* at 5 (¶ v). Also, the court noted that financial aid is available without regard to religion, and that “expenses do not differ depending on a student’s religious preference.” *Judgment* at 5 (¶ w).

2. Colorado Christian University

From a survey of 1062 students taken in the summer 2004, the religious composition of CCU’s student body is:

⁷See also Colo. Rev. Stat. § 23-3.7-104 (identical statute enacted in 1986).

⁸See Americans United, 648 P.2d at 1076.

Richard O'Donnell, Executive Director

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Baptist	149	14.03%
Episcopal	6	0.56%
Evangelical	121	11.39%
Fundamentalist	4	0.38%
Greek Orthodox	1	0.09%
Hindu	1	0.09%
Jewish	2	0.19%
Lutheran	33	3.11%
Mennonite	6	0.56%
Methodist	38	3.58%
Mormon	4	0.38%
Non-Denominational	428	40.30%
None (atheist or agnostic)	6	0.56%
Pentecostal	85	8.00%
Presbyterian	77	7.25%
Roman Catholic	66	6.21%
Seventh Day Adventist	5	0.47%
United Church of Christ	4	0.38%
Unspecified (Christian)	26	2.45%

Fifty-five percent of CCU's students are in the School of Adult and Graduate Studies. Forty-five percent are traditional undergraduates. CCU informs the applicants to its School for Adult and Graduate Studies of CCU's religious character and also that it "warmly welcomes adults of all creeds and faiths." As regards its traditional undergraduates, neither those applying nor those admitted are required to make or sign a profession of faith. Applicants to the traditional undergraduate school are required to write an essay regarding their personal faith and to provide a letter of reference from someone familiar with their religious involvements. They are also asked if they have activities with a "Church/Christian organization" or a "Denomination." CCU, however, does not require church or denominational membership or any particular religious profession or affiliation as a condition for admission. Furthermore, as shown above, it has admitted non-Christian students. Moreover, like Regis, financial aid at CCU is available without regard to religion, and expenses do not differ depending on a student's religious preference.

B. The faculty are not exclusively of one religious persuasion.

1. Regis College

Out of 49 faculty in 1977, Regis reported:⁹

⁹See Americans United, 648 P.2d at 1076.

Richard O'Donnell, Executive Director
October 18, 2004
Page 5

Catholic 20 (15 of whom were Jesuits)
Congregationalist 1
Episcopalian 7
Jewish 1
Lutheran 2
Methodist 4
Mormon 1
no preference 2
unknown 11

By 1984, only 12 of the regular faculty members were Jesuits, and, the trial court noted, there were numerous members of other faiths, including a department head who was an Episcopalian. *Judgment* at 4 (¶ n). The district court also found in 1984 that the trustees showed no denominational preference regarding hiring, tenure, or promotion. *Judgment* at 4 (¶ k).

It is noteworthy that the courts did not find the preponderance of Jesuits at Regis pushed it over the line of "pervasively sectarian." As you likely know, "Jesuits" are members of the Society of Jesus, a tightly organized religious order within the Roman Catholic Church founded by Saint Ignatius of Loyola and canonically established by Pope Paul III in 1540. See *The Oxford Dictionary of World Religions* 496 (John Bowker, ed., Oxford Univ. Press 1997); 8 *The Encyclopedia of Religion* 14 (Mircea Eliade, ed., MacMillan Publ. Co. 1987). Throughout history, they have been known for their strong allegiance to the Pope, often called the Pope's "shock troops" or "Marines." There is no comparable group at CCU.

2. Colorado Christian University

From a survey of 97 faculty taken in the summer 2004, the religious composition of CCU's faculty is:

Baptist	13	13.40%
Episcopal	3	3.09%
Evangelical	12	12.37%
Fundamentalist	1	1.03%
Lutheran	10	10.31%
Methodist	3	3.09%
Non-Denominational	24	24.74%
Other	2	2.06%
Pentecostal	2	2.06%
Presbyterian	23	23.71%
Roman Catholic	2	2.06%

Richard O'Donnell, Executive Director
October 18, 2004
Page 6

United Church of Christ 2 2.06%

In keeping with its mission, CCU requires its faculty to affirm its non-denominational Statement of Faith (enclosed). This Statement of Faith recites that CCU "unites with the broad, historic evangelical faith rather than affiliating with any specific denomination." Until this application process for CCHE, CCU had never sought to determine the religious preference of its faculty. As shown above, however, now that it has done so, it can take pride in the religious diversity of its faculty.

C. There is no required attendance at religious convocations or services.

1. Regis College

Regis College's bylaws stated that religious services were offered but attendance was not required of students or faculty.¹⁰ After the trial in 1984, the court found that Regis's chapel was owned by and located in the Jesuit residence on campus, but "persons of other faiths are allowed to use the chapel on a regular basis." *Judgment* at 3 (¶ f). While there was a Campus Ministry in 1984, the court found that "this is not evidence that the Board reflects a particular religion." *Judgment* at 4 (¶ j).

2. Colorado Christian University

Like Regis, CCU offers religious services but does not require them for its adult and graduate students (about 55% of CCU's student population). In its traditional undergraduate program at its Lakewood campus (about 45% of students), students must attend twenty-five of thirty chapel services each semester. These services are held twice per week and last less than one hour. Exemptions are available for students with a direct, unavoidable work conflict.

D. There is a strong commitment to principles of academic freedom.

1. Regis College

Regis subscribed to the 1940 Statement of Principles on Academic Freedom and Tenure.¹¹

¹⁰See Americans United, 648 P.2d at 1076; *Regis Answer Brief* at 7 (enclosed).

¹¹Americans United, 648 P.2d at 1076.

Richard O'Donnell, Executive Director
October 18, 2004
Page 7

2. Colorado Christian University

Identical to Regis, CCU has adopted the 1940 Statement of Principles of Academic Freedom of the American Association of University Professors and the Association of American Colleges.¹²

E. There are no required courses in religion or theology that tend to indoctrinate or proselytize.

1. Regis College

Regis required nine semester hours of religious study for a bachelor's degree. Its bylaws stated that these courses "are not limited to the Roman Catholic Religion, and there is no effort by [Regis] to proselytize religion." This course requirement could be satisfied with courses in "religion and culture," like courses on Asian Religions, Hinduism, Buddhism, and Taoism.

The district court in 1984 found that in setting the curriculum "there is no particular emphasis on the Roman Catholic faith" and the required religion courses "do not emphasize Roman Catholic views." The court concluded that the religious courses were academic, and not for the purpose of indoctrinating students. *Judgment* at 3 (¶ h).

2. Colorado Christian University

Generally, CCU's adult and graduate students (about 55% of students) do not have any required curriculum. Thus, only CCU's traditional undergraduate students (about 45% of students) must successfully complete twenty-four courses in general education requirements and two courses in foreign languages. The general education requirements are organized under eight areas of study: behavioral and social sciences, communication, computers, humanities, mathematics, natural science, integrative studies, and theology and biblical studies. Of the twenty-six required courses, there are four theology and biblical studies courses for traditional undergraduate students. Adult students must complete two courses in theology or biblical studies. Like at Regis, these CCU courses are intended to educate, not to indoctrinate or proselytize.¹³

¹²See Faculty Handbook Section 3, Part 3.7, pgs. 2-3 (attached to CCU's initial application to CCHE).

¹³See CCU's application at 4 (and attached documents) for the titles and content of these courses.

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F. The governing board does not reflect nor is the membership limited to persons of any particular religion.

1. Regis College

After the trial in 1984, the district court noted that "there are currently 29 members of the Board, of whom 15 are Jesuits and the remainder are primarily of the Catholic persuasion, although at least two Board members are not Catholic." Slip op. at 3 (¶ b). Indeed, Regis's bylaws required that a majority of the trustees be Jesuits and that the president of the College be Jesuit. Slip op. at 3 (¶ d).

As noted above, because of this heavy presence of Jesuits required to serve as trustees (and the president), the Colorado Supreme Court held that Regis satisfied only the latter half of the fifth criterion, *i.e.*, trustees were "not limited to persons of any particular religion." The Court remanded for more factual development on the former half, *i.e.*, whether Regis's governing board "reflected" the Roman Catholic Church.¹⁴

Despite the trial court's findings that 27 of 29 trustees were "of the Catholic persuasion," and over 50% of trustees were required to be, and were, Jesuits (and that the president was required to be, and was, Jesuit), the courts held that Regis's board was "not limited to" Catholics (or Jesuits) and that it did not "reflect" the Catholic Church. Thus, the court determined that Regis fully satisfied the fifth criterion. Again, this finding is particularly remarkable given the history and intensity of Jesuits within the Catholic tradition.

2. Colorado Christian University

In contrast to Regis's predominance of Catholics (and Jesuits), CCU's governing board is much more diverse.

Baptist	3	13.64%
Evangelical	6	27.27%
Non-Denominational	6	27.27%
Presbyterian	7	31.82%

¹⁴Americans United, 648 P.2d at 1088. Justice Rovira dissented from that portion of the majority opinion, finding that the record "amply supports the judgment of the trial court that the governing board of Regis College does not reflect a particular religion." Id. at 1088-89.

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CCU's Board of Trustees currently has twenty-two members. The bylaws prescribe that the Board shall not consist of less than seven persons.¹⁵ CCU trustees must affirm a non-denominational Statement of Faith, which includes the statement that CCU "unites with the broad, historic evangelical faith rather than affiliating with any specific denomination." It is clear that CCU's governing board is far more religiously diverse than Regis's was in 1977 to 1984.

G. Funds do not come primarily or predominantly from sources advocating a particular religion.

1. Regis College

The Colorado Supreme Court recounted that Regis received its revenues from the following sources:¹⁶

Student tuition and fees	73%
Continuing education	10%
Federal student aid	7%
Private gifts and grants	7%
Jesuit cash gifts	2%
Unspecified sources	1%

The plaintiffs in the case, the advocacy group Americans United for Separation of Church and State, argued that Regis failed this requirement because 73% of Regis's funds came from students and 80% of Regis's students were Catholic. The Supreme Court rejected this argument as a "mechanical application" of the statute. The Court wrote:

Rather, the purpose of section 23-3.5-105(1)(f) is to ensure that no organized group advocating a particular religion in an official capacity contributed in a significant way to the funding of the institution. Regardless of their religious predilections, students as individuals are not "sources advocating a particular religion" within the meaning of the statute.

Americans United, 648 P.2d at 1088 n.15.

¹⁵See Bylaws at Article II, § 1 (attached to application).

¹⁶Americans United, 648 P.2d at 1077.

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Regis represented that at that time "there [were] about twelve Catholic institutions in the United States who receive[d] their money in part from a Bishop or directly from the diocese Regis does not, and never has."¹⁷

Dr. Emmet, special assistant to Regis's president, testified that Regis "receives no support from the Catholic Church nor has any legal, moral, or other ties to the Catholic Church." Dr. Emmet explained that when Regis stated that it was "in the Catholic tradition" it meant that "it's in the tradition of the value-oriented education, service to others."¹⁸

2. Colorado Christian University

Like Regis, CCU's funds come from the following sources:

	<u>2004</u>		<u>2003</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
Student tuition and fees:	16,185,668	76.7%	15,473,518	75.8%
Federal student aid:	336,351	1.6%	426,297	2.1%
Private gifts and grants:	688,859	3.3%	678,782	3.3%
Auxiliary services: ¹⁹	3,540,820	16.8%	3,430,495	16.8%
Investment income:	56,812	0.3%	26,551	0.1%
Other sources:	<u>268,534</u>	<u>1.3%</u>	<u>342,415</u>	<u>1.7%</u>
Total revenue and support:	<u>\$ 21,077,044</u>	<u>100.0%</u>	<u>\$ 20,378,058</u>	<u>100.0%</u>

Also like Regis, CCU receives no support from, nor does it have ties to, any particular church or other "source advocating a particular religion." In contrast to Regis, CCU has no comparable income stream like "Jesuit cash gifts." This is yet another way in which CCU is less "pervasively sectarian" than Regis was when it was approved.

H. Conclusion

On each of the six statutory criteria, CCU compares as well or better than Regis College. Accordingly, CCHE should find that CCU is not "pervasively sectarian," and thus should permit CCU to fully participate in Colorado's state-funded student financial aid programs and the College Opportunity Fund program.

¹⁷See Regis Answer Brief at 11 (citing deposition testimony of Dr. Emmet).

¹⁸Id.

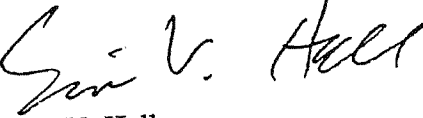
¹⁹"Auxiliary services" are things like student housing, dining, and bookstore revenues.

ROTHGERBER JOHNSON & LYONS LLP

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October 18, 2004
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Sincerely yours,

ROTHGERBER JOHNSON & LYONS LLP


Eric V. Hall

EVH/ksl

cc: Brian Bissell
Tony Dill

STATE OF COLORADO

Department of Higher Education
COLORADO COMMISSION ON HIGHER EDUCATION

Judy Weaver, Chair
Terrance L. Farina, Vice Chair
Judith Altenberg
Raymond T. Baker
Michael F. Feeley
Richard L. Garcia
Pres Montoya
Dean L. Quamme
Greg C. Stevinson
James M. Stewart
William Vollbracht



Bill Owens
Governor

Richard F. O'Donnell
Executive Director

November 4, 2004

Brian T. Bissell
Vice President for Business Affairs and Chief Financial Officer
Colorado Christian University
180 South Garrison Street
Lakewood, Colorado 80226

Dear Mr. Bissell,

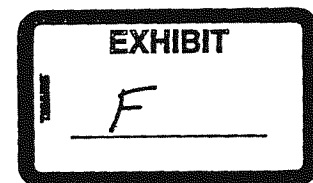
Since meeting with you and Colorado Christian University's legal council and reviewing your attorney, RJ&L's letter of October 18, 2004, which outlines Colorado Christian University's argument for inclusion in the College Opportunity Fund program, we have reviewed the pertinent materials and consulted with the Attorney General's Office regarding the "pervasively sectarian" language that is in dispute. Our review also included the documentation that you asked our office to review in Section 7 of your College Opportunity Fund program bid application.

As you know, the Colorado Department of Higher Education's primary responsibility is one of upholding current Colorado law, and the "pervasively sectarian" test is required by current State statute. The Department must therefore apply that test to determine whether an institution is eligible to participate in the College Opportunity Fund program. Based on our review of the relevant facts, documentation and other information, it is the Department's conclusion that CCU is "pervasively sectarian" and as such is not eligible to participate in Colorado's College Opportunity Fund program.

If you have any questions or would like to discuss the issue further, please feel free to contact me at 303-866-2723.

Sincerely,

Rick O'Donnell



STATE OF COLORADO

Department of Higher Education
COLORADO COMMISSION ON HIGHER EDUCATION

Judy Weaver, Chair
Terrance L. Farina, Vice Chair
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James M. Stewart
William Vollbracht



Bill Owens
Governor

Richard F. O'Donnell
Executive Director

November 5, 2004

Brian T. Bissell
Vice President for Business Affairs and Chief Financial Officer
Colorado Christian University
180 South Garrison Street
Lakewood, Colorado 80226

Dear Mr. Bissell,

The Colorado Department of Higher Education, through consultation with the Attorney General's Office, has completed its review of Colorado Christian University's application for participation in Colorado's state-funded student assistance programs. This review took into consideration all documentation that the institution previously forwarded in its original application your and RJ&L's letters from March 3, 2004 and October 18, 2004.

As you know, the Colorado Department of Higher Education's primary responsibility is one of upholding current Colorado law, and current State Statute requires the "pervasively sectarian" test. The Department must therefore apply this test to determine whether an institution is eligible to participate in state-funded financial aid programs. Based on our review of the relevant facts, and provided documentation, it is the Department's conclusion that CCU is "pervasively sectarian" and is not eligible to participate in Colorado's state-funded student assistance programs.

If you have any questions or would like to discuss the issue further, please feel free to contact me at 303-866-2723.

Sincerely,

Rick O'Donnell

