

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

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| BUSINESS LEADERS IN CHRIST, an, |) | |
| unincorporated association, |) | CASE NO. 3:17-CV-00080 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE UNIVERSITY OF IOWA; LYN |) | DEFENDANTS' RESISTANCE |
| REDINGTON, in her official capacity as |) | TO PLAINTIFF'S MOTION |
| Dean of Students and in her individual |) | FOR PRELIMINARY INJUNCTION |
| capacity; THOMAS R. BAKER, in his |) | |
| official capacity as Assistant Dean of |) | |
| Students and in his individual capacity; and |) | |
| WILLIAM R. NELSON, in his official |) | |
| capacity as Executive Director, Iowa |) | |
| Memorial Union, and in his individual |) | |
| capacity, |) | |
| |) | |
| Defendants. |) | |
| |) | |
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COME NOW the Defendants and in their resistance Plaintiff’s Motion for Preliminary Injunction state:

1. BLinC is no longer a “recognized” student organization as defined by the University of Iowa guidelines because of its failure to comply with non-discrimination laws, policies and regulations.
2. The University of Iowa’s actions are neutral and support compelling state interests.
3. BLinC is not entitled to a preliminary injunction under controlling standards.

4. BLinC does not have standing to assert rights on behalf of other student organizations. Furthermore, the purpose of a preliminary injunction is to return a party to the status quo and not further equitable relief.

WHEREFORE, Defendants request the Court to deny the application for a preliminary injunction.

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Original filed electronically.

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| PROOF OF SERVICE | |
|--|--|
| The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on January 5, 2018: | |
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
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| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> ECF System Participant (Electronic Service) | |
| Signature: <u>/s/Betty Christensen</u> | |

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| BUSINESS LEADERS IN CHRIST, an, unincorporated association, |) | CASE NO. 3:17-CV-00080 |
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| Plaintiff, |) | |
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| vs. |) | |
| |) | |
| THE UNIVERSITY OF IOWA; LYN REDINGTON, in her official capacity as Dean of Students and in her individual capacity; THOMAS R. BAKER, in his official capacity as Assistant Dean of Students and in his individual capacity; and WILLIAM R. NELSON, in his official capacity as Executive Director, Iowa Memorial Union, and in his individual capacity, |) | DEFENDANTS’ BRIEF IN SUPPORT OF RESISTANCE TO PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION |
| |) | |
| Defendants. |) | |
| |) | |

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INTRODUCTION

Plaintiff, Business Leaders in Christ (“BLinC”) brought an action against Defendants, the University of Iowa, Lyn Redington, Thomas R. Baker and William R. Nelson (hereinafter collectively “Iowa”), alleging that Iowa violated its rights with respect to religious freedom. At this time, BLinC seeks a preliminary injunction to require Iowa to recognize BLinC as an affiliated student group.

FACTUAL BACKGROUND

On or about February 20, 2017, a University of Iowa student filed a complaint against BLinC asserting that BLinC discriminated against him because of his sexual orientation, stating he was “openly gay”. (Doc 1-2, Exhibit B, p. 2).

On or about June 30, 2017, the University of Iowa issued a finding on the formal complaint filed against BLinC. [Doc 1-20, p. 18-52]. BLinC appealed that decision and a response was provided on or about November 16, 2017 denying the appeal. [Doc. 1-21, p. 2-3]. BLinC was informed that the decision was final University action and that BLinC could appeal the decision to the Board of Regents, State of Iowa. BLinC did not appeal that decision. Instead, on December 11, 2017, BLinC filed the instant action.

BLinC is an organization of students that was previously recognized by the University of Iowa (“Iowa”). BLinC’s membership is open to University of Iowa students under the following terms:

“Membership in BLinC shall be open to all students without regard to race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identity, associational preferences, or any other classification that deprives the person of consideration as an individual. The organization will guarantee that equal opportunity and equal access to membership, programming, facilities, and benefits shall be open to all persons.”

(Doc. 1-1, Ex. A, p. 2. Art. II, Section 1).

Article III provides for officers and duties in the following manner:

“All Officers are required to affirm that they accept and seek to live BLinC’s religious beliefs as set forth in its Statement of Faith attached as Exhibit A. They must be prepared to provide spiritual leadership for the organization, including leading prayer and Bible study, explaining the content of BLinC’s religious beliefs, and ministering to others. They should have knowledge of, and agreement with, BLinC’s mission and an understanding of how to model the values of the organization for the rest of the membership. All Officers are expected to uphold BLinC’s religious beliefs and help ensure that the organization remains true to its religious mission, as described in this paragraph.”

(Doc 1-1, Ex. A, p. 2 Art. III(1)).

BLinC’s Statement of Faith provides in part:

“All Christians are under obligation to seek to follow the example of Christ in their own lives and in human society. In the spirit of Christ, Christians should oppose racism, every form of greed, selfishness, and vice, and all forms of sexual immorality, including pornography. We believe God’s intention for a sexual relationship is to be between a husband and a wife in the lifelong covenant of marriage. Every other sexual relationship beyond this is outside of God’s design and is not in keeping with God’s original plan for humanity. We believe that every person should embrace, not reject, their God-given sex. We should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick. We should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death.”

(Doc. 1-1, Ex. A, 1, p. 8, bottom page).

Stuart Stutzman is an accountant in the Student Organization Business Office (SOBO), a component of the Center for Student Involvement & Leadership at the University of Iowa. When a registered student organization submits a funding request, that request is reviewed by both student governments: University of Iowa Student Government (UISG) and Graduate & Professional Student Government (GPSG). UISG’s funding standards can be found here:

<https://uisg.uiowa.edu/funding/max-funding-standards/>. GPSG's funding guidelines can be found here: <https://gpsg.uiowa.edu/assets/Uploads/2017-2018-GPAC-funding-guidelines-and-tenets-.pdf>, and GPSG's Organization Priority List can be found here: <https://gpsg.uiowa.edu/assets/Uploads/FY18-Organization-priority-list2.xlsx>. BLinC is a GPSG Priority 3 organization. (Attached Affidavit of Stutzman).

UISG and GPSG distribute funding to student organizations, which comes from Student Activity Fees (SAF) collected with tuition. BLinC did not request, and thus did not receive, any SAF funds during the current fiscal year, FY18. The Undergraduate Programs Office at the Tippie College of Business deposited \$25.00 into the BLinC account in August to be spent on printing. These funds have not been spent. During FY17, BLinC requested SAF funding for office supplies, printing/advertising, travel, and speaker honoraria for an event. UISG allocated \$100 for office supplies, \$170 for printing/advertising, and \$600 for travel. GPSG allocated \$150 for speaker honoraria. BLinC spent \$546.26 of the travel funding. All other funding was unspent and returned to UISG and GPSG at fiscal year-end. Failure to comply with maximum funding standards will result in a loss of allocated funds and/or probation of funds by UISG. UISG reserves the right to freeze accounts if money is being used in an unethical or suspicious manner. UISG also reserves the right to audit a registered student organization's account at any time. The SOBO conducts an annual audit of all allocated SAF money at the end of each academic year. At this time, corrections are made, if necessary, and the unspent SAF amounts are calculated for reversion back to the student governments. On the front end, all transactions are pre-approved by SOBO staff. SOBO staff have access to view all submitted and approved funding requests in OrgSync so that SOBO can determine whether it is appropriate to apply SAF funding to the transaction in question. (Attached Affidavit of Stutzman).

Kristi Finger is the Assistant Director of Reservations and Outdoor Space, an office within the Iowa Memorial Union (IMU) at the University of Iowa and just recently, but formerly, this past Fall was the Student Life Program Coordinator in the IMU and therefore she is familiar with the day-to-day administration of student organizations. BLinC was first registered as a Student Organization on August 20, 2014. Registration as a student organization grants the following benefits, which can also be found here: <https://dos.uiowa.edu/policies/registration-of-student-organizations/>.

- a) Registration as a University organization;
- b) Establishment of an account in the Student Organization Business Office (SOBO), Fraternity Business Service, or Recreational Services and appropriate purchasing privileges in accordance with University policies;
- c) Eligibility to apply for funds from mandatory Student Activity fees (i.e., for student organizations) or Recreational Services fees (i.e., for sports clubs);
- d) Inclusion in appropriate University publications;
- e) Utilization of the Center for Student Involvement & Leadership's (CSIL) OrgSync software (funded by UISG & GPSG)
- f) Utilization of the University's trademarks in accordance with the UI Trademark Licensing Department's program and policies;
- g) Eligibility for use of campus meeting facilities and outdoor spaces;
- h) Eligibility, but not the right, to utilize UI Fleet Services vehicles in accordance with state and University policies, procedures, guidelines, and insurance requirements;
- i) Eligibility, but not the right, to utilize University staff and programming resources;
- j) Eligibility, but not the right, to utilize Information Technology Services Mass Mail once each semester;
- k) Eligibility to apply for awards and honors presented to University registered organizations and members; and
- l) Eligibility to apply for Student Organization Office Suite (SOOS) or Student Activity Center (SAC) office space and/or storage space.

(Attached Affidavit of Finger).

Registered student organizations (RSOs) have the opportunity to participate in the Student Organization Fair. The Student Organization Fair is part of "Fair Days" at Iowa. Fair Days happens in August and January. Fair Days includes the Student Organization Fair, Student

Employment Fair, and Volunteer Fair. RSOs register for a table/space at the Student Organization Fair. Space is allocated on a first-come, first-served basis. There is a deadline by which RSOs must register. Space can be limited when the Fair is inside the IMU in February. Space is not necessarily limited if the Fair in August is on Hubbard Park. But the deadline is necessary for both the August and January Fairs. RSO are given a table/space if they apply, if they meet the deadline, and if there is space available. RSOs staff the table with members, they can distribute flyers and swag, and interested students can “sign-up” for membership or additional information. (Attached Affidavit of Finger).

Below is the list of Student Organization Fairs since BLinC became registered in Fall 2014 and BLinC’s participation:

Fall 2017 – Did Not Participate
Spring 2017 - Participated
Fall 2016 - Participated
Spring 2016 - Participated
Fall 2015 – Did Not Participate
Spring 2015 – Did Not Participate
Fall 2014 – Did Not Participate

(Attached Affidavit of Finger).

TEMPORARY INJUNCTION STANDARD

The first inquiry is to establish the standard to grant or deny a temporary injunction. On a motion for preliminary injunction, the Court should consider the following factors:

- 1) the threat of irreparable harm to the movant;
- 2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties;
- 3) the probability that movant will succeed on the merits; and
- 4) the public interest.

Dataphase Sys. Inc. v. CL Sys., Inc., 640 F2d 109, 113 (8th Cir. 1987).

BLinC argues that the lessor standard of review under *Dataphase* applies because the challenge is to “informal rules”. (Memorandum, p. 9). This argument is significant.

In *Planned Parenthood Minnesota, North Dakota, South Dakota, et. al., v. Mike Rounds, et al.*, 530 F.3d 724 (8th Cir. 2008), the Court refined the *Dataphase* test to require the movant to demonstrate that it “is likely to prevail on the merits” when a party seeks to enjoin the implementation of a state law or regulation. *Id.* at 734. The Eighth Circuit held that “policies implemented through legislation or regulations developed through presumably reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.” *Id.* citation omitted. If this showing is made then, and only then, should the Court consider the other *Dataphase* factors. The Court stated:

By re-emphasizing this more rigorous standard for demonstrating a likelihood of success on the merits in these cases, we hope to ensure that preliminary injunctions that thwart a state’s presumptively reasonable democratic process are pronounced only after an appropriately deferential analysis.

Id. at 734.

Accordingly, the initial inquiry is whether Iowa’s implementation of its policies was initially part of a reasoned democratic process. The challenged policy provides:

“The University of Iowa brings together in common pursuit of its educational goals persons of many nations, races, and creeds. The University is guided by the precepts that in no aspect of its programs shall there be differences in the treatment of persons because of race, creed, color, religion, national origin, age, sex, pregnancy, disability, genetic information, status as a U.S. veteran, service in the U.S. military, sexual orientation, gender identify, associational preferences, or any other classification that deprives the person of consideration as an individual, and that equal opportunity and access to facilities shall be available to all. These principles are expected to be observed in the internal policies and practices of the University; specifically in the admission, housing, and education of students; in policies governing programs of extracurricular life and activities; and in the employment of faculty

and staff personnel. Consistent with state and federal law, reasonable accommodations will be provided to persons with disabilities and to accommodate religious practices. The University shall work cooperatively with the community in furthering these principles.”

(Doc 7-2, Ex. C, p 17.)

The University of Iowa was created by the Iowa Constitution Article IX, § 11, and is a state entity. The Board of Regents governs the University of Iowa. Iowa Code section 262.7(1). The Board of Regents is a state administrative agency with its members appointed by the Governor of Iowa and approved by the Iowa Senate § 262.2, Iowa Code. The Regents have implemented regulations pursuant to Chapter 17A, Iowa Code. The Board of Regents Rules are promulgated in Chapter 681 of the Iowa Administrative Code. Pursuant to I.A.C. 681-12.4(262), the University of Iowa is authorized to create an operations manual. It is that manual that is in dispute. Pursuant to I.A.C. 681.11.1(J):

The president of each institution is delegated the authority to adopt policies as may be appropriate for the operation of the individual institution and which are not inconsistent with the general rules and policies by the board. The board of regents retains the authority to rescind any institutional policy.

Iowa’s challenged Policy on Human Rights are consistent with Iowa law – Chapter 216, Iowa Code, and Regents’ policies and have not been rescinded by the Regents. Accordingly, petitioner seeks to enjoin a reasoned democratic decision and not “informal rules” and the higher standard of review applies.

ARGUMENT

I. BLinC IS NOT LIKELY TO SUCCEED ON ITS FIRST AMENDMENT CLAIMS AS ASSERTED.

BLinC raises several constitutional arguments to enjoin Iowa that are addressed below.

A. FREE SPEECH

Content-based discrimination is only permissible if strict scrutiny is met. *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972). Content neutral action need only meet intermediate scrutiny. *Turner Broadcasting System v. FCC*, 512 U.S. 622, 640 (1994). Content neutral means that speech must be viewpoint neutral and subject matter neutral. *Perry Educ. Assn. v. Perry Local Educator's Assn.*, 460 U.S. 37, 45 (1983). Subject matter neutral means that government cannot regulate based on the topic of the speech. *Carey v. Brown*, 447 U.S. 455 (1980).

A facial content based restriction will be proper if it is motivated by a permissible content neutral purpose. *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 47-48 (1986). It is proper to regulate speech if the government interest is unrelated to suppression of the message. *Edie v. Pap's A.M.*, 529 U.S. 277 (2000). Under the unconstitutional condition doctrine, the state may not condition a benefit if the individual foregoes a constitutional right. *Speiser v. Randall*, 357 U.S. 513, 518 (1958). However, the government may condition funds on a requirement to encourage activities to be in the public interest. *Rust v. Sullivan*, 500 U.S. 173 (1991). The government's decision to not fund an activity that involves a fundamental right does not infringe on that right. *Id.* at 193. In this case, Iowa's human rights policy is content and subject matter neutral. Moreover, Iowa has the right to recognize groups only if they abide by its policies.

B. ESTABLISHMENT CLAUSE

It is clear that the government may not discriminate among religious groups. *Hernandez v. Commissioner*, 490 U.S. 228 (1982). If there is not facial discrimination, the court applies the Lemon test.

“First the statute must have a secular purpose; second its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). The first test is whether the law has a secular purpose. A secular purpose – a purpose that is non-religious and general in nature. *McGown v. Maryland*, 366 U.S. 420, 433 (1961) (law requiring businesses to be closed on Sunday upheld as relating to the good for all citizens.) The second prong of the test is whether the actions inhibit religion. In *Estate of Thornton v. Caldor*, 472 U.S. 703 (1985), the court held a law that required employers to allow employees to not work on their Sabbath was unconstitutional because the law did not have an incidental effect on religion. *Id.* at 710. At the same time, religious groups are exempt from certain employment discrimination laws. In *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 483 U.S. 327 (1987), the court upheld a law providing for an exemption under Title VII. The court stated the law was permissible “to alleviate significant government intrusion with the ability of religious organizations to define and carry out their religious missions.” *Id.* at 335.

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S.Ct. 694 (2012), the court held that religious institutions have an exemption from the enforcement of employment laws with respect to who may the group’s ministers be. In *Hosanna*, the court held that both the establishment clause and the free exercise clause are violated if a religious group is sued for the termination of a minister. *Hosanna* at 706. The court stated “By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group’s right to shape its own faith and mission through its appointments. According, the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits governmental involvement in such ecclesiastical

decisions.” *Id.* at 706. The court in *Hosanna* noted that the teacher involved was deemed a “minister” by the school, having taken the required courses at a religious college and designated as such by the school board. *Id.* Although the court did not adopt a rigid test to determine the definition of administer, the court indicated the inquiry would be fact intensive. *Id.* In this case, BLinC seemingly argues that all individuals of its group are ministers.

C. RELIGIOUS GROUP ACCESS TO SCHOOLS

In *Widmar v. Vincent*, 454 U.S. 263 (1981), the court held a state’s university’s policy to prohibit religious student groups from using school facilities for religious worship was unconstitutional. The university allowed non-religious groups to use facilities and the court concluded that such a restriction violated the Free Speech Clause because the university itself created a public forum for other groups. *Id.* at 269. In *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993), the court held that discrimination against religious groups could only survive under strict scrutiny. *Id.* at 387. In *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995), the court held it was unconstitutional to refuse to give student activity funds to a Christian group because they published a religious magazine. The majority held the restriction was content based. *Id.* at 114. In this case Iowa does not seek to suppress the message of BLinC, but rather that it abide by certain policies.

D. FREE EXERCISE CLAUSE

The government may not compel or punish religious beliefs. *Reynolds v. United States*, 366 U.S. 599 (1961). The government may not prohibit the freedom to believe, but it may restrict freedom to act. *Employment Div. v. Smith*, 485 U.S. 660, 670 n.13 (1988). In *Reynolds v. United States*, 98 U.S. (8 Ohio) 145 (1878), the court held that a law prohibiting polygamy was constitutional – because it related to acts that were contrary to societal order. A law that is

neutral need not be justified by a compelling interest. *Church of the Lukumi Babalu Age, Inc. v. Hialeah*, 508 U.S. 520, 527 (1993).

Government action is proper if it is neutral and of general applicability. *See, Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999) (law requiring social security number to receive a driver's license permissible.) If, however, the action targets a religion it may fail. *FOP Network Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999) (regulation prohibiting beards unconstitutional because it had exceptions for secular reasons, but not religious reasons.)

In addition, the courts should not intervene in internal religious disputes. *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). The courts may, however, intervene if the matter only involves secular legal issues. *Jones v. Wolf*, 443 U.S. 595 (1979). In this case, Iowa is not intervening in a religious dispute but rather is enforcing existing policies.

II. IRREPARABLE HARM

BLinC claims the irreparable harm is self-evident because “The loss of First Amendment freedoms constitutes irreparable injury.” BLinC Memorandum, p. 28 citing *Powell v. Ryan*, 855 F.3d 899, 904 (8th Cir. 2017). BLinC urges an immediate injunction is required to allow it to participate in a recruitment fair on campus. However, the record demonstrates that BLinC has inconsistently participated in the recruitment events. In fact, prior to the complaint against BLinC and Iowa's investigation, BLinC did not participate in the Fall 2017 recruitment event.

III. BALANCE OF HARM

BLinC seeks to preserve its rights under religious freedom. However, the University has a right and obligation to ensure an open and non-discriminatory environment on campus. Iowa is not attempting to regulate BLinC similar to Title VII or Chapter 216 of the Iowa Code. These laws apply to entities for non-discrimination purposes. Although Court's will not apply certain

nondiscrimination laws to religious groups, none of the cases involve the voluntary acceptance of state funds. The harm to Iowa is that of its institution and student body. The harm to BLinC is minimal under this record.

IV. THE PUBLIC INTEREST FAVORS IOWA.

Iowa has a legitimate interest in preventing and prohibiting acts of discrimination against individuals. Both the U.S. Constitution and the Iowa Constitution prohibit discrimination based on sexual preferences. *See, Obergefell, et al. v. Hodges*, 575 U.S. _____ (2015) and *Varnum v. Brien*, 763 NW.2d 862 (Iowa 1978). In addition, Iowa law provides:

It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity.

Moreover, Petitioner's challenge to other programs misses the mark. For example, Petitioner asserts that Iowa discriminates in its athletic programs asserting that certain male or female teams do not exist. No Court has ever required an institution of higher education to require a specific sport. Rather, the only inquiry is whether male and female student athletes are treated on equal ground. Title IX of the Education Amendment of 1972, 20 U.S.C. § 1681. In fact, under Iowa law athletic programs are excluded from the general discrimination provisions. Iowa Code section 216.9(1)(a).

Next, Petitioner challenges Iowa's minority scholarship programs as discriminatory. Petitioner's simplistic challenge ignores relevant legislative and institutional goals. For example, under Iowa law the Iowa legislature, after a reasoned democratic process, has expressly stated:

The general assembly also declares that it is the policy of this state to apply positive measures to ensure that equal opportunities exist for minority persons to pursue their educational goals.

Iowa Code section 261.101. Pursuant to that policy additional funds have been allocated to the Board of Regents. *See, Grutter v. Bollinger*, 539 U.S. 306 (2003) (college admission standards may include race-based consideration).

V. COMPELLING STATE INTEREST

BLinC ignores the fact that the core issues involve two constitutional provisions – the First Amendment and the Fourteenth Amendment. The Equal Protection Clause provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., Art. 14 § 2. The Fourteenth Amendment protects persons not groups. *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) citation omitted. A state may only treat people differently because of protected status for a compelling reason. *Id.*

In *Grutter*, the Court found that diversity in colleges was a compelling reason and the Court should defer. *Id.* at 329. The Court noted:

We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the University environment, universities occupy a special niche in our constitutional tradition.

Id. at 330, citations omitted.

“The freedom of a University to make its own judgments as to education includes the selection of its student body.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978).

In this case, Iowa attempts to create a diverse student body in its recognized student groups and the goals of *Grutter* are met.

In *Obergefell, et al, v. Hodges*, 575 U.S. _____ (2014), the Court held that same sex couples had a constitutional right to marry, pursuant, in part, to the Fourteenth Amendment’s guarantee of equal protection. In *Loving v. Virginia*, 388 U.S. 1, 12 (1967), the Court held that a law prohibiting inter-racial marriage violated the Equal Protection Clause. At its core, *Loving*

and *Obergefell* stand for the proposition that equality for protected individuals is required by the U.S. Constitution. *See also, Varnum v. Brien*, 763 N.W2d 862 (Iowa 2009) (right to same sex marriage protected by the Iowa Constitution).

Article I, Section 6 of the Iowa Constitution provides:

“All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon, the same terms shall not equally belong to all citizens.”

In essence, all persons similarly situated should be treated equally. *Varnum v. Brien*, 763 N.W2d 862, 878 (Iowa 2009). Under *Varnum*, The Iowa Courts recognize that same sex marriage and ancillary rights are a compelling state interest. Accordingly, Iowa has a compelling interest to prohibit discrimination on factors such as sexual orientation or other immutable traits. “A human trait that defines a group is immutable when the trait exists solely by the accident of birth. *Varnum* at 892, citations and internal quotations omitted.

Although the Iowa Constitution protects the free exercise of religion. Iowa Const. Art. I, § 3, (“The general assembly shall make no law...prohibiting the free exercise of religion...”), Iowa may not hold religious views through legislation. *Varnum* at 905. In this case, BLinC is requesting the Court to adopt a religious view by not entering a generally applicable non-discrimination regulation. A regulation that is supported by a compelling state interest.

Moreover, BLinC voluntarily sought University recognition and became eligible for state supported funds. BLinC, as a recognized group, became eligible for the following state provided benefits:

- a) Registration as a University organization;

- b) Establishment of an account in the Student Organization Business Office (SOBO), Fraternity Business Service, or Recreational Services and appropriate purchasing privileges in accordance with University policies;
- c) Eligibility to apply for funds from mandatory Student Activity fees (i.e., for student organizations) or Recreational Services fees (i.e., for sports clubs);
- d) Inclusion in appropriate University publications;
- e) Utilization of the Center for Student Involvement & Leadership's (CSIL) OrgSync software (funded by UISG & GPSG)
- f) Utilization of the University's trademarks in accordance with the UI Trademark Licensing Department's program and policies;
- g) Eligibility for use of campus meeting facilities and outdoor spaces;
- h) Eligibility, but not the right, to utilize UI Fleet Services vehicles in accordance with state and University policies, procedures, guidelines, and insurance requirements;
- i) Eligibility, but not the right, to utilize University staff and programming resources;
- j) Eligibility, but not the right, to utilize Information Technology Services Mass Mail once each semester;
- k) Eligibility to apply for awards and honors presented to University registered organizations and members; and
- l) Eligibility to apply for Student Organization Office Suite (SOOS) or Student Activity Center (SAC) office space and/or storage space.

(Attached Affidavit of Finger).

The argument the State cannot interfere with the leadership choices or tenets of BLinC misses the mark. BLinC has made a voluntary choice to accept State funding and with that choice come restrictions. For example, BLinC is subject to audit for use of State funds, the use of University space based on time and place and compliance with all State laws regarding use of public buildings.

Based on this analysis, the Court must carefully weigh the compelling interest of religious freedom on the one hand and the compelling interest of preventing discrimination on the other hand.

CONCLUSION

For the reasons set forth above, Defendants request the Court to deny Plaintiff's Motion for Preliminary Injunction.

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Copy electronically served on all parties of record:

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|--|--|
| PROOF OF SERVICE | |
| The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on January 5, 2018: | |
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> Overnight Courier |
| <input type="checkbox"/> Federal Express | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> ECF System Participant (Electronic Service) | |
| Signature: <u>/s/Betty Christensen</u> | |

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

| | | |
|--|---|-------------------------------------|
| BUSINESS LEADERS IN CHRIST, an, unincorporated association, |) | CASE NO. 3:17-CV-00080 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE UNIVERSITY OF IOWA; LYN REDINGTON, in her official capacity as Dean of Students and in her individual capacity; THOMAS R. BAKER, in his official capacity as Associate Dean of Students and in his individual capacity; and WILLIAM R. NELSON, in his official capacity as Executive Director, Iowa Memorial Union, and in his individual capacity, |) | AFFIDAVIT OF STUART STUTZMAN |
| |) | |
| Defendants. |) | |
| |) | |

STATE OF IOWA)
) ss
COUNTY OF JOHNSON)

COMES NOW the undersigned, after being duly sworn, depose and state:

1. I am an accountant in the Student Organization Business Office (SOBO), a component of the Center for Student Involvement & Leadership at the University of Iowa.

2. That I am familiar with the above-referenced litigation.

3. When a registered student organization submits a funding request, that request is reviewed by both student governments: University of Iowa Student Government (UISG) and Graduate & Professional Student Government (GPSG). UISG’s funding standards can be found here: <https://uisg.uiowa.edu/funding/max-funding-standards/>. GPSG’s funding guidelines can

be found here: <https://gpsg.uiowa.edu/assets/Uploads/2017-2018-GPAC-funding-guidelines-and-tenets-.pdf>, and GPSG's Organization Priority List can be found here: <https://gpsg.uiowa.edu/assets/Uploads/FY18-Organization-priority-list2.xlsx>. BLinC is a GPSG Priority 3 organization.

4. UISG and GPSG distribute funding to student organizations, which comes from Student Activity Fees (SAF) collected with tuition.

5. BLinC did not request, and thus did not receive, any SAF funds during the current fiscal year, FY18. The Undergraduate Programs Office at the Tippie College of Business deposited \$25.00 into the BLinC account in August to be spent on printing. These funds have not been spent.

6. During FY17, BLinC requested SAF funding for office supplies, printing/advertising, travel, and speaker honoraria for an event. UISG allocated \$100 for office supplies, \$170 for printing/advertising, and \$600 for travel. GPSG allocated \$150 for speaker honoraria. BLinC spent \$546.26 of the travel funding. All other funding was unspent and returned to UISG and GPSG at fiscal year-end.

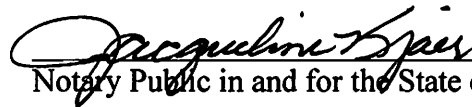
7. Failure to comply with maximum funding standards will result in a loss of allocated funds and/or probation of funds by UISG. UISG reserves the right to freeze accounts if money is being used in an unethical or suspicious manner. UISG also reserves the right to audit a registered student organization's account at any time.

8. The SOBO conducts an annual audit of all allocated SAF money at the end of each academic year. At this time, corrections are made, if necessary, and the unspent SAF amounts are calculated for reversion back to the student governments. On the front end, all transactions are pre-approved by SOBO staff. SOBO staff have access to view all submitted and

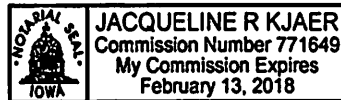
approved funding requests in OrgSync so that SOBO can determine whether it is appropriate to apply SAF funding to the transaction in question.

Subscribed and sworn to before me by Stuart Stutzman on this 5th day of January, 2018.



Notary Public in and for the State of Iowa



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

**BUSINESS LEADERS IN CHRIST, an,
unincorporated association,**

Plaintiff,

vs.

**THE UNIVERSITY OF IOWA; LYN
REDINGTON, in her official capacity as
Dean of Students and in her individual
capacity; THOMAS R. BAKER, in his
official capacity as Associate Dean of
Students and in his individual capacity; and
WILLIAM R. NELSON, in his official
capacity as Executive Director, Iowa
Memorial Union, and in his individual
capacity,**

Defendants.

CASE NO. 3:17-CV-00080

AFFIDAVIT OF KRISTI FINGER

**STATE OF IOWA)
) ss
COUNTY OF JOHNSON)**

COMES NOW the undersigned, after being duly sworn, depose and state:

1. I am the Assistant Director of Reservations and Outdoor Space, an office within the Iowa Memorial Union (IMU) at the University of Iowa and just recently, but formerly, this past Fall was the Student Life Program Coordinator in the IMU and therefore I am familiar with the day-to-day administration of student organizations.

2. That I am familiar with the above-referenced litigation.

3. BLinC was first registered as a Student Organization on August 20, 2014.

4. Registration as a student organization grants the following benefits, which can also be found here: <https://dos.uiowa.edu/policies/registration-of-student-organizations/>.

- a) Registration as a University organization;
- b) Establishment of an account in the Student Organization Business Office (SOBO), Fraternity Business Service, or Recreational Services and appropriate purchasing privileges in accordance with University policies;
- c) Eligibility to apply for funds from mandatory Student Activity fees (i.e., for student organizations) or Recreational Services fees (i.e., for sports clubs);
- d) Inclusion in appropriate University publications;
- e) Utilization of the Center for Student Involvement & Leadership's (CSIL) OrgSync software (funded by UISG & GPSG)
- f) Utilization of the University's trademarks in accordance with the UI Trademark Licensing Department's program and policies;
- g) Eligibility for use of campus meeting facilities and outdoor spaces;
- h) Eligibility, but not the right, to utilize UI Fleet Services vehicles in accordance with state and University policies, procedures, guidelines, and insurance requirements;
- i) Eligibility, but not the right, to utilize University staff and programming resources;
- j) Eligibility, but not the right, to utilize Information Technology Services Mass Mail once each semester;
- k) Eligibility to apply for awards and honors presented to University registered organizations and members; and
- l) Eligibility to apply for Student Organization Office Suite (SOOS) or Student Activity Center (SAC) office space and/or storage space.

5. Registered student organizations (RSOs) have the opportunity to participate in the Student Organization Fair. The Student Organization Fair is part of "Fair Days" at Iowa. Fair Days happens in August and January. Fair Days includes the Student Organization Fair, Student Employment Fair, and Volunteer Fair.

6. RSOs register for a table/space at the Student Organization Fair. Space is allocated on a first-come, first-served basis. There is a deadline by which RSOs must register. Space can be limited when the Fair is inside the IMU in January. Space is not necessarily limited if the Fair in August is on Hubbard Park. But the deadline is necessary for both the August and January Fairs.

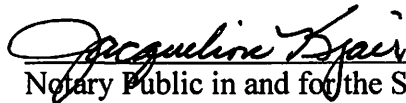
7. RSO are given a table/space if they apply, if they meet the deadline, and if there is space available. RSOs staff the table with members, they can distribute flyers and swag, and interested students can “sign-up” for membership or additional information.

8. Below is the list of Student Organization Fairs since BLinC became registered in Fall 2014 and BLinC’s participation:

- Fall 2017 – Did Not Participate
- Spring 2017 - Participated
- Fall 2016 - Participated
- Spring 2016 - Participated
- Fall 2015 – Did Not Participate
- Spring 2015 – Did Not Participate
- Fall 2014 – Did Not Participate



Subscribed and sworn to before me by Kristi Finger on this 5th day of
January, 2018.



Notary Public in and for the State of Iowa

