No. 08-1371

In the Supreme Court of the United States

CHRISTIAN LEGAL SOCIETY CHAPTER OF UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW, PETITIONER

v.

LEO P. MARTINEZ, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICI CURIAE* OF AMERICAN ISLAMIC CONGRESS, COALITION OF AFRICAN-AMERICAN PASTORS, NATIONAL COUNCIL OF YOUNG ISRAEL, NATIONAL HISPANIC CHRISTIAN LEADERSHIP CONFERENCE, PROJECT NUR, SIKH AMERICAN LEGAL DEFENSE AND EDUCATION FUND, AND SIKH COALITION IN SUPPORT OF PETITIONERS

KEVIN J. HASSON
ERIC C. RASSBACH
HANNAH C. SMITH
LUKE W. GOODRICH
LORI H. WINDHAM
THE BECKET FUND FOR RELIGIOUS LIBERTY
3000 K Street, NW
Suite 220
Washington, DC 20007
(202) 955-0095

DOUGLAS LAYCOCK
Counsel of Record
YALE KAMISAR COLLEGIATE PROFESSOR OF LAW
THE UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State St.
Ann Arbor, MI 48109
(734) 647-9713

Counsel for Amici Curiae

QUESTION PRESENTED

Whether the Constitution permits a public university law school to exclude a religious student organization from a forum for speech solely because the group requires its officers and voting members to share its core religious commitments.

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INTEREST OF THE *AMICI*

Amici represent the broad diversity of American religious traditions.[1] Although they disagree on many theological questions, *amici* are united in their support for the right of religious people to associate with one another to further their beliefs. *Amici* believe that the rights of religious and expressive association are especially important for religious minorities, who stand to lose the most if majoritarian notions of conformity find no constitutional limit. They therefore urge the Court to reaffirm the Constitution's longstanding protections for the rights of religious and expressive association.

Individual statements of interest are set forth in the Appendix.

SUMMARY OF ARGUMENT

Hastings College of the Law refuses to recognize the Christian Legal Society as a student organization so long as CLS requires its voting members to adhere to the organization's core beliefs. Hastings thereby violates CLS's right to expressive association and its right to religious association.

I. In *Healy* v. *James*, 408 U.S. 169 (1972), this Court held that universities cannot refuse recognition to a student organization on the basis of the organization's exercise of First Amendment rights. One

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[1] The parties have consented to the filing of this brief. As required by Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

such right, protected in many other cases of this Court, is the right of an expressive association to exclude from membership those who disagree with the association's core values. Because CLS is a small and selective organization, with a strong and focused message, it is maximally protected by this Court's expressive association cases.

Healy of course recognizes that universities can regulate the conduct of student organizations. But they cannot define the exercise of First Amendment rights as prohibited conduct. By banning CLS based on its choice of members, Hastings has done just that. It has banned CLS for its *identity*, not for its conduct, because an association's identity is constituted by its members. Hastings has thus violated CLS's right of expressive association.

II. Hastings has also violated CLS's right of religious association. Expressly reaffirmed in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), the right of religious association protects the right of a religious group to control its internal affairs, regardless of whether the group engages in expression. This Court has applied the right of religious association in a wide variety of contexts—from disputes over a religious group's property and governance, to disputes over a religious group's choice of employees, to disputes over a religious group's selection and discipline of members. By interfering with CLS's internal affairs—including its selection of members, its choice of Bible study leaders, and its application of a religious code of conduct—Hastings has burdened CLS's right of religious association.

III. It is no response to say that the burden on CLS is minimal because CLS is allowed to exist as an

unrecognized group. Neither the right to expressive association nor the right to religious association is subject to forfeit as a condition of participating in a university forum for speech. That was settled in *Healy*, and the rule has been repeatedly applied in subsequent cases.

IV. To justify the burden on CLS's right of expressive or religious association, at a minimum Hastings must show that its policy is narrowly tailored to further a compelling governmental interest. Many cases imply that a religious association's right to govern its internal affairs is essentially absolute.

But the choice of scrutiny does not matter here, because Hastings does not have even a legitimate interest in requiring a religious association to admit nonbelievers as voting members. Hastings' asserted interest in prohibiting "discrimination," as applied here, is simply the negation of the underlying constitutional right. Of course there is a strong interest in prohibiting religious discrimination where religion is irrelevant. But it is fundamentally confused to apply a rule against religious discrimination to a religious association. Hastings has changed the prohibition on religious discrimination from a protection for religious minorities into an instrument for excluding and victimizing those minorities. What Hastings has done is plainly unconstitutional.

ARGUMENT

I. Hastings has burdened CLS's right of expressive association.

This case is largely controlled by *Healy* v. *James*, 408 U.S. 169 (1972). To the extent that *Healy* leaves

any questions open, other decisions of this Court supply the answers.

A. *Healy* permits universities to regulate disruptive conduct, but not an organization's identity, associations, or beliefs.

Healy held that organizing a student group at a public university is an exercise of "the right of individuals to associate to further their personal beliefs," and that "denial of official recognition * * * burdens or abridges that associational right." *Id.* at 181. "[T]he College's denial of recognition was a form of prior restraint," and therefore "a 'heavy burden' rests on the college to demonstrate the appropriateness of that action." *Id.* at 184.

That burden might be met if the college could prove the group's "unwillingness to be bound by reasonable school rules governing *conduct*." *Id.* at 191 (emphasis added). But the group's choice of whom to associate with—in particular, its possible association with a national organization engaged in "disruptive and violent campus activity"—was *not* a legitimate reason for denying recognition. *Id.* at 185-87. Reasons for non-recognition must be "directed at the organization's *activities* rather than its philosophy." *Id.* at 188 (emphasis added). *Healy* uses the words "conduct," "actions," and "activities" some 26 times to describe the legitimate basis of regulation (not counting the use of those words for other purposes).

Nor was it just any conduct that the College could legitimately regulate. When *Healy* said that an organization could be barred for violating school rules regulating conduct, it meant conduct that "interrupt[ed] classes, or substantially interfere[d] with

the opportunity of other students to obtain an education," or "actions which 'materially and substantially disrupt[ed] the work and discipline of the school.'" *Id.* at 189 (quoting *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969)). Various forms of the words "disrupt," "disruptive," and "disruption" appear some 22 times. *Healy*'s references to "reasonable campus rules," *ibid.*, must be read in this context.

The same is true of *Healy*'s approving reference to the College's Student Bill of Rights, which said that "students have no right (1) 'to deprive others of the opportunity to speak or be heard,' (2) 'to invade the privacy of others,' (3) 'to damage the property of others,' (4) 'to disrupt the regular and essential operation of the college,' or (5) 'to interfere with the rights of others.'" 408 U.S. at 189. Point 5 of this quotation must be read in context. Hastings cannot evade the First Amendment by defining "the rights of others" to include the negation of First Amendment rights. Just as Students for a Democratic Society had no right to deprive others of the right to speak (point 1 of the quotation), so those "others" could not have a right to deprive SDS of the right to speak.

Thus, Hastings could prohibit *defamatory* speech, because defamation of other students violates those students' rights, but it could not prohibit *religious* speech on the ground that other students have a "right" to a religion-free environment. Similarly here, Hastings cannot prohibit CLS from exercising its constitutional right to select members and leaders by simply declaring that other students have a "right" to join CLS. *Healy*'s reference to "the rights of others" does not change the fundamental principle that

rights created by administrative regulation are subject to the Constitution—not the other way around.

SDS could be denied recognition if it engaged in harmful or disruptive conduct, but the harm must be something more tangible than a feeling of offense at the way the regulated group exercises its First Amendment rights. SDS could not be barred because of who it was, what name it chose, whom it associated with, or what it believed. Here, either version of Hastings' rule is on the wrong side of that line. Hastings has not banned CLS for its *conduct*, but for its *identity*: for who CLS is and whom it chooses to associate with.

An association is constituted by, and consists of, its members. Its members determine who and what it is. CLS is an association of Christian lawyers, law students, and judges who believe a particular statement of faith and attempt to live up to the moral teachings of traditional Christianity. Pet. App. 100a-103a; JA 146. Mix in with these Christians others who interpret the faith more metaphorically, and some who pick and choose which traditional Christian teachings to follow, and the association would quickly become very different. It might retain the name "CLS," but it would be a different association with a different identity—even before Hastings forced it to add adherents of other faiths, or religious seekers uncertain what they believe, or atheists and agnostics, or people indifferent to religion, or political or philosophical opponents deliberately seeking to disrupt the association and change its policies. But under Hastings' rule, every one of these people would have to be allowed to join, vote, and lead Bible study.

In effect, Hastings' rule is that no association of traditionally minded, morally strict Christians is permitted to exist at Hastings. An organization that insists on preserving such an identity will not be recognized. This dispute is therefore not about what CLS *does*; it is about who CLS *is*. Hastings has banned CLS for who it is and whom it associates with as effectively as Central Connecticut tried to ban SDS for who it was and whom it associated with. *Id.* at 185-87.

B. Expressive associations have the right to choose members and leaders who share the association's beliefs.

Healy did not squarely address membership rules, but other decisions of this Court confirm that expressive associations have the right to control their identity—especially by selecting members and leaders who share the association's beliefs and excluding those who don't.

Government violates an organization's right to expressive association if it tries "to interfere with the internal organization or affairs of the group." *Roberts* v. *United States Jaycees*, 468 U.S. 609, 623 (1984). And "[t]here can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members that it does not desire." *Ibid.* More recently, the Court suggested that rules that "*directly* interfere with an organization's composition," or with its "membership," are even more burdensome than the rules struck down in *Healy*. See *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 69 (2006) (emphasis added).

The Court has had frequent occasion to protect the membership decisions of political parties. "A political party has a First Amendment right to limit its membership as it wishes * * *." *New York State Board of Elections* v. *Lopez Torres*, 552 U.S. 196, 202 (2008). A party can limit voting in the party primary to party members, because "a corollary of the right to associate is the right not to associate." *California Democratic Party* v. *Jones*, 530 U.S. 567, 574 (2000). "Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders." *Eu* v. *San Francisco County Democratic Central Committee*, 489 U.S. 214, 229 (1989). "[T]he freedom to associate for the 'common advancement of political beliefs' necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *Democratic Party* v. *Wisconsin*, 450 U.S. 107, 122 (1981) (citation omitted).

The Court has applied the same principle to many other types of voluntary associations, from the Jaycees to parade organizers to the Boy Scouts—and of course, to religious organizations. The Court unanimously upheld the right of parade organizers to exclude a group with a dissenting message, "just as readily as a private club could exclude an applicant whose manifest views were at odds with a position taken by the club's existing members." *Hurley* v. *Irish-American Gay, Lesbian And Bisexual Group*, 515 U.S. 557, 581 (1995). With respect to the Boy Scouts, the Court said that "[t]he forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's

ability to advocate public or private viewpoints." *Boy Scouts of America* v. *Dale*, 530 U.S. 640, 648 (2000).

We consider the cases on religious associations at length in Section II. For now, we note only Justice Brennan's statement in *Corporation of the Presiding Bishop* v. *Amos*: "Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is thus a means by which a religious community defines itself." 483 U.S. 327, 342 (1987) (Brennan, J., concurring).

All this is common sense. Members make up the group, and in CLS and many other organizations, members elect the leaders. Pet. App. 100a-102a; J.A. 118, 229-231. In CLS, voting members may lead Bible study, J.A. 118, 230-31, so even one dissenting member could radically change CLS's core religious activity. An influx of such members could dilute the organization's faith commitments, or even take over the organization and elect a new slate of officers.

Remarkably, Hastings forbids the members of CLS to consider the religion of candidates for leadership positions. Its interrogatory answers state:

> Under the express terms of the Policy on Nondiscrimination, if a registered student organization adopts a *policy or practice that bars access to its leadership positions on the basis of* race, color, *religion*, national origin, ancestry, disability, age, sex or sexual orientation, then it is in violation of the Policy on Nondiscrimination.

J.A. 161 (emphasis added).

Rogue officers denouncing everything that CLS once stood for would be only the most obvious mani-

festation of the problem, and perhaps less harmful, because they would be easily recognized as usurpers. The greater danger might be more subtle departures from CLS's rigorous understanding of the faith. Either kind of officer could make public statements, spend CLS funds, or legally bind the group to positions that contradict CLS's original beliefs. See *Eu*, 489 U.S. at 231 n.21 ("By regulating the identity of the parties' leaders, the challenged statutes may also color the parties' message and interfere with the parties' decisions as to the best means to promote that message."). Control over membership is essential to control over message.

C. The right to choose members and leaders is at its strongest in organizations like CLS.

The right to control membership is at its strongest when an expressive association is small, selective, and has a strong and focused message—like CLS. In *Roberts*, by contrast, the Court concluded that Jaycees chapters were "large and basically unselective groups," 468 U.S. at 621, with no ideological commitments inconsistent with the admission of women, *id.* at 627, and that Minnesota's law "impose[d] no restrictions on the organization's ability to exclude individuals with ideologies or philosophies different from those of its existing members." *Ibid.* So a law banning sex discrimination was upheld as applied to the Jaycees.

This question about the nature of the group's commitments was the principal point of disagreement in *Dale*. The dissents are devoted almost entirely to whether the Boy Scouts actually had a teaching against homosexuality. See, *e.g.*, 530 U.S. at

684 (Stevens, J., dissenting) ("In short, Boy Scouts of America is simply silent on homosexuality."); *id.* at 701 (Souter, J., dissenting) ("BSA has not made out an expressive association claim, * * * because of its failure to make sexual orientation the subject of any unequivocal advocacy."). No Justice suggested that the Boy Scouts could be required to accept a gay scoutmaster *even if* they had a clear teaching against same-sex relationships.

Here, there can be no doubt that CLS qualifies for the strongest version of the protection set out in this Court's cases. The record is clear that CLS has specific religious commitments and a specific message—not just Christianity, but the specific and traditional understanding of Christianity set out in its statement of faith. J.A. 144-47, 226; Pet. App. 100a-101a. CLS is selective in its membership, insisting on adherence to its statement of faith and on sincere efforts to live up to that statement. These restrictions define CLS's identity and are essential to maintaining that identity. With as few as nine active members at some times, J.A. 230, CLS is also quite small, with a viewpoint shared by only a small minority at Hastings. These facts leave it maximally vulnerable to having its commitments altered by interlopers.

CLS's prohibition on non-marital sexual activity flows directly from its statement of faith. J.A. 144-47, 226. Treating this rule as sexual-orientation discrimination has no basis in any legally accepted understanding of discrimination.[2] But even if it *were*

[2] Petitioner's Br. 39. The rule applies equally to opposite-sex and same-sex relationships, prohibiting "fornication, adultery, and homosexual conduct." J.A. 146. In any student population, there are far more sexually active un-

sexual-orientation discrimination, it would be protected, because it is essential to the message of traditional Christian faith and morality that CLS seeks to promote and live by. *Dale* makes clear that CLS could exclude all gays and lesbians. *A fortiori*, it can exclude those who violate its generally applicable requirement of compliance with traditional norms of sexual morality.

D. Hastings claims unfettered discretion to deny recognition and access to groups it disapproves.

Hastings' claim that any nondiscrimination rule trumps the right of expressive association, together with its broad powers to make and enforce nondiscrimination rules, gives it largely unfettered discretion to restrict freedom of association.

First, Hastings claims power to ban discrimination on any grounds it chooses and to interpret such bans in wholly novel ways, as with its sexual-orientation argument. New rules banning discrimination on the basis of new categories could eliminate any student organization with a strong viewpoint that required exclusion of the newly protected category. *Cf.* Petitioner's Br. 51-52.

Second, Hastings can impose additional burdens on non-recognized groups. Although Hastings cur-

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married heterosexuals than gays and lesbians. Thus, there is neither disparate treatment nor disparate impact on the basis of sexual orientation. The marriage laws do not create disparate impact, because the legal possibility of marriage is factually irrelevant to the many students who are not yet prepared, emotionally or financially, to take on the commitments of marriage.

rently allows CLS to meet on campus as an act of grace, and allows unrecognized groups to announce events on classroom chalkboards, J.A. 218-219, 232-233, 300, it could change either of these rules immediately after this lawsuit ends.

Third, Hastings exercises unfettered discretion in enforcement of its rules. Hastings now claims to have an unwritten "all comers" policy that requires every recognized student organization to be open to every student. This claim may simply be false. But assuming that such a policy exists in the minds of Hastings officials, the record shows that it has never been enforced against anyone but CLS. Petitioner's Br. 4, 12-14. Hastings exercises discretion to enforce its alleged policy against any organization it chooses and to ignore open and explicit violations by any other organization it chooses.

Such unguided discretion, applied to exercises of the right of expressive association, violates the long-settled rule against discretionary control over First Amendment rights. Unguided discretion enables government officials to "favor or disfavor speech based on its content." *Thomas* v. *Chicago Park District*, 534 U.S. 316, 323 (2002).

Hastings has already used this discretion to attempt an end run around this Court's cases guaranteeing equal treatment for student religious organizations. See *Rosenberger* v. *Rector & Visitors of University of Virginia*, 515 U.S. 819 (1995); *Widmar* v. *Vincent*, 454 U.S. 263 (1981). High schools could use the same technique to evade the Equal Access Act, 20 U.S.C. § 4071 *et seq.* (2006). These cases hold, and the Act provides, that organizations cannot be excluded from campus forums because of the religious

content or viewpoint of their discussions. But Hastings' position here would enable schools to exclude a religious group for refusing to accept members who disagree with the group's viewpoint, and thus effectively exclude from the forum any group with a sufficiently strong commitment to its views. Only the wishy-washy need apply.

II. Hastings has burdened CLS's right of religious association.

CLS is also entitled to protection for its right of *religious* association. Petitioner's Br. 40-41. The right of religious association may not offer *greater* protection than the right of expressive association, but it offers *different* protection, focused not on CLS's expressive activities but on the autonomous management of its religious affairs.

The right to religious association is based not on the right of free speech but on the free exercise of religion, the separation of church and state, and the constitutional exclusion of government from questions of religious faith, doctrine, and polity. The government cannot run religious associations any more than religious associations can run the government. Consequently, the right of religious association is not limited to "expressive" activities. Even if CLS met only for private meditation and prayer and had no message or viewpoint discernible to outsiders, it would be entitled to define its religious mission and manage its internal affairs.

A. This Court has long protected the right of religious associations to be free from government interference in their internal affairs.

Religious associations have the right to determine their own systems of internal governance and to resolve their own disputes. They have the right to decide who may perform religious functions within the association. And they have the right to control their own membership.

Hastings is violating each of these rights. By dictating who can be a voting member or a leader, Hastings interferes with CLS's internal governance. Because voting members may lead Bible studies, Hastings dictates who can perform religious functions. Most obviously, Hastings dictates who can be a member.

1. The right to internal self-governance.

This Court's first prominent decision on autonomy for religious associations is *Watson* v. *Jones*, 80 U.S. 679 (1871). Slavery and anti-slavery factions in a Presbyterian congregation each claimed the church property. The highest authority of the Presbyterian Church, recognized by both sides before the dispute began, recognized the anti-slavery group as the true church officers. This Court deferred to that decision and awarded the property to the anti-slavery group, holding that civil courts must defer to religious authorities on internal matters of religious significance. *Id.* at 727.

The rule of deference to religious authorities, the Court said, was necessary to protect the "unquestioned" "*right to organize voluntary religious associa-*

tions * * * ." *Id.* at 728 (emphasis added). That right includes the freedom "to create tribunals for the decision of controverted questions of faith within the association." *Id.* at 728-29. If civil courts could second-guess religious authorities on such internal matters, it "would lead to the total subversion of such religious bodies." *Id.* at 729.

Subsequent cases expanded and clarified this right. In *Kedroff* v. *Saint Nicholas Cathedral*, this Court struck down a New York law that interfered with a church's internal authority structure, explaining that religious organizations have a constitutional right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. 94, 116 (1952). In *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, the Court emphasized that when civil courts decide church property disputes, they must scrupulously refrain from deciding "underlying controversies over religious doctrine." 393 U.S. 440, 449 (1969). Similarly, in *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, the Court struck down state interference with a church's removal of a bishop, emphasizing that the First Amendment protects the right of religious groups "to establish their own rules and regulations for internal discipline and government." 426 U.S. 696, 724-25 (1976).

In *Jones* v. *Wolf*, 443 U.S. 595 (1979), the Court approved an alternate means of resolving religious property disputes, still in accordance with the intentions of the religious organization prior to the schism. This method allows civil courts to apply "well-established concepts of trust and property law" to re-

ligious property disputes, *id.* at 603—but only if (1) the courts defer to religious authorities on "issues of religious doctrine or polity," *id.* at 602, and (2) state law is "flexible enough to accommodate all forms of religious organization and polity" without burdening free exercise rights, *id.* at 603. The Court emphasized that this approach would protect "the free-exercise rights of the members of a religious association," because it would allow the association to provide in advance, in its governing documents, for any resolution of the dispute it desired. *Id.* at 606.

As further explained below, the Court expressly reaffirmed this line of cases in *Employment Division* v. *Smith*, 494 U.S. 872 (1990). There, the Court said that government may not "lend its power to one or the other side in controversies over religious authority or dogma." *Id.* at 877 (citing *Kedroff*, *Milivojevich,* and *Presbyterian Church*). And it explicitly reaffirmed freedom of religious association. *Id.* at 882 (citing *Roberts*).

Voting for the election of officers, voting on any other disputed issues, and leading Bible study at the Hastings chapter of CLS are exercises of "religious authority," however modest, and government cannot lend its aid to those who think that the association's governance should be open to a larger pool of voters or that Bible study should have a wider range of leaders.

2. The right to select the individuals who perform religious functions.

Many of the church property disputes discussed above were also disputes about the selection of individuals to perform religious functions. *Kedroff* and

Milivojevich were presented as disputes over property, but it was undisputed that the property belonged to the bishop. The real dispute was: Who is the bishop? See *Milivojevich*, 426 U.S. at 709 ("[T]his case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.").

This protection extends not just to bishops but to other positions involving significant religious functions. The first such case in this Court was *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1 (1929), involving an endowed chaplaincy in the Catholic Church. An heir of the donor claimed an entitlement to the chaplaincy under the terms of the gift, but the archbishop determined that this heir was not qualified for the position under church law. Of course the Court refused to order the church to accept a chaplain it had rejected. *Id.* at 16-17.

A similar idea appears in *Corporation of the Presiding Bishop* v. *Amos*, 483 U.S. 327 (1987). There, the employee was not a bishop, but a building engineer. *Amos* held that Title VII's religious exemption, which allows religious organizations to make employment decisions on the (otherwise illegal) basis of religion, serves "the legitimate purpose of alleviating significant governmental interference with *the ability of religious organizations to define and carry out their religious missions*." *Id.* at 339 (emphasis added). Similarly, in *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979), the Court said that requiring religious schools to bargain with a union would cause "intrusion into the administration of the affairs of church-operated schools." *Id.* at 499. This intrusion presented "diffi-

cult and sensitive questions" under the Religion Clauses." *Id.* at 507. To avoid those questions, the Court interpreted the Act not to apply to "church-operated schools." *Ibid.*

Employment discrimination laws present similar constitutional issues when applied to religious groups. Title VII exempts religious organizations from the ban on religious discrimination—so, for example, Catholic schools may prefer Catholic teachers. 42 U.S.C. §2000e-1(a) (2006). But religious groups receive no exemption from the ban on race or sex discrimination (or age or disability discrimination under the Age Discrimination in Employment Act or Americans with Disabilities Act). So, for example, the Catholic Church violates the literal text of Title VII by confining the priesthood to males, as do Orthodox Jewish synagogues that appoint only male rabbis. And any pastor who is discharged, whatever the reason, may allege that the real reason was some kind of illegal discrimination. Such a claim would force the civil courts to evaluate the pastor's performance of his religious functions and the church's reasons for losing confidence in his religious leadership.

It would be unconstitutional for the courts to second-guess such important religious decisions, and the courts of appeals have uniformly refused to do so. See *Rweyemamu* v. *Cote*, 520 F.3d 198, 204-10 (2d Cir. 2008) (collecting cases); *Petruska* v. *Gannon University*, 462 F.3d 294, 303-04 (3d Cir. 2006) (same). The courts have derived this rule from cases such as *Watson*, *Kedroff*, *Milivojevich*, and *Catholic Bishop*. State courts have generally reached the same conclusion

with respect to a range of theories for claiming wrongful discharge.[3]

This rule is the right of religious association applied to employment. The rule is generally called the "ministerial exception," but it is not limited to "ministers" or to "churches." Rather, "it applies to any claim, the resolution of which would limit a religious institution's right to choose who will perform particular spiritual functions." *Petruska*, 462 F.3d at 299. The ministerial exception applies to a chaplain at a Catholic college, *ibid.*, a chaplain at a Protestant hospital,[4] a rabbi at a Jewish temple,[5] a professor of canon law,[6] a kosher supervisor at a Jewish nursing home,[7] a church organist,[8] a church music director,[9] and a communications manager for a diocese.[10]

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[3] See, *e.g.*, *El-Farra* v. *Sayyed*, 226 S.W.3d 792 (Ark. 2006); *Pierce* v. *Iowa-Missouri Conference of Seventh-day Adventists*, 534 N.W.2d 425 (Iowa 1995); *Music* v. *United Methodist Church*, 864 S.W.2d 286 (Ky. 1993); *Miller* v. *Catholic Diocese*, 728 P.2d 794 (Mont. 1986).

[4] *Scharon* v. *St. Luke's Episcopal Presbyterian Hospitals*, 929 F.2d 360 (8th Cir. 1991).

[5] *Friedlander* v. *Port Jewish Center*, No. 09-0021-CV, 2009 WL 3109870 (2d Cir. 2009).

[6] *EEOC* v. *Catholic University*, 83 F.3d 455 (D.C. Cir. 1996).

[7] *Shaliehsabou* v. *Hebrew Home*, 363 F.3d 299 (4th Cir. 2004).

[8] *Tomic* v. *Catholic Diocese*, 442 F.3d 1036 (7th Cir. 2006).

[9] *EEOC* v. *Roman Catholic Diocese*, 213 F.3d 795 (4th Cir. 2000).

[10] *Alicea-Hernandez* v. *Catholic Bishop*, 320 F.3d 698 (7th Cir. 2003).

The idea underlying the ministerial exception has led state courts to uniformly reject claims for so-called clergy malpractice. See 2 William W. Bassett, *Religious Organizations and the Law* § 8.38 (1997 & Supp. 2009) (collecting cases). As the Kentucky Supreme Court explained, "it is not for the court to construe or to enforce the clergy's religious duties." *Arlinghaus* v. *Gallenstein*, 115 S.W.3d 351, 353 (Ky. 2003). To do so would be for the state to regulate internal church affairs that are protected by the right of religious association.

The voting members of CLS fall squarely within the rationale of the ministerial exception. As already noted, voting members lead the group's most important religious activity—the weekly Bible studies. These studies are not merely an academic discussion of the text or a venue for open-mike theology, but an inherently religious undertaking, accompanied by prayer and other forms of worship. See J.A. 230-31. Members may be called upon to respond to the spiritual doubts or questions of other attendees, explain matters of religious doctrine, or pray for another member's spiritual needs. In short, voting members are "important to the spiritual and pastoral mission" of CLS. *EEOC* v. *Roman Catholic Diocese*, 213 F.3d 795, 801 (4th Cir. 2000) (quotation omitted).

Nor does it matter that CLS members are volunteers. Few cases address selection of volunteer leaders because discrimination statutes generally protect only employees. But forcing a religious group to accept an unwanted volunteer leader is no less intrusive than forcing it to accept a paid one. *Dale* protected the right to choose volunteer leaders. 530 U.S. at 651-52. See also *Christian Legal Society* v. *Walker*,

453 F.3d 853, 862-63 (7th Cir. 2006) (protecting another CLS chapter's right to require its volunteers to be Christian). Where a government rule reaches inside a religious group and attempts to dictate who can perform its religious functions, the right of religious association protects the religious group.

3. The right to select and discipline members.

So far as these *amici* are aware, no plaintiff has been bold enough to sue a church for discrimination in deciding its own membership—let alone for *religious* discrimination. There are no cases rejecting such a theory; "[t]he easiest cases don't even arise." *United States* v. *Lanier*, 520 U.S. 259, 271 (1997).

However, this Court has had occasion to comment on religious control of membership in the course of deciding disputes about church governance. Courts "have no power to revise or question ordinary acts of church discipline, or of excision from membership. * * * [W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off." *Bouldin* v. *Alexander*, 82 U.S. 131, 139-140 (1872). Referring to "voluntary religious associations," the Court said that "[a]ll who unite themselves to such a body do so with an implied consent to [its] government, and are bound to submit to it." *Watson*, 80 U.S. at 728-29. Among the issues committed to religious decision is "the conformity of the members of the church to the standard of morals required of them." *Id.* at 733. What beliefs one must profess to be a member of CLS, and whether a member can be in good standing despite ongoing non-marital sex, is thus a matter that only CLS can decide.

There are also cases dismissing tort suits in which church members attempt to challenge religious discipline imposed by their church. *Westbrook* v. *Penley*, 231 S.W.3d 389 (Tex. 2007) (refusing to interfere with three-step disciplinary process outlined in scripture); *O'Connor* v. *Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994) (refusing to interfere with an excommunication); *Paul* v. *Watchtower Bible & Tract Society*, 819 F.2d 875 (9th Cir. 1987) (refusing to interfere with practice of shunning disciplined members); *Dwenger* v. *Geary*, 14 N.E. 903 (Ind. 1888) (upholding bishop's right to refuse Catholic burial). If religious associations can discipline or expel their members, *a fortiori* they can apply religious criteria for membership.

4. *Employment Division* v. *Smith* reaffirmed religious associations' right to autonomy in their internal affairs.

These religious association cases are unaffected by *Employment Division* v. *Smith*, 494 U.S. 872 (1990). There, the Court held that a law burdening religiously motivated behavior requires no special justification under the Free Exercise Clause if the law is "neutral" and "generally applicable." *Id.* at 880. But as already mentioned, *Smith* reaffirmed the rule that government must stay out of "controversies over religious authority or dogma." *Id.* at 877. And it reaffirmed the right to religious association more generally:

> [I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. *Cf. Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984) ("An individual's freedom to speak, to

> worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the state [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed").

Id. at 882 (alteration of internal quotation by the Court).

Consequently, eleven circuits have adopted or reaffirmed the ministerial exception since *Smith*.[11] No circuit has taken a different view. As an early post-*Smith* opinion explained, although the Free Exercise Clause "does *not* guarantee the right of [church] members to practice what their church may preach if that practice is forbidden by a neutral law of general application," it still "guarantees a church's freedom to decide how it will govern itself, what it will teach, and to whom it will entrust its ministerial responsibilities." *Catholic University*, 83 F.3d at 463. First,

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[11] See, *e.g., Rweyemamu* v. *Cote*, 520 F.3d 198, 204-10 (2d Cir. 2008); *Petruska* v. *Gannon University*, 462 F.3d 294, 303-09 (3d Cir. 2006); *EEOC* v. *Roman Catholic Diocese*, 213 F.3d 795, 800-05 (4th Cir. 2000); *Combs* v. *Central Texas Annual Conference of the United Methodist Church*, 173 F.3d 343, 348-50 (5th Cir. 1999); *Hollins* v. *Methodist Healthcare, Inc.*, 474 F.3d 223, 225-27 (6th 2007); *Alicea-Hernandez* v. *Catholic Bishop*, 320 F.3d 698, 702-04 (7th Cir. 2003); *Scharon* v. *St. Luke's Episcopal Presbyterian Hospitals*, 929 F.2d 360, 362-63 (8th Cir. 1991); *Werft* v. *Desert Southwest Annual Conference of the United Methodist Church*, 377 F.3d 1099, 1100-04 (9th Cir. 2004); *Bryce* v. *Episcopal Church*, 289 F.3d 648, 656-58 (10th Cir. 2002); *Gellington* v. *Christian Methodist Episcopal Church*, 203 F.3d 1299, 1302-04 (11th Cir. 2000); *EEOC* v. *Catholic University*, 83 F.3d 455, 461-63 (D.C. Cir. 1996).

the court said, "the burden on free exercise that is addressed by the ministerial exception is of a fundamentally different character from that at issue in *Smith* * * * ." *Id.* at 462. And second, protecting the church's right to control its internal affairs "does not present the dangers warned of in *Smith*"—it does not "empower a member of [a] church, 'by virtue of his beliefs, "to become a law unto himself."'" *Ibid.* (quoting *Smith*, 494 U.S. at 885). We also note that it does not potentially reach into every field of human activity or potentially apply to every government regulation.

The court looked instead to the "long line of Supreme Court cases that affirm the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Ibid.* (quoting *Kedroff*, 344 U.S. at 116). "[W]e cannot believe that the Supreme Court in *Smith* intended to qualify this century-old affirmation of a church's sovereignty over its own affairs." *Id.* at 463. Other circuits have adopted this reasoning, developed similar arguments on their own, or treated the matter as settled. See *supra* notes 4-11.

In sum, the right to religious association guarantees the right of religious organizations to govern their own internal affairs, select their own members, make rules for those members, select their own leaders, and select personnel to perform religious functions. It without question protects CLS's right to decide who will elect its officers and lead its Bible studies.

B. Cases protecting the internal affairs of religious organizations are all manifestations of the underlying right of religious association.

Some courts have described these cases as protecting a right to "church autonomy." *Bryce* v. *Episcopal Church*, 289 F.3d 648, 655-59 (10th Cir. 2002). See also *Marsh* v. *Chambers*, 463 U.S. 783, 803-04 (1983) ("The second purpose of separation and neutrality is to keep the state from interfering in the essential autonomy of religious life, either by taking upon itself the decision of religious issues, or by unduly involving itself in the supervision of religious institutions or officials.") (footnotes omitted). This usage correctly emphasizes that freedom of religious association includes not merely the right to form a religious association, but also—and what is more frequently at issue—the right to autonomously manage the internal affairs of that association.

Most courts describe the cases dismissing employment-law claims by individuals performing religious functions as the "ministerial exception." *Rweyemamu*, 520 F.3d at 204-07. This "judicial shorthand" is "evocative [but] imprecise." *Id.* at 206. As already discussed, the ministerial exception protects more than just ministers, and it protects the religious functions of all religious groups, not just Christian churches.

Underlying both these phrases is the freedom of religious association. Church autonomy and the ministerial exception are important applications of that underlying principle. The right of religious association unites all the cases on resolution of church disputes, selection of personnel to perform religious

functions, and selection and discipline of church members.

The right to religious association is analogous to, but distinct from, the right to expressive association. The right to expressive association is a "right to associate *for the purpose of speaking*." *Rumsfeld*, 547 U.S. at 68 (emphasis added). The key questions in an expressive association case are two. First, does the group "engage in some form of expression, whether it be public or private"? *Dale*, 530 U.S. at 648. And second, would the challenged regulation "significantly affect the [group's] ability to advocate public or private viewpoints"? *Id.* at 641, 650.

Similarly, the right of religious association is a right to associate *for the purpose of religious exercise*. While expressive association protects organizations' ability to advocate viewpoints, religious association protects organizations' ability "*to define and carry out their religious missions*." We borrow this phrase from *Amos*, 483 U.S. at 339, where it is used to explain the purpose and effect of religious exemptions.[12]

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[12] See also *Salvation Army* v. *Department of Community Affairs*, 919 F.2d 183 (3d Cir. 1990):

> [R]eligious organizations might engage in two different types of activity that are protected by the First Amendment: (1) expression of ideas, which is protected by the free speech clause whether the ideas in question are religious or not; and (2) exercise of religion, *which may include actions that are not covered by the free speech clause. * * * [T]he correct freedom of association analysis depends upon the nature of the activity for which protection is claimed.*

This inquiry makes sense of every case discussed in Section II.A of this brief. When a civil court decides disputes over religious doctrine or polity, or when government interferes with the relationship between a religious association and the individuals performing its religious functions, or when it overrules decisions to exclude or discipline members, it interferes with the religious association's ability to define and carry out its religious mission, and thus violates the freedom of religious association.

Just as courts give an expressive association deference on questions regarding "the nature of its expression" and "what would impair its expression," *Dale*, 530 U.S. at 651, courts must give a religious association deference on questions regarding "the nature of its [religious mission]" and "what would impair its [religious mission]." On the question whether a political party will be seriously burdened if forced to accept members it does not want, "a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party* v. *Wisconsin*, 450 U.S. 107, 123-24 (1981). Neither may Hastings substitute its judgment on this question for that of CLS.

The right of religious association does not extend to functions with no religious significance. Religious groups "are not—and should not be—above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts." *Rayburn* v. *General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). But here too, as with the "reasonable campus rules"

Id. at 199 (emphasis added).

in *Healy*, the state cannot define just anything to be a tort. See *supra* at 5-6. Limiting the membership of a religious association to those who share the association's faith is a constitutional right, not a tort.

III. The burden on CLS's rights of expressive and religious association is severe.

The identity of CLS's members and leaders is an integral part of both its external expression and its internal life as a religious community. CLS's stated purpose is to "enable[] its members . . . to love the [L]ord with their whole beings" and it accomplishes this purpose in part by "[c]ultivating spiritual growth through communal prayer, fellowship, and worship." Pet. App. 99a-100a. CLS's membership limits enable it to provide that fellowship and communal worship by guaranteeing that its members share the same beliefs. These activities help form CLS's conscience as a religious group. The membership of the CLS community at Hastings is critical to its religious identity, just as the membership of a church or synagogue is critical to those organizations' religious identities.

CLS pays a substantial price for preserving its organizational identity and internal autonomy. As in *Healy*, recognition as a student organization brings with it the right to communicate with other students by means of University-controlled media. Without official recognition, CLS has no access to the Student Organizations Faire, school newsletter, bulletin boards, university e-mail lists, or office space. J.A. 216-17.

Healy says that such "denial of access to the customary media" on campus is a burden that "cannot

be viewed as insubstantial." 408 U.S. at 181-82. As the Court explained, "[i]f an organization is to remain a viable entity in a campus community in which new students enter on a regular basis, it must possess the means of communicating with these students." *Id.* at 181. And "the group's possible ability to exist outside the campus community does not ameliorate significantly the disabilities imposed by" its nonrecognition. *Id.* at 183. See also *Widmar*, 454 U.S. at 267-70 (treating exclusion from campus forum as burden).

Healy and *Widmar* are not distinguishable on the ground that there the school also denied meeting space. Hastings has allowed meeting space for now, as an act of grace, while insisting that CLS has no right to this space. J.A. 233, 300, 442-44; Pet. App. 79a. As already explained, *Healy* treated exclusion from the "customary media" of campus communication as in itself a substantial burden on the right of association. 408 U.S. at 181-82. And in *Rosenberger*, the university recognized the students' group and allowed it to meet; only funding was denied. 515 U.S. at 827. Even this was an unconstitutional burden on expression.

Access to a forum was also at issue in *Hurley*. This was no routine use of the parks and sidewalks for public expression, but a massive parade that required the city to suspend the normal uses of its streets. See *Hurley*, 515 U.S. at 560-61 (parade drew up to 20,000 marchers and a million spectators). That the parade organizers were using government property did not require them to surrender their freedom of expressive association.

As in both *Healy* and *Hurley*, Hastings' policy puts CLS to a Hobson's choice between controlling its message and having access to the means of disseminating that message. That choice places a severe burden on CLS's right of expressive association.

These sanctions equally burden CLS's right of religious association. Either it must surrender its right to determine who is a member, who votes, who leads, and who teaches Bible study, or it must forfeit access to the means of communicating with students and attracting new members. That the penalty takes the form of a loss of the right to communicate does not make it any less a penalty on the right of religious association. Forfeiture of any right or privilege penalizes the exercise of any other right that must be surrendered in order to regain the forfeited right. Petitioner's Br. 54-57; Cato Institute Br. 19-32. Loss of access to Hastings' channels of communication severely burdens both associational rights at issue here.

IV. The burden on CLS's rights of expressive and religious association is not justified by any legitimate government interest.

The burden on CLS's associational rights is not justified by any legitimate government interest, let alone a compelling one.

Because refusal to recognize a student organization prevents that organization from functioning on campus, *Healy* treated nonrecognition as a prior restraint requiring a "heavy burden" of justification. 408 U.S. at 184. When the burden on expressive association is "severe," the state must show that its policy is "narrowly tailored to serve a compelling state

interest." *Clingman* v. *Beaver*, 544 U.S. 581, 586 (2005) (plurality opinion); *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Where the burden is more modest, "'important regulatory interests will usually be enough.'" *Clingman*, 544 U.S. at 587 (quoting *Timmons*, 520 U.S. at 358). An example of a modest burden is government interference with the membership rules of an organization that is large, diffuse, non-selective, and lacking in any clear message. See *supra* at 10-11 (citing *Roberts*, 468 U.S. at 621, 627).

Some courts have applied the compelling interest test to claims of interference with the choice of religious leaders. See *Rayburn*, 772 F.2d at 1169. But no court has ever found a government interest sufficient to justify such interference, and other cases appear to assume that the rule against interference with internal church affairs is a categorical rule not subject to balancing with governmental interests. There is no mention of possible government justifications in most of the ministerial exception cases, or in this Court's cases such as *Watson*, *Kedroff*, or *Milivojevich*. Balancing of interests in these cases generally occurs only implicitly, at the margins of the right to religious association, in deciding which functions are sufficiently religious to deserve protection. Once a religious group's decision is found to be inside the rule against government interference, "there is no further balancing." See Douglas Laycock, *Church Autonomy Revisited*, 7 Geo. J.L. & Pub. Pol'y 253, 267 (2009).[13]

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[13] There is a very different set of cases where physical torts, most notably sexual assaults and molestations, oc-

Little turns on this choice between categorical rule and strict scrutiny, or even some lesser standard of review, because there is simply no legitimate reason for forcing a religious organization to admit members or appoint leaders who do not adhere to the faith. Unlike a political party, *California Democratic Party*, 530 U.S. at 572, religious associations play no role in governing the state. They are essentially private bodies, engaged in a constitutionally protected activity, and the state has no legitimate interest in overriding their membership rules.

Of course Hastings has an important interest in prohibiting invidious discrimination in secular organizations that are part of the school's life. But it has no legitimate interest in prohibiting religious discrimination inside a religious organization. To do that is to claim an interest in abolishing distinctive religious organizations. It is to turn the religious discrimination laws on their head.

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cur inside churches, often against children. Of course the molester has no First Amendment defense. Claims against the church itself for negligent hiring or supervision implicate the church's right to select and supervise its own clergy. Some courts have held such suits barred by the church's right to manage its internal affairs; a larger number of courts have allowed such cases to proceed on some or all counts. See *Malicki* v. *Doe*, 814 So.2d 347, 351 & n.2, 358 & n.10 (Fla. 2002) (collecting both sets of cases). These cases have a variety of rationales, but they are best explained by the government's compelling interest in protecting children against physical harms having nothing to do with anyone's religion. See Laycock, 7 Geo. J.L. & Pub. Pol'y at 273-74.

Religion became part of the canonical list of civil rights categories when attention was focused on employment and the commercial sector. The goal was to ensure that religious minorities—Jews were the most prominent example, but Catholics and members of other faiths were also victimized in some parts of the country—could participate in business, work in the professions or any other occupation, and receive services from "establishments doing business with the general public." See S. Rep. No. 88-872 at 2355 (1964). No one ever intended to require synagogues to admit Gentile members or appoint Baptist rabbis. Title VII contains express exceptions to keep that from happening. Religious associations and religious schools can hire on the basis of religion, and anyone can hire on the basis of religion if religion is a *bona fide* occupational qualification. 42 U.S.C. §§ 2000e-1(a), 2000e-2(e) (2006).

Hastings has ripped the category from this context, dropped the exceptions, and applied it in a way that is simply absurd. A rule intended to protect religious minorities from discrimination is now used to target religious minorities for exclusion. Religious students at Hastings are forbidden from keeping their religious association faithful to its original creed and mission. Hastings' interest is *illegitimate*, because it directly negates the rights of expressive and religious association.

This Court's cases protecting the right to exclude members who do not support the cause are just one example of courts and other state actors distinguishing between invidious discrimination and legitimate association to advocate an idea or exercise a religious faith. Another example is the Code of Conduct for

United States Judges, which has long distinguished between permissible and impermissible discrimination in the organizations that judges join. The Code prohibits "membership in any organization that practices *invidious discrimination* on the basis of race, sex, religion, or national origin." *Id.*, Canon 2C (emphasis added).

The accompanying commentary explains that whether an organization is engaged in invidious discrimination "depends on how the organization selects members and other relevant factors, such as *that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members*, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited." *Id.* at cmt. 2C (citing *Roberts* and similar cases). It would be absurd—and unconstitutional—to forbid judges to belong to churches that require a profession of faith for membership. As applied to judges, such a rule would violate the Test Oath Clause, in addition to the First Amendment.

Hastings bans *all* "discrimination" on the basis of religion, whether invidious or not: even the constitutionally protected selection of voting members and religious leaders. J.A. 221. In short, Hastings has no legitimate interest in controlling CLS's identity, let alone a compelling one. By unjustifiably denying recognition to CLS, Hastings has violated its rights of religious and expressive association.

CONCLUSION

For the foregoing reasons, the Ninth Circuit's ruling should be reversed.

Respectfully submitted,

KEVIN J. HASSON
ERIC C. RASSBACH
HANNAH C. SMITH
LUKE W. GOODRICH
LORI H. WINDHAM
THE BECKET FUND FOR
RELIGIOUS LIBERTY
3000 K Street, NW
Suite 220
Washington, DC 20007
(202) 955-0095

DOUGLAS LAYCOCK
Counsel of Record
YALE KAMISAR
COLLEGIATE
PROFESSOR OF LAW
THE UNIVERSITY OF
MICHIGAN LAW SCHOOL
625 South State St.
Ann Arbor, MI 48109
(734) 647-9713

APPENDIX

The American Islamic Congress (AIC) is a civil rights organization promoting tolerance and the exchange of ideas among Muslims and between other peoples. AIC combats negative perceptions of Muslims by advocating responsible leadership and "two-way" interfaith understanding. As Muslim-Americans, thriving amidst America's open multicultural society and civil liberties, we promote these same values for the global Muslim community. We are not afraid to advocate unequivocally for women's equality, free expression, and nonviolence—making no apologies for terrorism, which primarily claims Muslim lives. We join this brief in support of the universal principles of freedom of religion and freedom of expression.

The Coalition of African-American Pastors (CAAP) is a grass-roots movement of African-American Christian leaders who believe in traditional family values, such as protecting the lives of the unborn, defending the sacred institution of marriage, and supporting the role of religion in American public life. Many African-American Pastors were involved in the civil rights movement of the 1960s and strongly reject the notion that, when a religious group chooses members and leaders that support its core values, it is somehow engaging in "invidious discrimination." Indeed, CAAP could not exist in its present form if it could not limit its membership and leadership to those who agree with its mission. Thus, CAAP strongly supports the right of the Christian Legal Society and other religious groups to limit their membership and leadership to those who agree

with their core religious tenets and abide by their religiously motivated standards of conduct.

The National Council of Young Israel (Young Israel) is a Jewish religious organization that seeks to promote the religious observance of the families that attend the Jewish congregations that comprise our membership. Young Israel was created in 1912, a time in which observance of Torah laws and customs required extraordinary sacrifice. We worked tirelessly then and continue to do so now to facilitate and enhance the Torah observance of our congregational constituents. Today, our membership includes approximately 150 congregations (representing approximately 200,000 individual constituents) and we additionally represent hundreds of synagogues, Jewish day schools, and Jewish community institutions throughout the United States. Young Israel's principal objective is to foster and maintain a program of spiritual, cultural, social and communal activity towards the advancement and perpetuation of traditional Torah-true Judaism. We join this brief in support of protecting the autonomy of religious associations that has permitted traditional Torah-true Judaism to flourish in our country.

The National Hispanic Christian Leadership Conference, The Hispanic National Association of Evangelicals, is America's largest Hispanic Christian organization serving over 16 million constituents via our 25,434 member churches and member organizations. The NHCLC exists to unify, serve and represent the Hispanic Born Again Faith community by reconciling the vertical and horizontal elements of the Christian message via the 7 directives of Life,

Family, Great Commission, Stewardship, Education, Justice and Youth.

Project Nur ("Project Light") is a Muslim-led forum for students from various backgrounds, cultures, and faith to come together to celebrate their differences, solidify their commonalities, and bring light or knowledge to their respective communities. Project Nur is dedicated to creating a space that allows all students to learn from and about each other in order to build an inter-ethnic and multi-faith student community promoting human rights and civil rights; ultimately resulting in emphasizing the positive values and expectations of all identities, while promoting co-existence, tolerance and understanding. Project Nur aims to emphasize positive relationships by building bridges between Muslims and people of other faiths in order to diminish generalizations and stereotypes. As a Muslim-led student organization, Project Nur is committed to the freedom of all people, and students in particular, to associate in furtherance of their beliefs.

The Sikh American Legal Defense and Education Fund ("SALDEF") is a national civil rights and educational organization. Its mission is to protect the civil rights of Sikh Americans and ensure a fostering environment in the United States for future generations of Sikh Americans. SALDEF seeks to empower Sikh Americans through legal assistance, educational outreach, legislative advocacy, and media relations. SALDEF believes that it can attain these goals by helping to protect the religious liberties of people of all religious backgrounds. SALDEF speaks here

for the religious and expressive association rights of all people.

The Sikh Coalition was founded on September 11, 2001, to 1) defend civil rights and liberties for all people; 2) promote community empowerment and civic engagement within the Sikh community; 3) create an environment where Sikhs can lead a dignified life unhindered by bias and discrimination; and 4) educate the broader community about Sikhism in order to promote cultural understanding and create bridges across communities. Ensuring religious liberty for all the people is a cornerstone of the Sikh Coalition's work. The Sikh Coalition files this amicus out of the belief that the rights of religious and expressive association are indispensable safeguards for religious minority communities.