

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

---

INTERVARSITY CHRISTIAN  
FELLOWSHIP/USA, *et al.*,

*Plaintiffs,*

v.

BOARD OF GOVERNORS OF  
WAYNE STATE UNIVERSITY,  
*et al.*,

*Defendants.*

Civil Action No.:  
3:19-cv-10375-RHC-SDD  
Judge Robert H. Cleland

**PLAINTIFFS' REPLY BRIEF IN  
SUPPORT OF MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT AND  
PERMANENT INJUNCTION**

**ORAL ARGUMENT  
REQUESTED**

---

Paul C. Schultz  
Mitzel Law Group PLC  
1590 Eisenhower Pl.  
Ann Arbor, MI 48108-3284  
(734) 668-4100 phone  
[pschultz@mitzellaw.com](mailto:pschultz@mitzellaw.com)

Daniel H. Blomberg  
Eric S. Baxter  
Lori Windham  
Christopher Mills  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Ave. NW  
Suite 400  
Washington, DC, 20006  
(202) 955-0095 phone  
(202) 955-0090 fax  
[dblomberg@becketlaw.org](mailto:dblomberg@becketlaw.org)  
[ebaxter@becketlaw.org](mailto:ebaxter@becketlaw.org)

***Counsel for Plaintiffs***

## TABLE OF CONTENTS

	<b>Page</b>
REPLY TO WSU’S COUNTER-STATEMENT OF MATERIAL FACTS .....	i
INTRODUCTION .....	1
ARGUMENT .....	1
I. Wayne State violated the Religion Clauses (Counts 1-2). .....	1
II. Wayne State violated InterVarsity’s other First Amendment rights. ....	2
A. Wayne State violated InterVarsity’s free speech rights (Counts 7–8). ....	2
1. Wayne State’s forum restrictions were unreasonable.....	3
2. Wayne State engaged in viewpoint discrimination. ....	4
B. Wayne State violated free association and assembly rights (Counts 6, 9). ....	7
C. Wayne State violated InterVarsity’s free exercise rights (Counts 3–4). ....	8
D. Wayne State violated the Establishment Clause (Count 5).....	10
E. Wayne State fails strict scrutiny. ....	11
III. Individual defendants violated the Michigan Constitution (Count 15). ....	11
IV. This Court should grant permanent injunctive relief. ....	12
CONCLUSION .....	12

## REPLY TO WSU'S COUNTER-STATEMENT OF MATERIAL FACTS

### *InterVarsity at Wayne State*

1. Plaintiff InterVarsity Christian Fellowship/USA is a religious organization that conducts religious ministry through chapters on over 600 college campuses across the Country. Beyerlein Decl. [Ex. A] ¶ 4, Ex. A1; Beyerlein Dep. [Ex. F] at 79:7-10.

**Counter-Statement:** Defendants do not dispute that Plaintiff InterVarsity Christian Fellowship/USA is a religious organization that conducts religious ministry through chapters at over 600 college campuses across the Country.

2. Plaintiff InterVarsity Christian Fellowship at Wayne State University is one of those chapters, and has been a recognized part of the Wayne State community for more than seventy-five years. Villarosa Dep. [Ex. C], Ex. C11 at WSU001717; Blomberg Decl. [Ex. B], Ex. B24 at 10.

**Counter-Statement:** Defendants do not dispute that Plaintiff InterVarsity Christian Fellowship at Wayne State University has had a presence on Wayne State's campus since the 1930s, two decades before Wayne State adopted its first anti-discrimination policy. *See* ECF No. 45-2 at PageID.771-773.

**REPLY: Wayne State's response does not contest that InterVarsity has been "a recognized part of the Wayne State community for more than seventy-five years."**

3. Both Plaintiffs (collectively, "InterVarsity") share a common purpose: "to establish and advance . . . communities of students and faculty who follow Jesus as Savior and Lord." Ex. A ¶ 5, Ex. A2.

**Counter-Statement:** Defendants do not dispute that Plaintiffs’ stated purpose is “to establish and advance . . . communities of students and faculty who follow Jesus as Savior and Lord.” ECF No. 47-4, PageID 1172.

4. At Wayne State, InterVarsity’s members meet weekly for religious services and Bible study, engage in outreach and prayer vigils on campus, host campus conferences on religion, and organize projects to serve both Wayne State and the surrounding community. *See, e.g.*, Ex. B21 at 1; Ex. F at 29-31.

**Counter-Statement:** Defendants do not dispute that Beyerlein testified that the Wayne State InterVarsity chapter meets weekly for religious services and Bible study, engages in outreach and prayer vigils, hosts campus conferences on religion, and organizes community service projects. ECF No. 47-47, PageID.2253-2254.

5. While membership and participation in InterVarsity is open to everyone, students seeking leadership roles must “indicate their agreement with InterVarsity’s Doctrine and Purpose Statements,” “exemplify Christ-like character, conduct and leadership,” and describe their Christian faith. Ex. 1 to the Garza Decl. [Ex. G] at 2 (InterVarsity Constitution); Ex. C8 at WSU002246; Ex. C11 at WSU001718; Ex. F at 25-26.

**Counter-Statement:** Defendants do not dispute that InterVarsity’s membership is open to everyone or that, in the Organization Registration Request form submitted by Plaintiffs on March 30, 2017, students seeking leadership roles must “indicate their agreement with InterVarsity’s Doctrine and Purpose Statements,” “exemplify Christ-like character, conduct and leadership,” and describe their Christian faith. ECF No. 45-26, PageID.1049. Defendants further state

that, pursuant to the Organization Registration Request for submitted by Plaintiffs on September 15, 2017, students seeking leadership roles “must sign the Statement of Agreement (Purpose Statement) and Doctrinal Basis [and] commit to abide by the Statement of Agreement in their conduct . . . .” ECF No. 45-28, PageID.1072.

**REPLY: Wayne State’s response does not contest that “students seeking leadership roles” in an InterVarsity chapter must “indicate their agreement with InterVarsity’s Doctrine and Purpose Statements.” See ECF No. 47-47, PageID.2252-2253 at 25:10-26:7; see also ECF No. 47-48, PageID.2299 ¶ 11; id. ¶ 49 (“The reason why we’ve been able to be a consistent religious ministry for 75 years at Wayne State is that our leaders have agreed with our fundamental religious purpose and beliefs. And if we were forced to end that requirement, our group would quickly lose its Christian identity.”); ECF No. 47-49, PageID.2326 ¶ 11.**

6. Student leaders receive extensive religious training to help them perform their duties, including training on how to lead Bible studies, share InterVarsity’s beliefs with others, and follow InterVarsity’s doctrine and purpose statements. Ex. F at 113:5-12; Ex. G ¶¶ 10, 14-17; LaRowe Decl. [Ex. H] ¶¶ 5-9.

**Counter-Statement:** Defendants do not dispute that LaRowe testified that InterVarsity provides religious training to its student leaders, ECF No. 47-49, PageID.2225, and Defendants do not dispute that Beyerlein testified that InterVarsity hired her “to work with student leaders to train them, to help them learn how to lead a Bible discussion and to help them talk about Christian beliefs on

campus . . . to provide pastoral care to students, to talk to them about spiritual things, and [ ] to do outreach on campus.” ECF No. 47-47, PageID.2274.

**REPLY: Wayne State’s response does not contest that InterVarsity’s “[s]tudent leaders receive extensive religious training to help them perform their duties.” Wayne State’s response also fails to address the declaration of Cristina Garza, InterVarsity’s Wayne State chapter president, which explained the apprenticeship training that she and other InterVarsity leaders undergo prior to becoming leaders, in addition to other forms of ministerial training InterVarsity’s student leaders receive. IVCF Ex. 47-48, PageID.2299, 2300 ¶¶ 10, 14-17.**

7. InterVarsity’s constitution expressly defines these students as “Christian Leaders,” and their “distinct religious role[s]” necessarily “involve[ ] significant spiritual commitment.” Ex. G ¶¶ 9, 11, 19-21; Ex. 1 to the Garza Decl. at 2.

**Counter-Statement:** Defendants do not dispute that InterVarsity’s constitution defines student leaders as “Christian Leaders” and states that their “distinct religious role[s]” necessarily “involve[] significant spiritual commitment.” ECF No.47-49, PageID.2310-2314.

8. They are the “primary means” through which InterVarsity “ministers on campus,” and they have responsibility for leading the group’s Bible study, prayer, worship, and acts of service. Ex. G ¶¶ 9, 19-21.

**Counter-Statement:** Defendants do not dispute that Garza testified that InterVarsity’s student leaders are the “primary means” through which InterVarsity

“ministers on campus” and they have responsibility for leading the group’s various activities. ECF No. 47-48, PageID.2299, 2301.

9. They also organize and lead religious outreach events and prayer vigils, personally provide religious counsel to students, and evaluate the religious qualifications of future leadership candidates. *Id.*; see Ex. H ¶¶ 12-15.

**Counter-Statement:** Defendants do not dispute that LaRowe testified that InterVarsity’s student leaders organize and lead various programs and dispense with various responsibilities in their roles leading the student group. ECF No. 47-49, PageID.2226-2227.

***Wayne State’s Student Organization Policies***

10. InterVarsity is a registered student organization, or “RSO,” at Wayne State. The RSO program is a longstanding effort by Wayne State to provide a forum that encourages and supports the formation of student organizations centered around common causes and beliefs. Ex. C at 98:4-100:8.

**Counter-Statement:** Defendants do not dispute that InterVarsity is currently a registered student organization (“RSO”) program at Wayne State. Wayne State’s support of RSOs is multi-fold, and is not just limited to providing a forum for students to form organizations centered around common causes and beliefs. One of the main purposes of RSOs is to promote “student involvement [that] leads to feeling –to being connected to campus.” ECF No. 45-4, PageID.794. RSOs “are a means of enriching the campus life experience for organization members and the greater campus community”; “provide quality programs, services, and leadership opportunities that enhance classroom learning and compliment the Wayne State

experience”; and “support student intellectual growth and maturity through promoting ethical development, appreciating diversity, encouraging civic engagement, providing leadership development, and supporting the establishment of meaningful interpersonal relationships.” ECF No. 45-8, PageID.849; ECF No. 45-6, PageID.829.

11. The program has over 500 RSOs, including fraternities and sororities, club sports teams, and other student organizations. Blomberg Decl., Ex. B15 at WSU000637.

**Counter-Statement:** Defendants do not dispute that Wayne State offers a robust campus life, with over 500 RSOs. ECF No. 47-20, PageID.1246. Defendants do not dispute that among those RSOs are fraternities, sororities, club sports teams, and other student organizations.

12. Through these groups, students band together to celebrate distinct cultures, promote political causes, enjoy unique hobbies, worship together, serve the community, pursue academic excellence, and much more. Ex. C7 at WSU000316; Ex. B15 at WSU000637; *see, e.g.*, Ex. C4 at WSU006642.

**Counter-Statement:** Defendants do not dispute that the over 500 different RSOs representing a wide array of different interests, beliefs, and social missions, among other things. ECF No. 45-7, PageID.846.

13. Wayne State established the program to “enrich[] the campus life experience” and “support student intellectual growth and social maturity.” Ex. B15 at WSU000637.



**Counter-Statement:** Defendants do not dispute that two of the primary benefits of RSOs are that they “enrich[] the campus life experience” and “support student intellectual growth and social maturity.” ECF No. 47-20, PageID.1246.

14. The groups are highly valued by Wayne State because they create social and professional networks for students, opportunities for practical application of classroom learning, and a marketplace of ideas where students can grapple with new and challenging concepts—all of which serves to increase the graduation rate, along with creating a diverse and dynamic campus culture. *Id.*; Strauss Dep. [Ex. D] at 121-22.

**Counter-Statement:** Defendants do not dispute that the Dean of Student’s Student Organization Resources homepage states that the Student Organization Resources area’s mission is: (i) “to support student organizations as a means of enriching the campus life experience for organization members and the greater campus community”; (ii) “develop student organizations so they may provide equality programs, services, and leadership opportunities that enhance student classroom learning and compliment the Wayne State experience;” and (iii) “to support student intellectual growth and social maturity through promoting ethical and moral development, appreciating diversity, encouraging civil engagement, providing leadership development, and supporting the establishment of meaningful interpersonal relationships.” ECF No. 47-20, PageID.1246. Defendants also do not contest that Dean Strauss echoed those sentiments, testifying that “when a student is connected to something or some things or someone on campus, the data will show

you that those students retain at a higher rate and graduate at a higher rate.” ECF No. 47-45, PageID.2139.

15. Wayne State encourages participation in the RSO forum by giving significant benefits to student groups that register, including the ability to reserve free meeting space on campus; access free tables in public spaces for student outreach and advocacy; participate in two main recruiting events—FestiFall and WinterFest; appear on the Wayne State webpage; and use University’s online OrgSync communication system to connect with students and schedule events. Ex. B15 at WSU000637-38; Ex. D at 115-22.

**Counter-Statement:** Defendants state that organizations that become RSOs have available to them numerous resources including: (i) the ability to reserve free or reduced-price meeting spaces, ECF No. 45-8, PageID.858-859, ECF No. 45-9, PageID.864; (ii) the ability to reserve tables in the Student Center for recruiting purposes, ECF No. 45-6, PageID.831-832; (iii) the ability to apply to the Student Activities Funding Board for funding, *id.* at PageID.829; (iv) participation in various campus events, *id.*; (v) access to lockers in the Student Center (though due to the limited number of lockers, not all RSOs are afforded locker space), *id.* at PageID.829-830; (vi) access to Engage, the platform used by WSU to manage student organizations registrations to calendar events, manage membership, and communicate with members, ECF No. 45-4, PageID.793-794; and (vii) are listed as active on the Dean of Students Office’s website, *id.* at PageID.793. Further, Defendants do not contest that Dean Strauss testified that one of the reasons that the university offers such benefits to RSOs is “[t]o provide students the opportunity for

involvement,” but dispute the implication that Strauss testified that these benefits are provided for the purpose of encouraging participation in the RSO program. *Id.* at PageID.794-795.

**REPLY: Wayne State’s response does not contest that “Wayne State encourages participation in the RSO forum by giving significant benefits to student groups that register.” Instead, Wayne State’s response “dispute[s] the implication that Strauss testified that these benefits are provided for the purpose of encouraging participation in the RSO program.” But when asked “[w]hy does the university offer these benefits,” Strauss testified: “To provide students the opportunity for involvement.” ECF No. 47-45, PageID.2139-2140 at 121:16-122:1. He was then asked “And do you think having those benefits increases student involvement?” and he answered, “Yes.” *Id.* at 122:2-4. Villarosa also testified that giving RSOs benefits “supports activities and engagement on campus.” ECF No. 47-33, PageID.1957 at 46:1-10. And Wayne State’s own website advertises the “Benefits of being a RSO” right underneath its “Register your student organization” link. ECF No. 47-20, PageID.1246 at WSU000637.**

16. To access the RSO forum and its benefits, a group must submit information about its members, its leaders, and a constitution explaining its purpose and governance. Ex. B15 at WSU000681; Ex. C at 62-63.

**Counter-Statement:** Defendants do not dispute that to become an RSO, students must complete a form, currently submitted through Engage. ECF No. 45-6, PageID.822. That submission must: (i) identify at least two currently registered

students who are members of the organization, ECF No. 45-12, PageID.906-907; (ii) acknowledge certain WSU policies, including the Non-Discrimination policy, *id.* at PageID.913-916; and (iii) submit a valid operating agreement, *id.* at PageID.908-912. Among other things, the operating agreement contains fields for the organization to input its goals and purposes for the organization, as well requirements for membership and leadership. *Id.*

17. Once approved, the group must reregister annually. Ex. C at 150:10-14.

**Counter-Statement:** Defendants do not dispute that once an organization's registration has been approved, it must re-register annually. ECF No. 47-33, PageID.1983.

18. Reregistration is accomplished by updating student officers' names and contact information and resubmitting the organization's constitution. Ex. B13 at WSU000172-73.

**Counter-Statement:** Defendants do not dispute that an organization's re-registration may be accomplished by updating student officers' names and contact information and resubmitting the organization's constitution. But Villarosa testified that, even though an organization is re-registering and not registering for the first time, its application for RSO status is still reviewed to ensure it meets the standards for RSO status, including adhering to all University policies. ECF No. 45-6, PageID.825.

19. Wayne State's Coordinator of Student Life, Ricardo Villarosa, evaluates each submission for completeness and compliance with Wayne State's requirements. Ex. C at 14-15, 26-27, 62. If the submission fails to comply, Villarosa denies the

application and explains why. *Id.* The organization can then make corrections and resubmit. *Id.* If it is unclear whether a submission is compliant, Villarosa consults with Dr. David Strauss, the Dean of Students, regarding how to proceed. *Id.* at 2831.

**Counter-Statement:** Defendants do not dispute that at all relevant times, Ricardo Villarosa, Coordinator for Student Life, handled the registration process for student organizations. ECF No. 45-6, PageID.822-824. Defendants do not dispute that if a submission failed to comply with the requirements to become an RSO, Villarosa would refuse to register the organization and would leave a comment explaining why the organization was not registered. Defendants do not dispute that an organization that was not registered would have an opportunity to correct the submission and resubmit it. Defendants further do not dispute that, if it is unclear whether a submission complies with the requirements for becoming an RSO, Villarosa testified that he would then consult with either Dean Straus or the Office of General Counsel. *Id.* at PageID.825.

20. This evaluation includes reviewing whether the organization’s leadership and membership criteria violate Wayne State’s Non-Discrimination Policy (the “Policy”). *Id.* at 26-27.

**Counter-Statement:** Defendants do not dispute that part of Villarosa’s review includes reviewing whether the organization’s leadership and membership criteria violate Wayne State’s Non-Discrimination Policy. ECF No. 45-6, PageID.825.

21. According to Wayne State, the Policy forbids discrimination on the basis of “race, color, sex (including gender identity), national origin, religion, age, sexual

orientation, familial status, marital status, height, weight, disability, or veteran status” in the context of “hiring, terms of employment, tenure, promotion, placement and discharge of employees, admission, training and treatment of students, extracurricular activities, the use of University services, facilities, and the awarding of contracts.” Ex. C5 at WSU001371-72.

**Counter-Statement:** Defendants do not dispute that Wayne State’s Non-Discrimination Policy “embraces all persons regardless of race, color, sex (including gender identity), national origin, religion, age, sexual orientation, familial status, marital status, height, weight, disability, or veteran status and expressly forbids sexual harassment and discrimination in hiring, terms of employment, tenure, promotion, placement and discharge of employees, admission, training and treatment of students, extracurricular activities, the use of University services, facilities, and the awarding of contracts.” ECF No. 47-38, PageID.2072.

22. Wayne State claims that there are “no written exceptions” to this Policy. Ex. B9 at 10-11.

**Counter-Statement:** Defendants admit that there are no written exceptions, however, as Dean Strauss testified, Wayne State’s RSO Policy recognizes two exceptions to the Non-Discrimination Policy regarding leadership of and membership in registered student organizations. ECF No. 45-4, PageID.799. Those exceptions are for social Greek organizations and club sports organizations, both of which may limit membership and leadership by gender identity. *Id.* at PageID.799, 801, 803. Further, as Dean Strauss testified, Wayne State recognizes these two limited exceptions to the Non-Discrimination Policy consistent with the manner in

which the federal government has interpreted Title IX. *Id.* at PageID.801-802. Strauss further testified that, as to social Greek organizations, this exception is rooted in history and the treatment of social Greek organizations at institutions of higher learning throughout the country. *Id.* at PageID.799, 800.

23. The Policy itself, however, goes on to say that it “shall not preclude the university from implementing those affirmative action measures which are designed to achieve full equity for minorities and women.” Ex. C5 at WSU001371.

**Counter-Statement:** Wayne State does not dispute that its Non-Discrimination Policy states that it “shall not preclude the University from implementing those affirmative action measures which are designed to achieve full equity for minorities and women.” ECF No. 47-38, PageID.2072.

***Wayne State Denies InterVarsity’s Reregistration***

24. In early 2017, Wayne State instituted a new online system called OrgSync for approving student organizations. Ex. C at 38:20-22; Ex. C11 at WSU001718.

**Counter-Statement:** Defendants dispute that WSU instituted a new online system called OrgSync in early 2017 for approving student organizations. As Villarosa testified, WSU adopted the OrgSync system in the fall of 2016. ECF No. 45-6, PageID.827. At some point during the 2016-2017 school year, as Villarosa testified, OrgSync was purchased by a company called Campus Labs, who merged the OrgSync product into a product called Engage. *Id.* WSU began using the Engage platform in the fall of 2017. *Id.* The OrgSync and Engage platforms were both consistently branded to WSU students as “Get Involved.” *Id.*

25. Cristina Garza, InterVarsity's chapter president, submitted the group's constitution through the automated system. *Id.*

**Counter-Statement:** Defendants do not dispute that, in March 2017, Cristina Garza, InterVarsity's chapter president, submitted the organization's registration materials through the Get Involved platform for approval. ECF No. 45-26, PageID.1050; ECF No. 47-48, PageID.2301.

26. That constitution was essentially identical to the constitutions InterVarsity had previously submitted, Ex. G ¶ 23, and was the same as InterVarsity constitutions at other Michigan universities such as the University of Michigan, Michigan State University, and Central Michigan University. Ex. C11 at WSU001718; Ex. A ¶ 6.

**Counter-Statement:** Defendants do not dispute that Garza testified that "to the best of [her] knowledge, the constitution [she] submitted in spring 2017 was the same as the constitution InterVarsity has used in previous years . . . . [but] [b]ecause the process was new in 2017, [she didn't] know when InterVarsity was last required to submit a constitution." ECF No. 47-48, PageID.2302. Defendants state that InterVarsity does not attach constitutions previously submitted to WSU or constitutions submitted to other Michigan universities, and thus these documents are not properly before the Court.

**REPLY: Wayne State's response does not contest the testimony of Ann Beyerlein that "[t]he InterVarsity constitution submitted by Cristina Garza to Wayne State University during spring 2017 contained the standard InterVarsity religious leadership requirements, similar to the religious leadership requirements constitutions of InterVarsity chapters that had been**



**approved at other Michigan public universities, including the University of Michigan and Central Michigan University.” ECF No. 47-2, PageID.1166 ¶ 6. The Wayne State chapter’s constitution is also substantially identical to the constitution at issue in *InterVarsity Christian Fellowship/USA v. Univ. of Iowa*. No. 18-00080 (S.D. Iowa), ECF No. 1-1, Ex. A, at 2-3 (Aug. 6, 2018).**

27. It makes clear that InterVarsity welcomes all students as members, regardless of religious belief, but asks that student leaders embrace InterVarsity’s statement of faith. Ex. 1 to the Garza Decl. at 2; Ex. C8 at WSU002246.

**Counter-Statement:** Defendants do not dispute that InterVarsity’s membership criteria is open to all students, but that its leadership criteria, as stated in the March 30, 2017 submission, required “Chapter leaders . . . to indicate their agreement with InterVarsity’s Doctrine and Purpose Statements and exemplify Christ-like character, conduct and leadership . . . .” ECF No. 45-26, PageID.1049.

28. On March 30, Ms. Garza received an OrgSync message stating that the application had been completed and that her position as president had been accepted. But the following day, Villarosa posted two messages stating “[n]either membership, nor officer requirements may violate the university anti-discrimination policy— please amend the officer requirements accordingly and resubmit.” Ex. C8 at WSU002241.

**Counter-Statement:** Defendants do not dispute that Villarosa sent a comment through the OrgSync system that “Neither membership nor officer requirements may violate the university anti-discrimination policy – please amend the officer requirements accordingly and resubmit.” ECF No. 45-26, PageID.1044.

29. Garza initially missed the messages, as she was unfamiliar with the new system, and did not amend the leadership policies. Ex. G ¶ 26.

**Counter-Statement:** Defendants do not dispute that Garza testified that she “missed the messages [from Villarosa] at first, and did not notice any changes to InterVarsity’s status, since [she] was able to reserve rooms and tables, use OrgSync, and act as a registered student organization.” ECF No. 47-48, PageID.2302-2303. Further, as Beyerlein testified, InterVarsity never took any action in response to Villarosa’s comments. ECF No. 45-27, PageID.1056.

30. InterVarsity continued to be treated as a registered student organization in Spring 2017 and into the start of the fall semester. Ex. G ¶¶ 26-27; Ex. C11 at WSU001718.

**Counter-Statement:** Defendants do not dispute that, despite never successfully registering for the 2016-2017, InterVarsity was active on Wayne State’s campus and reserved rooms on campus. ECF NO.45-27, PageID.1056. Defendants also do not dispute that, prior to the denial of InterVarsity’s registration in the Fall of 2017, InterVarsity reserved rooms on campus. *Id.*

**REPLY: Wayne State’s response contends that InterVarsity “never successfully register[ed] for the 2016-2017” school year, while conceding that “InterVarsity was active on Wayne State’s campus and reserved rooms on campus” during that school year. Wayne State is wrong. As Villarosa explained, registration happens in the fall, and Wayne State has identified no denial of InterVarsity’s fall 2016 registration. ECF No. 47-33, PageID.1990-1991 at 181:15-183:1. The undisputed testimony establishes that InterVarsity operated**

as a registered student organization throughout the 2016-2017 school year. ECF No. 47-47, PageID.2251 at 18:25-19:8 (Beyerlein testifying that there were no “issues with the Wayne State Chapter’s ability to operate at Wayne State in the 2016-2017 school year”); ECF No. 47-48, PageID.2302-2303 at ¶ 26 (Garza explaining the same); ECF No. 47-48, PageID.2301 ¶ 19 (Garza explaining that during that school year, she communicated with the Dean of Students’ office, reserved rooms and tables, and held meetings).

Indeed, the record reflects that on October 19, 2016—at the beginning of the 2016-2017 school year—the Dean of Students’ office added Garza as an Administrator to InterVarsity’s page on the Get Involved system, a privilege reserved for registered student organizations. ECF No. 47-48, PageID.2318; ECF No. 55, PageID.2501. Wayne State’s Counter-Statement identifies only an application submitted near the very end of the 2016-2017 school year, on March 30, 2017. ECF No. 45, PageID.721-722. And Wayne State itself identified that application as a “*renewal* request.” ECF No. 47-48, PageID.2317 (emphasis added). Wayne State does not contest Garza’s explanation that she re-registered then because “[i]n spring of 2017, Wayne State instituted a new online system for student organization approval.” ECF No. 47-48, PageID.2301 ¶ 22. Nor does Wayne State contest that for the remainder of the 2016-2017 school year and into the start of the fall 2017 semester, InterVarsity was treated as a registered student organization. ECF No. 47-48, PageID.2302-2303 ¶¶ 26-27; ECF No. 54-5, PageID.2487.

31. In September 2017, after Garza renewed InterVarsity's application for that school year, Villarosa asked the organization to contact him regarding its "Membership and Officer Requirements." Ex. C9 at WSU002847; Ex. G ¶ 31.

**Counter-Statement:** Defendants state that, on September 14, 2017, Garza submitted a request for registration for review by WSU. ECF No. 45-28, PageID.1067-1074; ECF No. 47-48, PageID.2303 (misstating date but identifying Garza as the student who submitted the request for registration). On September 15, 2017, Villarosa refused to register the organization and commented, "Please contact me regarding your Membership and Officer requirements." ECF No. 45-28, PageID.1067.

32. Villarosa informed Garza that InterVarsity's statement of faith for leaders was inconsistent with the school's Policy. Ex. G ¶ 34; Ex. C9 at WSU002847; Ex. C11 at WSU001718.

**Counter-Statement:** Defendants state that on October 3, 2017, Villarosa sent another message to InterVarsity through the registration system stating that: "Your current written officer requirements violate the University Non-discrimination Policy. Please adjust and resubmit." ECF No. 45-28, PageID.1067.

33. Garza protested that many campus groups, including fraternities and sororities, place restrictions on leadership and membership, and asked for confirmation from the University's general counsel given the harm to InterVarsity's First Amendment rights. Ex. G ¶¶ 35-36; Ex. C11 at WSU001718.

**Counter-Statement:** Defendants do not dispute that on October 17, 2017, Ms. Garza wrote to Villarosa requesting a response “from the General Counsel’s office clarifying and explaining [WSU’s] policy.” ECF No. 45-32, PageID.1085.

**REPLY: Wayne State’s response does not contest that in addition to emailing Villarosa to request confirmation from General Counsel, ECF No. 47-48, PageID.2320, Garza had a prior conversation with Villarosa in which she told him about “other groups on campus [that] ask their members or leaders to share their views” as well as “other groups on campus that seem to violate the non-discrimination policy, like single-sex fraternities and sororities.” ECF No. 47-48, PageID.2304. Nor does Wayne State contest Garza’s testimony that Villarosa responded “that campus organizations such as single-sex fraternities and sororities stated in their constitutions that membership or leadership positions were open to all, but were allowed to disregard that rule in practice.”**  
*Id.*

34. Wayne State’s assistant general counsel responded via letter, stating that Garza was factually wrong because the Policy “applied equally to all organizations seeking recognition” and was legally wrong because “the policy is viewpoint neutral.” Ex. C10 at WSU001716.

**Counter-Statement:** Defendants do not dispute that Ms. Garza received a letter from the Office of the General Counsel stating that the “suggestion that the application of the University’s non-discrimination policy to your organization’s request for recognition violates the First Amendment is erroneous” and that “[t]he application of the policy does not transgress First Amendment limitations because

the policy is viewpoint neutral and is applied equally to all organizations seeking recognition.” ECF No. 47-43, PageID.2099.

35. Villarosa and Strauss both saw this letter. Villarosa knew it was false that WSU applied the Policy “equally” to “all organizations,” but neither he nor Strauss sought to set the record straight. Ex. C at 202:1-15; Ex. D at 72:19-21.

**Counter-Statement:** Defendants dispute that the letter was false: all similarly situated student organizations are treated equally; exemptions exist for social Greek organizations and club sports because they are not similarly situated. Defendants further dispute that Villarosa “knew [the letter] was false that WSU applied the Policy “equally” to “all organizations.” Villarosa testified that the Non-Discrimination Policy is “equally applied with the exemptions that we’ve discussed,” referencing the exemptions provided to social Greek organizations and club sports. ECF No. 47-33, PageID.1996. Further, Straus merely testified that at the time the letter was written, the decision had been made not to register InterVarsity because “that was the analysis provided to us, and thus, we denied the registration.” ECF No. 47-45, PageID.2127. Strauss had consulted with both Villarosa and Wayne State’s General Counsel in making that decision. *Id.* The testimony cited contains no statement by either Villarosa or Strauss that anything in the letter needed to be set “straight,” thus there is no basis for the implication that Villarosa or Strauss knowingly failed to correct an error.

**REPLY: Wayne State’s response is inconsistent with the record. Wayne State concedes, and the record demonstrates, that the General Counsel Office’s letter said that the Policy “is applied equally to all organizations seeking**

**recognition.” Both Villarosa and Strauss saw the letter; both Villarosa and Strauss admit that the Policy is *not* applied equally to Greek groups, sports clubs, and certain other groups; and neither attempted to correct this material error. ECF No. 47-33, PageID.1996 at 202:1-15; ECF No.47-45, PageID.2127, 2144, 2146 at 72:19-21, 138:16-139:10, 148:7-10. Moreover, Wayne State’s response misrepresents the content of the letter from the Office of General Counsel. The letter stated that the Policy “is applied equally to *all organizations*,” while Wayne State’s response claims that the letter stated that the Policy applies equally to “*all similarly situated organizations*”—and then asserts without support that Greek organizations and sports clubs are “*not similarly situated.*” *But see* ECF No. 47-45, PageID.2146 at 147:8-14 (Strauss explaining that the special treatment for Greek groups and club sports is “*subjective*”); *see also* IVCF SOMF ¶¶ 11, 22 (Greek groups and sports clubs are RSOs and are subject to the Policy). Wayne State’s response also ignores the Policy’s affirmative-action exemption, which Villarosa testified and Wayne State concedes allows Villarosa and Strauss to favor certain groups at their discretion. ECF No. 47-33, PageID.1975-77; IVCF SOMF ¶ 23.**

36. Just three days later, on October 26, Wayne State officially denied InterVarsity’s registration and immediately cancelled all its scheduled room reservations. Ex. G ¶¶ 40-42; Ex. B17 at IVCF Wayne 000041-42.

**Counter-Statement:** Defendants do no dispute that on October 26, 2017, because InterVarsity refused to submit an application to register as a student organization that did not contain discriminatory leadership criteria in violation of the

RSO Policy, InterVarsity's remaining Student Center room reservations were cancelled. ECF No. 45-34, PageID.1089.

37. InterVarsity immediately suffered the loss of all RSO benefits, which dramatically injured its ability to participate equally in campus life. Ex. F at 36:314; *see* Ex. C at 199:3-15, 200:1-17, 201:1-8.

**Counter-Statement:** Defendants dispute that InterVarsity “immediately suffered the loss of all RSO benefits” because InterVarsity never successfully registered in the fall of 2017 and thus did not have RSO benefits to lose. *See supra*. Villarosa testified that because InterVarsity had failed to successfully register as a student organization, it was not afforded certain benefits reserved for RSOs, including free meeting space, being listed on the Engage website, being eligible to apply to the Student Activities Funding Board for funding, and having a reserved table at WinterFest. ECF No. 47-33, PageID.1995. Defendants further contest the assertion that this “dramatically injured [InterVarsity’s] ability to participate equally in campus life.” Despite not being a registered student organization, InterVarsity continued to operate at WSU, including holding meetings three times per week, which is approximately the same number of weekly meetings the organization held when it was an RSO. ECF No. 45-27, PageID.1058-1059. Further, InterVarsity could not identify any specific meetings that were cancelled or not held, except that it “cut back” on table space and “special meetings.” *Id.* at PageID.1059. Even still, InterVarsity-Wayne reserved a least two tables the first two weeks of the spring semester. *Id.* InterVarsity also participated at WinterFest as a vendor and was able to rent a table in the Student Center near the Starbucks. *Id.* at PageID.1060.



InterVarsity could not identify the loss of any members as a result of non-registration. *Id.* at PageID.1062-1064.

**REPLY:** The undisputed facts establish that after Wayne State de-registered InterVarsity, “[w]e did hold some meetings; not as many as we normally would have.” ECF No. 47-47, PageID.2253 at 29:6-7. Beyerlein identified specific meetings that were cancelled: “the first week of school often we would do meet-and-greets for a few hours in the student center just for students to come and meet other students. We didn’t do those that January because we just, like I said, weren’t sure how much money we should be spending on that.” *Id.* ECF No. 47-47, PageID.2254 at 31:9-14. Her testimony further states: “there was a lot of table space that we didn’t rent like we would normally have, which is a big part of our ministry, but we didn’t get that table space because it was -- we just, again, we weren’t sure how much table space to rent, how long this was going to be going on, how much money we should be spending, et cetera.” ECF No. 47-47, PageID.2254 at 30:20-31:1. She testified that InterVarsity typically (including in the fall of 2017, when it was still an RSO) reserved “two tables” for the “first two weeks of school,” but that “we cut back in January of 2018” due to the cost of renting tables as a non-RSO. ECF No. 47-47, PageID.2254 at 31:25-33:3. Moreover, several InterVarsity staff members had to divert their time to help the Wayne State chapter overcome the challenges presented by deregistration. *See* ECF No. 55-6, PageID.2616-2619 ¶¶ 3-9; *see also* ECF No. 55, PageID.2540-2541.

38. Before terminating InterVarsity's 75-plus years on campus, Wayne State made no effort to consider actions less drastic than complete deregistration. Ex. C at 211:8-212:19, 231:3-232:4.

**Counter-Statement:** Defendants dispute that WSU's actions constituted "complete deregistration." As set forth above in Paragraphs 16-17, 31-32, and 36, like all student organizations, InterVarsity submitted an annual application for registration during the 2017-2018 school year that was not granted; in other words, InterVarsity was not registered, and thus there was no deregistration. Defendants further dispute that the record reflects that "Wayne State made no effort to consider actions less drastic than complete deregistration." On the contrary, the record reflects that Wayne State exchanged multiple communications with Plaintiffs regarding potential resolutions, but no resolution was reached. *See supra* Paragraphs 31-35; *infra* Paragraphs 82-84.

**REPLY: Wayne State's response does not contest that InterVarsity has been on Wayne State's campus for 75-plus years. Moreover, the undisputed record shows that Wayne State never proposed or considered any alternatives to denying InterVarsity registration other than requiring it to remove its leadership criteria. IVCF Ex. B23; Ex. B18 at IVCF Wayne 001082; see also IVCF Ex. C at 211:8-212:19, 231:3-232:4.**

39. It did not compare policies at other Michigan universities with InterVarsity chapters. *Id.* And it neither evaluated its interests in forbidding InterVarsity from having religious leaders nor tried tailoring its deregistration to those interests. *Id.*

**Counter-Statement:** Defendants do not dispute that Villarosa testified that he did not “check the policies at University of Michigan or Michigan State University to see if they had a different approach to how to handle groups like InterVarsity” nor did he check policies at Central Michigan University. ECF No. 47-33, PageID.1998. Defendants also do not dispute that Villarosa did not personally consider any alternative accommodations “with regard to allowing InterVarsity to have religious leaders.” *Id.* at PageID.2003. As set forth in Paragraphs 31-32 and 36, WSU did not deregister InterVarsity; WSU refused to register InterVarsity based on its annual application submission. Further, the record reflects that WSU devoted substantial time to evaluating its interests and options, demonstrated by the extensive correspondence between the Office of General Counsel and Plaintiffs. *See* CSF ¶¶ 31-35; 82-84.

**REPLY:** Wayne State’s response attempts to limit the relevant facts to Villarosa’s personal investigation, but Villarosa was its Rule 30(b)(6) witness as well as the employee charged with denying InterVarsity registration. ECF No. 55-5, PageID.2606. Wayne State ultimately does not contest that “[i]t did not compare policies at other Michigan universities with InterVarsity chapters.” *See also* IVCF Ex. D at 186:12-187:6 (Strauss testifying that he did not “consider policies from other universities” “in [his] decision-making”). And Wayne State provides no evidence that it considered alternatives to denial of registration. Finally, denied that a few cursory emails from Wayne State to InterVarsity provide evidence “that WSU devoted substantial time to evaluating its interests and options.”

*Wayne State's Selective Enforcement*

40. Notwithstanding Wayne State's claim that its Policy "is applied equally to all organizations," it has permitted countless registered student organizations, and many of its own programs, to limit participation based on protected characteristics. Ex. C10 at WSU001716.

**Counter-Statement:** Defendants dispute that Wayne State "has permitted countless registered student organizations, and many of its own programs, to limit participation based on protected characteristics." As Strauss testified, consistent with federal law, Wayne State's registered student organizations policy recognizes two exceptions to the Non-Discrimination Policy related to social Greek organizations and club sports. ECF No. 47-45, PageID.2146-2147. Further, Defendants contest that, as a matter of law, other WSU programs outside the scope of the RSO program have any relevance to this dispute.

**REPLY:** By Wayne State's own admissions, "numerous club sports and intramural teams," ECF No. 53, PageID.2378, dozens of social Greek organizations, various RSOs and Wayne State programs considered to fall within the affirmative action exception, and other registered organizations are allowed to discriminate on bases supposedly prohibited by the Policy. Wayne State's response "contest[s] that, as a matter of law, other WSU programs outside the scope of the RSO program have any relevance to this dispute." ECF No. 53, PageID.2376. But the Policy says it applies to "all" WSU programs. ECF No. 54-2, PageID.2464. Wayne State provides no reason that its own Policy should apply with greater force to private entities within the RSO forum than

**it does to Wayne State's own programs. Nor does Wayne State provide any reason why this Court should ignore exemptions it grants to its own programs when evaluating whether the Policy is neutral and generally applicable, or whether it advances a compelling governmental interest in the least restrictive way as applied to InterVarsity's leadership selection.**

41. To take an obvious example, Wayne State categorically allows NCAA and club sports teams to discriminate based on sex and gender identity. Ex. C at 156:19157:3; Ex. B20 at IVCF Wayne 001953; Ex. B11 at 3-4.

**Counter-Statement:** Defendants do not contest that Mr. Villarosa testified that it was consistent with his understanding of how the non-discrimination policy works for club sports that they are required to follow all of the other criteria, but not required to follow the requirement for sex and gender identity consistent with Title IX. ECF No. 47-33, PageID.1984. Defendants also do not contest that consistent with Title IX, Wayne State sponsors the following teams for competition through the National Collegiate Athletic Association: Men's Basketball, Women's Basketball, Men's Cross Country, Women's Cross Country, Men's Fencing, Women's Fencing, Men's Golf, Women's Golf, Men's Swimming and Diving, Women's Swimming and Diving, Men's Tennis, Women's Tennis, Men's Basketball, Women's Softball, Men's Football, Women's Volleyball, and Women's Track and Field. ECF No. 47-16, PageID.1226-1231. Defendants dispute that these teams "discriminate based on sex and gender identity" and further dispute that these teams demonstrate that the Non-Discrimination Policy is applied unevenly.

**REPLY: Wayne State attempts to limit its response to Villarosa’s own “understanding,” but Villarosa was the University’s Rule 30(b)(6) witness and was designated to testify regarding the “adoption, interpretation, and enforcement of Wayne State University’s Non-Discrimination/Affirmative Action Policy, as applied to registered student organizations, including fraternities, sororities, club sports, and other registered student organizations,” and regarding “registered student organizations at Wayne State that have employed criteria for the selection of leadership positions, membership, or participation with regard to” characteristics forbidden by the Policy. ECF No. 55-5, PageID.2606-10.**

42. Indeed, Wayne State’s own model constitution for club sports expressly permits such distinctions, Ex. B20 at IVCF Wayne 001953-1955; Ex. D at 150:21-151:2, and many registered club and intramural teams adopt them, *e.g.*, Ex. B16 at WSU004544 (Men’s Volleyball Club); Ex. B5 at WSU006648 (row 4) (Women’s Club Soccer); Ex. B20 at IVCF Wayne 001938-48 (Intramural Sports Handbook).

**Counter-Statement:** Defendants do not dispute that consistent with Title IX, the model constitution for club sports permits club sports teams to limit membership and leadership by gender identity. Nor do Defendants contest that, consistent with Title IX, numerous club sports and intramural teams so limit membership and leadership. As Strauss testified, such a limitation is necessary to “permit[] [club sports teams] to compete in competitions with other teams at other universities.” ECF No. 47-45, PageID.2146, 2148. Moreover, as Strauss testified, club sports

teams compete externally and must follow the policies of the league in which they compete. *Id.*

43. Wayne State admits that club teams can discriminate on sex and gender identity and still be registered, but says that other organizations, imposing the same limitation would be “inconsistent” with the Policy. Ex. D at 148:7-10, 151:17-152:4.

**Counter-Statement:** Defendants contest that there is any inconsistency in how it applies the Non-Discrimination Policy to club sports, because club sports are exempt from the Non-Discrimination Policy with regards to sex and gender identity. *See* CSF ¶ 41. Further, Strauss testified that while club sports are permitted to limit membership and leadership based on gender identity consistent with Title IX and the exceptions to the Non-Discrimination Policy recognized by the university for club sports and social Greek organizations, if another student group were to do so, that limitation “would raise a concern to consult with general counsel before making a final decision.” ECF No. 47-45, PageID.2147. Defendants further contest that these club sports limitations constitute “discrimination,” in part because the federal government has concluded that they do not.

**REPLY: Wayne State’s counter-statement on Paragraph 43 is nonresponsive.**

44. Moreover, Wayne State also provides an unwritten categorical exemption to single-sex social fraternities and sororities. Ex. D at 138:20-21; *see* Ex. C at 136:78; Mitchell Dep. [Ex. E] at 59:15-20.

**Counter-Statement:** Defendants do not contest that, consistent with Title IX and the historical operation of such organizations, social Greek organizations may

limit membership and leadership based on gender identity. Further, as Dean Strauss testified, this exception is based on nationally recognized historical exceptions: “When it comes to social fraternities and sororities, [WSU] subscribe[s] to or follow[s] the policies, the historical – the historical operation of the fraternities and sororities in this country and the practices that are followed at all other higher education institutions that have social Greek organizations.” ECF No. 47-45, PageID.2145.

**REPLY: Wayne State’s response does not contest that the exemption is unwritten or categorical, and the record reflects that the exemption allows discrimination on *both* sex and gender identity. IVCF Ex. C at 141:5-7, 145:14-16; Ex. E at 59:6-20.**

45. “Greek groups at Wayne State control their own membership” and leadership. Ex. E at 35:6-8, 71:14-21, 79:2-4.

**Counter-Statement:** Defendants do not contest that Coordinator for Student Organization Programs and Fraternity and Sorority Life Ryan Mitchell testified that unlike a regular student organization, a Greek organization “selects its members” and thus controls its own membership consistent with the charter it has from its national organization. ECF No. 47-46, PageID.2209. As one example, a Greek organization may have a GPA requirement. *Id.* Mitchell further testified that the “the student organizations decide who their leaders are” and that the process is not monitored by the University. *Id.* at PageID.2218.

46. Their membership policies are “dictated by whatever the national organization says [are] their membership” or “leadership requirement[s].” Ex. E at



35:9-18; *e.g.*, Ex. B6 at WSU006649 (row 6, col. Z) (Alpha Phi Alpha Fraternity, “refer to National Website for Membership Criteria”).

**Counter-Statement:** Defendants contest that the record reflects that Greek organizations are wholly exempt from the Non-Discrimination Policy. Strauss testified that Wayne State permits Greek organizations to limit membership and leadership by gender identity in accordance with each organization’s respective national charter. ECF No. 47-45, PageID.2144. But in all other respects, social Greek organizations must comply with the Non-Discrimination Policy and may not discriminate in leadership or membership based on any of the other categories listed in the policy. *Id.*

**REPLY: Wayne State allows Greek organizations to discriminate on both sex and gender identity, and to do so not only as to membership and leadership, but also as to participation and benefits. IVCF Ex. C at 136:9-137:1, 141:5-7, 145:14-16; Ex. E at 59:6-20.**

47. Many of them limit leadership, membership, participation, and benefits based on sex, and all of them are permitted to do so. Ex. C at 136:13-137:1.

**Counter-Statement:** Defendants do not contest that, consistent with the exception provided to social Greek organizations to limit membership and leadership by gender identity, many social Greek organizations do in fact so limit membership and leadership. ECF No. 47-33, PageID.1979.

**REPLY: See supra Reply SOMF ¶ 46.**

48. Alpha Sigma Phi and Phi Mu Alpha, for example, are limited to male students, Ex. B16 at WSU003540; Ex. B6 at WSU006649 (row 7, col. Z); Ex. B7 at

WSU006650 (row 68, col. T), while Alpha Epsilon Phi and Alpha Gamma Delta are limited to female students, Ex. B16 at WSU003259; Ex. B7 at WSU006650 (row 9, col. T); Ex. B16 at WSU003592; Ex. B6 at WSU006649 (row 4, col. C).

**Counter-Statement:** Defendants do not contest that Alpha Sigma Phi, Phi Mu Alpha, Alpha Epsilon Phi, and Alpha Gamma Delta are examples of social Greek organizations that limit membership and leadership based on gender identity but otherwise comply with the Non-Discrimination Policy.

49. Many other RSOs also discriminate on bases supposedly forbidden by the Policy, including race, color, national origin, sex, sexual orientation, veteran status, and religion.

**Counter-Statement:** Defendants contest that the record reflects that many RSOs “discriminate on bases supposedly forbidden by the Policy, including race, color, national origin, sex, sexual orientation, veteran status, and religion.” As set forth fully below and in WSU’s Statement of Uncontested Facts at Paragraphs 31-44 (ECF No. 45, PageID.710-720), WSU consistently applies the Policy to all student organizations, and the rare exceptions identified are due to administrative oversight.

**REPLY: Denied that “WSU consistently applies the Policy to all student organizations” and that its exceptions are “rare” or solely reflect “administrative oversight.” Wayne State does not consistently apply the Policy to social Greek organizations or club sports. ECF No. 55, PageID.2506-2507, 2509. It does not consistently apply the Policy to other student organizations either, registering student organizations that discriminated on various bases**

supposedly prohibited by the Policy. *E.g.*, ECF No. 52, PageID.2342, Ex. C4 (row 40, col. V) (Iraqi Student Organization requires every leader to be “a dedicated Iraqi student”); ECF No. 52, PageID.2342, Ex. C3 (row 65, cols. AJ, AN) (Muslim Students’ Association: leaders who “[v]iolat[e] an Islamic principle that deems him/her unworthy to serve as a Muslim leader” will be removed); ECF No. 53, PageID.2386 (acknowledging registration of Ratio Christi, whose leaders must “profess a personal relationship with Jesus Christ”); IVCF SOMF ¶¶ 41-64 (including IVCF Replies); ECF No. 55, PageID.2518-2522 (same); ECF No. 55, PageID.2525-2527 (same). And Wayne State does not consistently apply the affirmative action portion of its Policy, registering organizations limited to veterans but denying registration to organizations limited to women—even though the affirmative action portion of its Policy explicitly mentions women but not veterans. ECF No. 55, PageID.2518-2519; ECF No. 55, PageID.2513; ECF No. 55, PageID.2515.

50. The Iraqi Student Organization requires every leader to be “a dedicated Iraqi student.” Ex. C4 at WSU006642 (row 40, col. V).

**Counter-Statement:** Defendants do not contest that in the 2018-2019 school year, the Iraqi Student Organization’s leadership criteria required candidates to be a “dedicated Iraqi student.” Defendants further state that Villarosa testified that this registration was an oversight, stating “This would be something I might ask or raise. I see this here, and I don’t have a recollection of this one. This was through my review time, but I just -- I don’t recall seeing this. . . . As I look at this, this would raise a question.” ECF No. 47-33, PageID.2007-2008.

**REPLY**: Denied that “Villarosa testified that this registration was an oversight.” He testified that he did not “recall seeing this” but that it “would raise a question.” ECF No. 47-33, PageID.2007, 2008 at 249:17-250:5. Villarosa submitted a declaration claiming that his registration of another organization with a religious leadership limitation was an “oversight” (even though he repeatedly re-registered that organization). ECF No. 55, PageID.2518. Yet even though Villarosa was asked during his deposition about the Iraqi Student Organization’s registration, he did *not* submit a declaration calling that registration an oversight. And Strauss—the person with “the ultimate decision whether to register a student organization,” ECF No. 55, PageID.2506—vigorously defended registration of the Iraqi Student Organization, asserting that other students could “define themselves as Iraqi.” IVCF Ex. D at 101:3-13. (He said much the same about the Newman Catholic Center’s Catholic requirement: “It depends on what does it mean to be – ‘must also be Catholic.’ What does that mean? . . . It doesn’t proclaim that you must proclaim your allegiance to Catholicism.” ECF No. 47-45, PageID.2134 at 102:7-13.)

51. Anakh Sherniyan Di is an “all-girls competitive Bhangra dance team.” Ex. B16 at WSU003952.

**Counter-Statement**: Defendants do not contest that Anakh Sherniyan Di describes itself as an “all-girls competitive Bhangra dance team,” but Defendants further state that its membership requirement states only that one must have a “willingness to commit to weekly practices/competition schedules” and an “intention to participate in team building/service events” in order to join. ECF No.

47-21, PageID.1308. Its leadership criteria requires only that a prospective leader have “been a part of the organization for at least a semester” and “attend[] at least 60% of team meetings/practice sessions.” *Id.*

**REPLY: Wayne State concedes that Anakh Sherniyan Di is an “all-girls competitive Bhangra dance team.” IVCF Ex. B16 at WSU003952. On the registration, one of the organization’s “keywords” is “all-girl.” *Id.* And Villarosa testified that after registration, RSOs effectively control their own membership selection. ECF No. 47-33, PageID.1967 at 88:21-89:17; *see also* ECF No. 47-46, PageID.2208 at 30:10-15. Thus, it is clear on the face of this organization's registration that it will in fact select members based on sex, yet Wayne State registered it anyway.**

52. Queer WSU Students of Color limits leaders to those who show “dedication to the program” and have “[e]xperience with QPOC [queer persons of color] or lived experiences as a QPOC”—a facial preference for those with certain sexual orientations and races. Ex. B16 at WSU004108.

**Counter-Statement:** Defendants contest that Queer WSU Students of Color exhibits a facial preference for certain sexual orientations and races. The group’s membership requirements state that “all people of WSU are allowed to be members and must attend 3 meetings before being considered one. [F]ailure to attend more than 5 weeks of meetings in a row will result in a loss of membership.” ECF No. 47-21, PageID.1320. Moreover, the group’s leadership criteria states that prospective leaders must show “dedication to the program,” have “*experience with QPOC or*

lived experiences as QPOC,” and attend “80% of events.” *Id.* (emphasis added). The leadership criteria nowhere requires that a leader must be a queer person of color.

**REPLY: Wayne State does not contest that “Queer WSU Students of Color limits leaders to those who,” among other things, have “[e]xperience with QPOC [queer persons of color] or lived experiences as a QPOC.” If a student is a queer person of color, the student automatically satisfies this criterion. If a student is not queer or not a person of color, the student does not automatically satisfy this criterion. Thus, this criterion facially discriminates based on sexual orientation and race.**

53. The WSU Student Veterans Organization limits full membership and leadership to veterans, their dependents, or ROTC members. Ex. C4 at WSU006642 (row 100, col. T); Ex. C2 at WSU003251; *see* Ex. C at 119:1-8, 120:7-14.

**Counter-Statement:** Defendants do not contest that WSU Student Veterans Organization limited full membership and leadership to veterans, their dependents, or ROTC members. As Villarosa testified, despite this limitation, Wayne State considers the promotion of certain minority interests, including those of veterans, to be an affirmative action program permitted under the Non-Discrimination Policy. ECF NO. 47-33, PageID.1974-1975.

54. The Association of Black Social Workers “is comprised of people of African ancestry” and has the goal of fostering “interaction with other individuals of African heritage.” Ex. B16 at WSU004408; Ex. B7 at WSU006650 (row 101, col. Q); Ex. B1 at WSU006643 (row 8, cols. Q-T).

**Counter-Statement:** Defendants do not contest that the Association of Black Social Workers describes itself as “comprised of people of African ancestry” and as having the goal of fostering “interaction with other individuals of African heritage.” However, the group does not limit its membership or leadership based on race or national origin. ECF No. 47-21, PageID.1339-1340.

**REPLY: Denied that “the group does not limit its membership or leadership based on race or national origin.” As explained, after registration, RSOs effectively control their own membership selection, *supra* Reply ¶ 51, and the Association of Black Social Workers stated in its registration that it would limit itself to “people of African ancestry.”**

55. Many other student groups with religious leadership requirements have also remained registered. The Newman Catholic Center requires leaders to “be Catholic.” Ex. C4 at WSU006642 (row 59, col. V).

**Counter-Statement:** Defendants do not contest that for the 2018-2019 school year, the Newman Center was a registered student organization. Indeed, since registering InterVarsity on March 8, 2018, and during the pendency of this lawsuit, Wayne State has permitted religious organizations, including InterVarsity, to register with leadership criteria that otherwise violates the Non-Discrimination Policy by imposing religious criteria. IVCF Ex. C4 at Row 59, Column V; ECF No. 47-45, PageID.2133-2135. But at the time InterVarsity was not permitted to register, the Newman Catholic Center did not limit its leadership to “Catholic” students; it required leaders to be students at Wayne State and be “faithful, available, contagious, and teachable.” WSU Ex. 21 at Row 74, Column AL.

**REPLY: Wayne State concedes that Newman Catholic Center was registered even though it requires leaders to “be Catholic.” Wayne State now asserts that, after this lawsuit, it decided to grant blanket exceptions to religious organizations with religious “leadership criteria.” But none of its witnesses suggested any such exception; instead, Strauss asserted that the registration of Newman Catholic Center was consistent with the Policy because “It depends on what does it mean to be – ‘must also be Catholic.’ What does that mean?” ECF No. 47-45, PageID.2135 at 102:7-13; *but see* ECF No. 47-33, PageID.2008 at 250:22-252:4 (Villarosa testifying that it was an oversight). As to Christians on Campus’s requirement that leaders be “Christian,” Villarosa was asked: “Sitting here today, as the university’s representative of the interpretation and application of its non-discrimination policy, does this leadership requirement violate the non-discrimination policy?” Villarosa answered: “Yes.” ECF No. 47-33, PageID.2009 at 255:5-10. Thus, apparently the University’s officials—including its Rule 30(b)(6) witness—are unaware of the post-March 2018 supposed exception. And Wayne State has previously argued to this Court that religious groups with religious leadership limitations “make second-class citizens of students who refuse to accept [their] religious pledge.” (ECF No. 6, PageID.110).**

Even as now articulated in its opposition, Wayne State never explains why the exception is limited to religious “leadership criteria” (ECF No. 53, PageID.2385) and does not include “membership criteria”—nor does it address or explain the religious RSOs that have been registered with religious



**membership criteria. E.g., ECF No. 52, PageID.2342, Ex. C4 (row 23, cols. T, V) (Christians on Campus, membership limited to students “seeking Christian fellowship”). Nor does Wayne State explain the registration of groups prior to March 2018 with religious criteria. E.g., ECF No. 52, PageID.2342, Ex. C3 (row 65, cols. AJ, AN) (Muslim Students’ Association, noting various bases of discrimination forbidden in membership selection but omitting religion, and stating that a leader will be removed for “[v]iolat[ing] an Islamic principle that deems him/her unworthy to serve as a Muslim leader on campus”); IVCF Ex. C3 (row 114, cols. AK, AL) (The Rising, religious organization requiring leaders to “hold the same beliefs as our organization”). Nor does Wayne State explain how the Newman Catholic Center’s previous leadership requirement of “faithful[ness]” is not religious in nature—particularly given that the very first step listed for how to become a leader was “prayerful Discernment.” Ex. C3 (row 74, col. AM).**

56. The Muslim Students’ Association requires its leaders be “Muslim.” Ex. B7 at WSU006650 (row 57, col. V).

**Counter-Statement:** Defendants do not contest that for the 2019-2020 school year, the Muslim Students’ Association was a registered student organization. As aforementioned, since registering InterVarsity on March 8, 2018, and during the pendency of this lawsuit, Wayne State has permitted religious organizations, including InterVarsity, to register with leadership criteria that otherwise violates the Non-Discrimination Policy by imposing religious criteria. IVCF Ex. B76 at Row 57, Column V; ECF No. 47-45, PageID.2133-2135. At the time InterVarsity was not

permitted to register, the Muslim Students' Association did not limit its leadership by a protected characteristic. WSU Ex. 21 at Row 65, Column AL.

**REPLY: See supra Reply ¶ 55. Moreover, denied that “[a]t the time InterVarsity was not permitted to register, the Muslim Students' Association did not limit its leadership by a protected characteristic.” See ECF No. 52, PageID.2342, Ex. C3 (row 65, cols. AJ, AN) (Muslim Students' Association's 2016-2017 registration, noting various bases of discrimination forbidden in membership selection but omitting religion, and stating that a leader will be removed for “[v]iolat[ing] an Islamic principle that deems him/her unworthy to serve as a Muslim leader on campus”).**

57. Christians on Campus limits leadership to those who are “believer[s] in Jesus and uphold the Bible as complete divine revelation.” Ex. B16 at WSU004402; see Ex. C4 at WSU006642 (row 23, col. V).<sup>1</sup>

---

<sup>1</sup> **Plaintiffs' Footnote 1:** See also Ex. B3 at WSU006645 (row 8, col. V) (Faholo Campus Ministry; requires leaders to “agree” with certain “denominational faith statements”); Ex. B4 at WSU006647 (row 7, col. T) (Ratio Christi; leaders must “profess a personal relationship with Jesus Christ”); Ex. B1 at WSU006643 (row 46, cols. T-V) (The Eternal Message, members must “work hard to spread its message” and leaders must “follow[] its mission”); Ex. B7 at WSU006650 (row 95, col. V) (Coptic Christian Club; requires leaders to be “Coptic Orthodox Christian”); Ex. B16 at WSU003324 (Virtuous 31; requires its leadership to “really love God”).

**Defendants' Response to Plaintiffs' Footnote 1:** For various reasons, the organizations identified by Plaintiffs in Footnote 1 do not demonstrate inconsistent application of the Non-Discrimination Policy. Faholo Campus Ministry, The Eternal Message, and Virtuous 31 do not, on the face of the documents referenced by Plaintiffs, in fact limit leadership to members of a particular faith but merely require agreement with certain principles. This is

---

different in kind from Plaintiffs' leadership requirement, which requires acceptance of a statement of faith that thus excludes individuals who are not members of that faith.

The Ratio Christi registration was identified by Defendants as inadvertent in their Motion for Summary Judgment. *See* ECF No. 45, PageID.713-714.

The registration for the Coptic Christian Club is from the 2019-2020 school year; as stated elsewhere, since registering InterVarsity on March 8, 2018, and during the pendency of this lawsuit, Wayne State has permitted religious organizations, including InterVarsity, to register with leadership criteria that otherwise violates the Non-Discrimination Policy by imposing religious criteria. ECF No. 47-45, PageID.2133-2135.

**REPLY: *See supra* Reply ¶ 55. Denied that the leadership limitations of Faholo Campus Ministry, The Eternal Message, and Virtuous 31, are “different in kind” from InterVarsity’s. Wayne State states that InterVarsity, supposedly unlike these three other groups, requires “acceptance of a statement of faith that thus excludes individuals who are not members of that faith.” InterVarsity required that leaders “sign the Statement of Agreement (Purpose Statement) and Doctrinal Basis.” ECF No. 55, PageID.2534. Faholo Campus Ministry requires the same: leaders “[m]ust agree with [the Christian and Missionary Alliance Church’s] denominational faith statements.” IVCF Ex. B3 at WSU006645 (row 8, col. V). Likewise, The Eternal Message requires its leader “to ensure that the organization follows its mission”: to “introduce people to Islam, prophet Mohamad and his holy progeny.” ECF No. 52, PageID.2342, Ex. B1 (row 46, cols. Q, U). And Virtuous 31—during the same time frame when InterVarsity’s registration was denied—required that its leaders “really love God,” thereby excluding individuals based on religious beliefs. ECF No. 47-21, PageID.1275, 1276 (application dated Nov. 14, 2016); ECF No. 52, PageID.2342, Ex. C3 (row 120, col. AL).**

Wayne State registered Ratio Christi at Wayne, which required leaders to “profess a personal relationship with Jesus Christ.” ECF No. 52, PageID.2342, Ex. C3 (row 85, col. AL). Villarosa submitted a declaration stating that “Ratio Christi at Wayne should not have been approved as a registered student organization” “[a]t the time” and that the registration “was an inadvertent oversight.” ECF No. 45-23, PageID.1030-1031 ¶¶ 8-10. Yet Wayne State continued to register Ratio Christi at Wayne in later semesters with the exact same leadership limitation of those who “profess a personal relationship with Jesus Christ.” *See, e.g.*, ECF No. 52, PageID.2342, Ex. C4 (row 70, col. V); *id.* at Ex. B4 (row 7, col. T); *id.* at Ex. B7 (row 71, col. V).

**Counter-Statement:** Defendants contest that Christians on Campus was permitted to register with the leadership criteria identified in paragraph 57. When it attempted to register in 2017, Christians on Campus, in its registration, sought to limit leadership by requiring a candidate for office “be a believer in Jesus Christ and uphold the Bible as the complete divine revelation inspired by God through the Holy Spirit.” ECF No. 45-21, PageID.1025. Villarosa declined to register the organization, commenting “Please contact me regarding your requirements for officers Must be a believer in Jesus Christ and uphold the Bible as the complete divine revelation inspired by God through the Holy Spirit.” *Id.* at PageID.1020. Christians on Campus eliminated this requirement, and WSU registered the organization. WSU Ex. 21 at Row 22, Column AL. Defendants do not contest that for the 2018-2019 school year, Christians on Campus was a registered student organization that had leadership criteria that limited eligible leaders based on religious identity. As aforementioned, since registering InterVarsity on March 8, 2018, and during the pendency of this lawsuit, Wayne State has permitted religious organizations, including InterVarsity, to register with leadership criteria that otherwise violates the Non-Discrimination Policy by imposing religious criteria. IVCF Ex. C4; ECF No. 47-45, PageID.2133-2135.

**REPLY: See *supra* Reply ¶ 55.**

58. Wayne State even registered a church—New Life Church—as a student organization that meets on campus, holds worship services every Sunday, and requires its leaders to “advance the interests of New Life and our purpose.” Ex. B1 at WSU006643 (row 40, col. V); *see also* Ex. B16 at WSU003496.

**Counter-Statement:** Defendants contest that the Non-Discrimination Policy was not applied to New Life Church. There are a number of registered student organizations at WSU that state religious missions or are affiliated with national religious organizations or churches. *See generally* WSU Ex. 21. New Life Church is one of those examples. New Life states a clearly religious purpose, including “To help students who wish to pursue God [and] develop a deeper understanding and closer relationship with Jesus.” *Id.* at Row 73, Column AG. At the time of registration, New Life was “currently led by students who are members of New Life Church of Detroit, *but it is also a separate group from New Life Church of Detroit, governed on its own and not by New Life Church.*” *Id.* at Row 73, Column AI (emphasis added). At all relevant times, the organization’s leadership and membership was open to all students at WSU: “The only requirement at this time is that members must be students of Wayne State University and must make efforts to advance the efforts of the New Life student org.” *Id.* at Row 73, Column AJ; *see also id.* at Row 73, Column AL (stating leadership requirements as “The same as for members”).

**REPLY:** Wayne State’s response does not contest that that New Life Church is “a church” and that it “holds worship services every Sunday.” Denied that Wayne State only registered this organization when it stated that it was “a separate group from New Life Church of Detroit.” *See* ECF No. 52, PageID.2342, Ex. B1 (row 40) (registering the organization without this statement). Further denied that “the organization’s leadership and membership was open to all students at WSU.” One year, the organization was

registered even though it required its members and leaders to “advance the efforts of the New Life student org”—foremost among them being “[t]o help students who wish to pursue God develop a deeper understanding and closer relationship with Jesus.” ECF No. 52, PageID.2342, Ex. C3 (row 73, cols. AG, AJ, AL). Another year, New Life was registered even though it required its leaders “to advance the interests of New Life and our purpose,” including “to show the love of God to all people” and helping “Wayne State students to understand God and the Bible.” ECF No. 52, PageID.2342, Ex. B1 (row 40, cols. M, Q, V).

59. Non-religious groups are also permitted to limit leadership and membership based on mission alignment—including groups with missions to promote a particular protected class.

**Counter-Statement:** Defendants admit that organizations may limit membership or leadership based on mission alignment, but deny that permitting a group to limit leadership and membership based on a common goal violates the Non-Discrimination Policy, as set forth fully in response to the following paragraphs.

60. For example, when the “Reunite and Organize in Spite of Everything” student group submitted its constitution for apparent re-registration, Villarosa did not flag any problem with the group’s requirements that members “share with us the goal of African unification” or that leaders “already be actively working in the community to advance the African race.” Ex. C3 at WSU001838 (row 86, col. G) (showing ROSE’s status as “Current”); Ex. B16 at WSU004794.

**Counter-Statement:** Defendants do not contest that Reunite and Organize in Spite of Everything states that one of the criteria for membership is that members “share with us the goal of African unification.” However, the group’s leadership and membership criteria do not limit leadership or membership by a protected class; indeed, the group’s leadership criteria only requires that prospective leaders “[m]ust already be actively working in the community to advance the African race.” IVCF Ex. C3 at Row 86, Columns AJ, AL.

**REPLY: Wayne State’s response does not explain how requiring leaders “to advance the African race” complies with the text of the Policy in a way that InterVarsity’s leadership requirements do not.**

61. The Wayne African Student Society requires that members “understand and support[]” its “societal goals and purposes.” Ex. B16 at WSU004469; Ex. C4 at WSU006642 (row 97, col. T).

**Counter-Statement:** Defendants do not contest that The Wayne African Student Society requires members to “understand and support[]” the group’s “societal goals and purposes.” However, the group’s leadership and membership criteria do not limit leadership or membership by a protected class. ECF No. 47-21, PageID.1347-1349; IVCF Ex. C4 at Row 97, Columns T, V.

**REPLY: Wayne State’s response does not explain how requiring members to “support[] all the societal goals and purposes”—including “mak[ing] a linkage among the students of African descent”—complies with the text of the Policy in a way that InterVarsity’s leadership requirements do not. ECF No. 52, PageID.2342, Ex. C4 (row 97, cols. Q, T).**



62. The Secular Student Alliance, which seeks “[t]o promote secular values,” requires that leaders “have shown commitment to the group” and bans members from “preaching.” Ex. B16 at WSU004001.

**Counter-Statement:** Defendants do not contest that The Secular Student Alliance lists as a goal “[t]o promote secular views” and requires that its leaders “have shown commitment to the group.” However, the group’s leadership and membership criteria do not limit leadership or membership by a protected class. ECF No. 47-21, PageID.1314 (“All faiths are encouraged to join this group to remind everyone that coexisting is crucial, and regardless of what faith you are from you can be open minded to other views on religion.”).

**REPLY: Wayne State’s response does not explain how requiring leaders to “commit[]” “[t]o promot[ing] secular views” complies with the text of the Policy in a way that InterVarsity’s leadership requirements do not.**

63. The Macedonian-American Student Association requires members to “agree with the goals of the group.” Ex. B16 at WSU003926; Ex. B1 at WSU006643 (row 28, col. T).

**Counter-Statement:** Defendants do not contest that the Macedonian-American Student Association requires that its members “agree with the goals of the group.” However, the group’s leadership and membership criteria do not limit leadership or membership by a protected class. ECF No. 47-21, PageID1301-1302; IVCF Ex. B1 at Row 28, Columns T, V.

**REPLY: Wayne State’s response does not explain how requiring members to “agree with the goal[]” of “bring[ing] Macedonian-American**



**students together in order to preserve and enrich our ethnicity” complies with the text of the Policy in a way that InterVarsity’s leadership requirements do not. ECF No. 52, PageID.2342, Ex. B1 (row 28, cols. L, T).**

64. The National Black Operations Business Association limits membership to those who are “passionate about social issues and business topics which effect the black community as a whole.” Ex. B16 at WSU003276; Ex. C4 at WSU006642 (row 53, col. T).

**Counter-Statement:** Defendants do not contest that the National Black Operations Business Association requires its members to be “passionate about social issues and business topics which effect the black community as a whole.” However, the group’s leadership and membership criteria do not limit leadership or membership by a protected class, and in fact leadership is expressly open to all students. ECF No. 47-21, PageID.1269 (sating eligibility requirements to run for office as “You must be a Wayne State student”); IVCF Ex. C4 at Row 53, Columns T, V.

65. Wayne State also broadly allows RSOs to discriminate in membership, leadership, participation, and benefits on any basis that is not identified in the Policy.

**Counter-Statement:** Defendants do not contest that RSOs are permitted to limit their membership, so long as those limitations are consistent with the Non-Discrimination Policy.

**REPLY: Wayne State’s response is nonresponsive as to leadership, benefits, and participation, and thus concedes those facts. See ECF No. 47-33, PageID.1970, at 99:13-101:1.**

66. Thus, for instance, RSOs may exclude students based on ethnicity, politics, ideology, physical attractiveness, and GPA. Ex. C at 99:19-101:1.

**Counter-Statement:** Defendants do not contest that Villarosa testified that RSOs may, consistent with the Non-Discrimination Policy, limit membership and leadership based on ethnicity, politics, ideology, physical attractiveness, and GPA. ECF No. 47-33, PageID.1970.

67. To take just two examples from current RSOs, Young Americans for Freedom requires members to agree with its political “principles,” Ex. B2 at WSU006644 (row 14, col. T), and the International Youth and Students for Social Equality—whose goal is “to fight for a Marxist perspective at Wayne State University”—requires members and leaders to be “in full agreement with the IYSSE statement of principles.” Ex. B16 at WSU003187; *see* Ex. B7 at WSU006650 (row 39, cols. T, V); Ex. C4 at WSU006642 (row 39, cols. T, V).

**Counter-Statement:** Defendants do not contest that Young Americans for Freedom requires members to agree with its political “principles” and that the International Youth and Students for Social Equality requires its members and leaders to be “in full agreement with the IYSSE statement of principles.” However, these groups’ leadership and membership criteria do not limit leadership or membership by a protected class and thus comply with the Non-Discrimination Policy. IVCF Ex. B2 at Row 14, Columns T, V (showing membership and leadership requirements for Young Americans for Freedom); ECF No. 47-21, PageID.1256 (showing membership and leadership requirements for IYSSE); IVCF Ex. B7 at Row 39, Columns T, V (same); IVCF Ex. C4 at Row 39, Columns T, V (same).

68. Finally, Wayne State itself has multiple programs, scholarships, grants, and awards that discriminate against students based on protected characteristics. It concedes that it offers scholarships giving preference to veterans, men, women, students of a certain age or from a specific country, married students, and others. Ex. B12 at 4; *see, e.g.*, Ex. B19 at IVCF Wayne 001447 (“Women of Distinction Awards”); *id.* at 001452 (scholarship favoring LGBT students); Ex. B22 at 003029 (scholarship for students “enrolled and performing in the Men’s Glee Club”); *id.* at 003050 (scholarship for students between “the ages of 22 and 37”); *id.* at 003090 (scholarship only for students “from another country”); *id.* at 003105 (tuition waiver “for qualifying Native Americans”).

**Counter-Statement:** Defendants deny that multiple programs, scholarships, grants, and awards discriminate against students based on protected characteristics. Defendants concede that certain scholarships give preference to certain classes of students. Most of these do so as part of WSU’s Affirmative Action Policy. Defendants further state that the administration of these unrelated programs, scholarships, grants, and awards has no legal relevance to the operation of the RSO program, a limited public forum created by WSU, and thus no relevance to this dispute.

**REPLY:** Wayne State’s response “den[ies] that multiple programs, scholarships, grants, and awards discriminate against students based on protected characteristics,” but fails to provide evidence contesting widespread discrimination in programs, grants, and awards, in addition to the scholarships’ discrimination that it concedes. For instance, Wayne State

concedes that multiple programs, scholarships, grants, and awards discriminate against students based on protected characteristics. Such programs include the Student Veteran Resource Center, RISE Learning Community (for women of color), “Soul 2 Soul” graduate-student-support group (for graduate students of color), an all-female floor in Ghafari Hall, a women’s only area in the gym, and many others. *Infra* ¶¶ 69-72; *see also, e.g.*, ECF No. 47-24, PageID.1523-1524; ECF No. 47-24, PageID.1376 (group for “female-identified students”); ECF No. 47-24, PageID.1518-1519 (“Organization of Black Alumni”); ECF No. 47-24, PageID.1519 (“Faculty and Staff LGBTQ Organization”); ECF No. 47-25, PageID.1541 (The Network, “a learning community for young men”); ECF No. 47-25, PageID.1697 (intramural sports by gender). Various awards and grants discriminated on protected bases, as well. ECF No. 47-24, PageID.1401 (“Women of Distinction Awards”); ECF No. 47-27, PageID.1826 (tuition waiver “for qualifying Native Americans”).

Moreover, by Wayne State’s own admission, at least ten scholarships discriminated against students based on protected characteristics during the relevant time. ECF No. 47-17, PageID.1236. At least eight additional scholarships likewise discriminate based on protected characteristics. ECF No. 47-24, PageID.1403 (“#YouAreWelcomeHere Scholarship” for “international students”); ECF No. 47-24, PageID.1406 (“CFPCA LGBT Endowed Scholarship,” “[p]reference is given to LGBT students”); ECF No. 47-27, PageID.1739 (Abdul S. Sheikh Society Endowed Scholarship, “international

students”); ECF No. 47-27, PageID.1740 (Anna K. Lewenz Endowed Scholarship, limited to “members of the Association of Women in Mathematics”); ECF No. 47-27, PageID.1800 (Menendez-Diaz Endowed Scholarship Fund, for “Hispanic law students”); ECF No. 47-27, PageID.1811 (Paul Catlin, Ph.D. Endowed Memorial Scholarship Award, must “be from another country”); ECF No. 47-27, PageID.1813 (Roger M. Ajluni, M.D., Annual Scholarship for New American Students in the English Language Institute, “Preference will be given to students who are first generation U.S. citizens or permanent residents.”); ECF No. 47-27, PageID.1814 (Stanley H. Marx Endowed Scholarship, “Preference will be given to those who indicate single parent status”).

69. Other University programs employ similar distinctions. The “Student Veteran Resource Center” provides veterans with amenities such as private study areas, a lounge with a TV, and a kitchen. Ex. B20 at IVCF Wayne 001790-91.

**Counter-Statement:** Defendants do not contest that there is a space on campus called the Student Veteran Resource Center. The Center “was designed as a safe haven for those that have served to create partnerships, collaborate and engage in activities consistent with academic success.” ECF No. 47-25, PageID.1543-1544. Further, as Villarosa testified, Wayne State considers the promotion of certain minority interests, including those of veterans, to be an affirmative action program consistent with the Non-Discrimination Policy. ECF No. 47-33, PageID.1974-1975. Defendants further state that the administration of this unrelated program has no

legal relevance to the operation of the RSO program, a limited public forum created by WSU, and thus no relevance to this dispute.

70. The RISE Learning Community provides special benefits for women of color. Ex. C at 111-113; Ex. C6 at WSU000658; Ex. B22 at IVCF Wayne 003114-15.

**Counter-Statement:** Defendants do not contest that the RISE Learning Community is an academic resource “whose purpose is to provide a safe space for self-identified Women of Color (WOC) to come together for continued growth and education” that provides “academic support and building the skills necessary to succeed in college, through an assortment of engaging activities, with a focus on encouraging students to build supportive relationships with each other.” ECF No. 47-39, PageID.2076. Further, as aforementioned, Wayne State considers the promotion of certain minority interests to be an affirmative action program consistent with the Non-Discrimination Policy. ECF No. 47-33, PageID.1972-1973. Defendants further state that the administration of this unrelated program has no legal relevance to the operation of the RSO program, a limited public forum created by WSU, and thus no relevance to this dispute.

71. The “Soul 2 Soul” graduate-student-support group is open only to “graduate students of color.” Ex. B19 at IVCF Wayne 001470.

**Counter-Statement:** Defendants do not contest that Soul 2 Soul is a support group that “seeks to create a safe space for students of color to process their unique experiences of being graduate students of color at WSU, help increase resilience and encourage progress toward completion.” ECF No. 47-24, PageID.1424. As

aforementioned, Wayne State considers the promotion of certain minority interests to be an affirmative action program consistent with the Non-Discrimination Policy. ECF No. 47-33, PageID.1972-1973. Defendants further state that the administration of this unrelated program has no legal relevance to the operation of the RSO program, a limited public forum created by WSU, and thus no relevance to this dispute.

**REPLY: Wayne State’s response does not contest that the “Soul 2 Soul” graduate-student-support group is open *only* to “graduate students of color.” ECF No. 47-24, PageID.1424.**

72. And the University provides “women only” spaces on campus, including an entire floor in one building and a portion of the school’s gymnasium. Ex. C at 113-15; Ex. C6 at WSU000659.

**Counter-Statement:** Defendants do not contest that Wayne State provides “women only” spaces on campus. As aforementioned, Wayne State considers the promotion of certain minority interests to be an affirmative action program consistent with the Non-Discrimination Policy. ECF No. 47-33, PageID.1972-1973. Defendants further state that the administration of this unrelated program has no legal relevance to the operation of the RSO program, a limited public forum created by WSU, and thus no relevance to this dispute.

***Effects of Deregistration on InterVarsity***

73. As an RSO, InterVarsity had regularly reserved a meeting space that was easy to find and spacious, to better attract students and hold various prayer and teaching activities in the same room. Ex. F at 62.

**Counter-Statement:** Defendants do not contest that Beyerlein testified that after it was not permitted to register, “our rooms for [the] second semester were not as spacious or convenient or as easy to find in the student center.” ECF No. 47-47, PageID.2262.

74. But deregistration changed all that. *Id.* at 61:22-63:7.

**Counter-Statement:** Defendants do not contest that after InterVarsity was not permitted to register, it was no longer afforded the same benefits as RSOs, and thus was required to pay for its meeting space. ECF No. 47-47, PageID.2261-2262. As set forth above, Defendants dispute that WSU “deregistered” InterVarsity.

75. Due to the cost and the priority that RSOs receive in accessing spaces before non-RSO groups, InterVarsity could no longer rent the same space. *Id.*; *id.* at 30:1731:3.

**Counter-Statement:** Defendants do not contest that Beyerlein testified that the cost of renting the room it usually met in was “\$250 for a meeting time for an hour two. So we just didn’t know if we could afford that room, so we changed the meeting space for one of our small groups to a less convenient smaller room.” ECF No. 47-47, PageID.2262.

76. Instead, it was forced to spend thousands of dollars to rent smaller, less accessible rooms, constantly having to switch locations after being forced to the back of the room-rental line. Ex. C11 at WSU001719; Ex. F at 61-63.

**Counter-Statement:** Defendants contest that InterVarsity was forced into any actions. Defendants do not contest that Beyerlein testified that because it was no longer a student organization, InterVarsity had to pay to reserve its meeting rooms.



ECF No. 47-47, PageID.2262. Defendants further state that InterVarsity admitted that WSU refunded all such money paid to reserve meeting rooms. *Id.*

**REPLY: By Wayne State’s own admission, it did not “refund[]” the “money paid to reserve meeting rooms” until *after* InterVarsity filed suit. ECF No. 55, PageID.2542. Moreover, because Wayne State refused to provisionally reinstate InterVarsity, InterVarsity was forced to reduce its room and table reservations due to the costs imposed by the University. ECF No. 55, PageID.2537-2538.**

77. And InterVarsity had to cut back its on-campus activities because it could not afford to hold as many meetings as usual. *Id.* at 30:14-31:3.

**Counter-Statement:** Defendants contest that InterVarsity had to cut back on its campus activities. Beyerlein testified that InterVarsity continued to meet three times per week, which is roughly the same number of weekly meetings the organization would hold as a registered student organization. ECF No.47-47, PageID.2253-2254. Further, Beyerlein, testifying on behalf of the Wayne State chapter, could not identify any specific meetings that were cancelled or not held. *Id.* at PageID.2254.

**REPLY: The undisputed facts establish that after Wayne State de-registered InterVarsity, “[w]e did hold some meetings; not as many as we normally would have.” ECF No. 47-47, PageID.2253 at 29:6-7. Beyerlein identified specific meetings that were cancelled: “the first week of school often we would do meet-and-greets for a few hours in the student center just for students to come and meet other students. We didn’t do those that January**

because we just, like I said, weren't sure how much money we should be spending on that." *Id.* ECF No. 47-47, PageID.2254 at 31:9-14. Her testimony further states: "there was a lot of table space that we didn't rent like we would normally have, which is a big part of our ministry, but we didn't get that table space because it was -- we just, again, we weren't sure how much table space to rent, how long this was going to be going on, how much money we should be spending, et cetera." ECF No. 47-47, PageID.2254 at 30:20-31:1. She testified that InterVarsity typically (including in the fall of 2017, when it was still an RSO) reserved "two tables" for the "first two weeks of school," but that "we cut back in January of 2018" due to the cost of renting tables as a non-RSO. ECF No. 47-47, PageID.2254 at 31:25-33:3; *see also* ECF No. 47-48, PageID.2305-2307, ¶¶ 42-49; ECF No. 47-49, PageID.2328-2329, ¶¶ 18-25.

78. Attracting students became harder still, as InterVarsity was neither listed on nor able to communicate through OrgSync (where students normally find RSOs) and could not advertise its meetings or set up tables to meet students like other RSOs. Ex. C11 at WSU001719; Ex. F at 28:18-23; 30-31.

**Counter-Statement:** Defendants contest that attracting students became more difficult for InterVarsity as a result of its status as an unregistered student group. Indeed, despite not being a registered organization for several months of the 2017-2018 school year, InterVarsity could not identify any loss of membership. ECF No. 47-47, PageID.2259. Further, Beyerlein, testifying on behalf of InterVarsity, stated that for the 2015-2016 and 2017-2018 school years—the years in which InterVarsity was not registered for a significant period of time, InterVarsity had

roughly 20-25 members. *Id.* at PageID.2257-2258. In fact, in an email dated March 10, 2016, Beyerlein stated that “[t]he last 15 years we have been around 20-25 [students] and have felt the influence of more Christian groups around us.” ECF No. 45-36, PageID.1094.

**REPLY: Deny any inference that deregistration did not impact recruiting, membership, or other aspects of InterVarsity’s ministry. The testimony reflects that InterVarsity**

**certainly didn’t have access to the group of students that we normally would have had or that the other student orgs had access to. And those were the students that were really looking to be involved in a student org, maybe wanted to be leaders of a student org, and we didn’t get to talk to them. And if we did, we did have some questions from students about were we a real student organization, and we did have some questions about why we weren’t on the list of student organizations from the Dean of Students Office. So students were wondering like what was wrong with us, why we weren’t part of the student org fair, why were we in this hallway where the vendors usually are, the people who rent space? And so, yeah, qualitatively, it was a very different experience for us.**

**ECF No. 47-47, PageID.2259 at 50:21-51:12. Moreover, the record shows that InterVarsity/USA brought in two new staff members to assist the InterVarsity Wayne State chapter, with one arriving just before the deregistration problems and the other arriving during deregistration. ECF No. 47-47, PageID.2248, 2261, 2268, 2269 at 9:16-22; 58:12-17; 89:8-13, 91:15-22, 93:11-13. This more than tripled the amount of dedicated InterVarsity/USA staff attention helping the chapter, since the previous lead staff member was also the area director for a region of Michigan universities and thus was only able to come to Wayne State**

**one or two days per week. ECF No. 47-47, PageID.2257 at 44:8-11. That the chapter’s membership merely broke even despite such an influx of support indicates that deregistration was harmful to membership efforts. See, e.g., ECF No. 47-47, PageID.2275 at 114:12-19.**

**Moreover, even if there hadn’t been an impact on membership, there was still harm to InterVarsity’s ministry because “part of [its] ministry is being a presence on campus.” ECF No. 47-47, PageID.2256 at 41:23-25. InterVarsity wants to “be a presence there to encourage students” in their faith and health, such as by reminding them “to go to church, go to synagogue, use the counseling center.” ECF No. 47-47, PageID.2258 at 47:5-18. InterVarsity maintained this presence by, among other things, hosting “interactive tables on campus,” which “is a big part of [its] ministry,” but there was “a lot of table space” that it could not use because Wayne State’s actions “cut back [its] ministry.” ECF No. 47-47, PageID.2253-2254 at 29:6-33:3.**

79. Moreover, the stigma of being separated from other student groups came with its own cost. For instance, students asked whether InterVarsity was even a “real” student group. Ex. F at 63:1-2.

**Counter-Statement:** Defendants contest that being separated from other student groups created a “stigma” or “came with its own cost.” In the cited portion of the deposition transcript, Beyerlein testified that InterVarsity “didn’t get the communication that all other student groups get through OrgSync” and that InterVarsity “felt disrespected as a student organization that had been on the campus

for decades.” ECF No. 47-47, PageID.2262. As set forth above, InterVarsity could not identify any loss of membership as a result of not being a registered organization.

**REPLY: See supra Reply ¶ 78; infra Reply ¶ 81.**

80. And at the first major recruiting event post-deregistration (WinterFest), InterVarsity was shut out of the ballroom where RSOs connect with interested students—a particularly important opportunity given how many of Wayne State’s students are commuters. Ex. C at 201:1-3; Ex. F at 35:17-20; Ex. G ¶ 29.

**Counter-Statement:** Defendants contest the implication that InterVarsity was “shut out” from WinterFest. As Beyerlein testified, InterVarsity participated in WinterFest as a vendor and had a table in the Student Center near the Starbucks. ECF No. 47-47, PageID.2255.

**REPLY: Denied that InterVarsity “participated in WinterFest” in 2017-2018. As stated by Villarosa, WinterFest is “an opportunity for the student organizations to come together to . . . recruit,” and if an organization is not an RSO, it “would not be able to have a reserved table at Winterfest with the students.” ECF No. 47-33, PageID.1957, 1995 at 48:21-49:4, 201:1-3; see also ECF No. 47-45, PageID.2115 at 22:13 (Strauss stating that “Winterfest is only for [registered] student orgs”); ECF No. 47-47, PageID.2255 at 36:2-17 (Beyerlein explaining that the InterVarsity table was not in the WinterFest room). Admitted that InterVarsity was allowed to rent a vendor table near Starbucks, on a different floor of the student center from where WinterFest occurred. *Id.***

81. Instead, InterVarsity was relegated to “paid” space with outside vendors in a hallway on a floor below the ballroom, where it “missed a lot of the students” looking for organizations to join. Ex. F at 35-36; Ex. G ¶¶ 46-47.

**Counter-Statement:** Defendants contest that the record reflects InterVarsity “missed a lot of the students.” When asked to compare the 2016-2017 WinterFest to the 2017-2018 WinterFest, Beyerlein testified that she could not recall any difference in the amount of students with whom InterVarsity interacted. ECF No. 47-47, PageID.2255-2256.

**REPLY:** As InterVarsity’s student leaders explained shortly after the relevant WinterFest, “Without full participation at the Winterfest, InterVarsity was unable to reach out to as many students as it normally would have been able to do. Further, Wayne State’s action to segregate us from the other student groups sent a message that InterVarsity is an outsider and not a full or trustworthy member of the campus community. That stigma made our recruiting efforts less effective.” ECF No. 47-48, PageID.2306 at ¶ 47; ECF No. 47-49, PageID.2328 at ¶ 20 (“Missing out on talking to students at WinterFest has made it harder to recruit new members for our chapter.”).

*This Lawsuit*

82. Tom Lin, the president of InterVarsity USA, sent a letter to Wayne State’s president asking him to reconsider the decision to deregister InterVarsity. Ex. C11 at WSU001717.

**Counter-Statement:** Defendants do not contest that Tom Lin, the President of InterVarsity USA, wrote to Wayne State’s president asking him to reconsider allowing InterVarsity to register as a student organization.

83. Wayne State’s general counsel responded, suggesting that a resolution could take several months and threatening that Wayne State may feel “compelled to take aggressive measures” against InterVarsity. Ex. B23 at 1.

**Counter-Statement:** Defendants contest that the record reflects Wayne State’s general counsel threatened that Wayne State may feel compelled to take aggressive measures against InterVarsity. Rather, Wayne State’s general counsel expressed a desire that both sides avoid aggressive action, suggesting that “perhaps we might each designate someone to discuss now to resolve this in an amicable way *before either of us* is compelled to take aggressive measures.” ECF No. 47-28, PageID.1841 (emphasis added). Further, the comment was made in response to Mr. Lin’s letter, referred to in Paragraph 82, stating that WSU’s actions raised “significant legal problems” and claiming WSU’s “decision appears to violate state and federal law.” ECF No. 47-44, PageID.2101. In concluding the letter, Mr. Lin agreed only to “hold off on further legal action until December 8.” *Id.* at PageID.2106.

84. InterVarsity then requested provisional reinstatement so that it could participate fully in campus life pending the months-long discussions. Ex. B18 at IVCF Wayne 001065.

**Counter-Statement:** Defendants do not contest that InterVarsity requested provisional reinstatement. ECF No. 47-23, PageID.1370. Defendants deny that

InterVarsity was not permitted to “participate fully in campus life,” as evidenced by InterVarsity’s regular meetings and consistent membership set forth in Paragraphs 75-81 above.

**REPLY: See supra Reply ¶¶ 77-81.**

85. Wayne State refused. Ex. B18 at IVCF Wayne 001082.

**Counter-Statement:** Defendants do not contest that Wayne State did not permit InterVarsity to be provisionally reinstated. ECF No. 47-23, PageID.1371.

86. Due to Wayne State’s refusal to timely reconsider, the mounting rental costs, and significantly diminished access to campus, InterVarsity filed this lawsuit on March 6, 2018.

**Counter-Statement:** Defendants do not contest that InterVarsity filed this lawsuit on March 6, 2018.

87. The next day, Wayne State issued a statement defending and reiterating its deregistration decision, explaining that it “took action to decertify” InterVarsity because “it is in violation of the university’s non-discrimination policy.” Ex. B25 at 1-2.

**Counter-Statement:** Defendants do not contest that Wayne State issued a statement regarding the lawsuit.

88. On March 8, 2018, InterVarsity thus informed the Court and Defendants that it would seek a temporary restraining order reinstating InterVarsity. That afternoon, Wayne State modified its position, stating:

After a review of the situation and communicating with InterVarsity Christian Fellowship organization, Wayne State has decided to recertify the group as an official student organization. The InterVarsity



student group is committed to welcoming and including all students, and the university will not intervene in the group's leadership selection.

Ex. B26 at 2.

**Counter-Statement:** Defendants do not contest that Wayne State issued a statement on March 8, 2018 and decided to permit InterVarsity to register.

89. InterVarsity then re-applied for registered status, and that application was granted. Ex. C at 233:5-1.

**Counter-Statement:** Defendants do not contest that InterVarsity was permitted to register on March 8, 2018.

90. But Wayne State has not issued any official policy regarding student organizations' leadership requirements, and InterVarsity must reapply for registered status every academic year. *Id.* at 150:10-14, 181:15-82:15, 238:5-239:3.

**Counter-Statement:** Defendants do not contest that Wayne State has not issued an official policy regarding student organizations' leadership requirements. However, since registering InterVarsity on March 8, 2018, and during the pendency of this lawsuit, WSU has permitted religious organizations, including InterVarsity, to register with leadership criteria that would otherwise violate the Non-Discrimination Policy by imposing religious leadership criteria. *See generally* WSU Ex. 36.

91. Moreover, the University continues to insist that InterVarsity's leadership criteria still violate the Policy, *id.* at 255:5-10, and that InterVarsity's leadership criteria "make second-class citizens of students who refuse to accept [its] religious pledge." ECF No. 6 at 17, PageID.110.

**Counter-Statement:** Defendants do not contest that Villarosa testified that InterVarsity’s leadership criteria continues to violate the Non-Discrimination Policy. Nor do Defendants contest that in briefing in this case, they stated that InterVarsity’s leadership criteria “make[s] second-class citizens of students who refuse to accept [its] religious pledge.” Dkt. 6 at 17, PageID.110.

**REPLY:** Villarosa was Wayne State’s Rule 30(b)(6) witness, and his testimony that InterVarsity’s leadership criteria continue to violate the Policy is on behalf of the University. ECF No. 55-5, PageID.2606. Wayne State has repeatedly said that “InterVarsity’s requirement that its leaders subscribe to a statement of faith violate[s] Wayne State University’s Non-Discrimination/Affirmative Action Policy by imposing faith based criteria on leadership eligibility.” ECF No. 47-15, PageID.1221; ECF No. 6, PageID.94 (“this requirement plainly violated the non-discrimination policy”); ECF No. 47-14, PageID.1209 (“InterVarsity’s leadership selection process would comply with the University’s Non-Discrimination/Affirmative Action Policy if it eliminated the faith-based criteria for leadership.”); ECF No. 53, PageID.2404-2405 (“InterVarsity’s leadership criteria ‘make[s] second-class citizens of students who refuse to accept [its] religious pledge.’”); ECF No. 47-33, PageID.2009 at 255:5-10. And Wayne State has indicated that this requirement also violates the Student Code of Conduct. ECF No. 45, PageID.734-735; ECF No. 55, PageID.2497.

***Case Proceedings***

92. Wayne State previously moved to dismiss the complaint in its entirety for failure to state a claim, Dkt. 6, and InterVarsity moved for partial summary judgment, Dkt. 7.

**Counter-Statement:** Defendants do not contest that Defendants previously moved to dismiss the Complaint in its entirety for failure to state a claim, and InterVarsity moved for partial summary judgment.

93. After a hearing, this Court denied InterVarsity's motion without prejudice to allow the development of the record and denied Wayne State's motion except as to certain Michigan state law claims. Dkt. 26 at 21.

**Counter-Statement:** Defendants do not contest that this Court denied InterVarsity's motion for partial summary judgment without prejudice to allow the development of a record and granted in part and denied in part Defendants' motion to dismiss.

94. The parties proceeded to discovery, which is now complete.

**Counter-Statement:** Defendants do not contest that the parties proceeded to discovery, which is now complete.

## INTRODUCTION

The relevant facts are undisputed and the law is well-established: Wayne State has selectively imposed a restriction on InterVarsity’s religious leadership, and that violates several protections of the First Amendment at the same time. The Religion Clauses structurally forbid government from controlling a private religious group’s religious leadership. And the First Amendment’s protections for freedom of speech, association, and religion, along with state constitutional protections, forbid the government from decrying religious leadership criteria as “invidious discrimination” while affirming political, ideological, race, and sex-based criteria as helpful in advancing equality and diversity. This Court should so rule.

## ARGUMENT

### I. Wayne State violated the Religion Clauses (Counts 1-2).

“[R]eligious associations” have an “unquestioned” right to select their leaders free from government control. *Hutchison v. Thomas*, 789 F.2d 392, 394 (6th Cir. 1986) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871)). And they have long been allowed to participate in Wayne State’s RSO forum, as InterVarsity has for over 75 years. But Wayne State now insists the price of InterVarsity’s continued access is giving up the right to religious leadership. That’s unconstitutional.

Wayne State counters by recycling assertions that the Religion Clauses’ protection (1) can *never* support a Section 1983 claim and (2) can *never* be violated by denial of government benefits. Any ruling to the contrary, it claims, is not just “judicial activism,” WSU Br., ECF No. 45, PageID.738, but “*unbridled* judicial activism,” WSU Opp., ECF No. 53, PageID.2413. Wayne State’s sole authority for

its sweeping claims—*BLinC v. University of Iowa*, 360 F. Supp. 3d 885 (S.D. Iowa 2019)—is no help on this issue. The Sixth Circuit rejects *BLinC*'s view that the Religion Clauses apply only to suits between private parties. Rather, the Clauses are an unwaivable structural limitation against “federal and state governments” telling “a religious organization who its spiritual leaders would be.” *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 835-36 (6th Cir. 2015). And *Our Lady of Guadalupe School v. Morrissey-Berru* further undermines *BLinC*, forbidding “any attempt” to “dictate or even to influence such matters.” 140 S. Ct. 2049, 2060 (2020). In any event, *BLinC* is distinguishable because the injury here goes beyond benefits: under the Student Code of Conduct, InterVarsity's leaders could be expelled for violating the Policy. WSU SOMF ¶ 6, ECF No. 55, PageID.2497.

Finally, Wayne State's broad argument is harmful. It would allow other limited public fora—like schools, libraries, civic centers, and other public facilities that provide space to houses of worship—to condition access on following rules that require giving up religious leadership rights. And if those fora—unlike Wayne State—made the conditions generally applicable to all groups seeking access, then religious groups would be hard-pressed to make even Free Exercise claims to retain control over who preached their sermons or prayed their prayers. That is exactly the kind of result the Religion Clauses forbid.

## **II. Wayne State violated InterVarsity's other First Amendment rights.**

### **A. Wayne State violated InterVarsity's free speech rights (Counts 7-8).**

Wayne State fails to rebut that denying registration to InterVarsity was both unreasonable in light of the forum's purpose and discriminatory based on viewpoint.

### **1. Wayne State’s forum restrictions were unreasonable.**

Wayne State doesn’t dispute that it created the RSO forum for students to “[p]ursue [their] interests” and “participate in diverse programming,” including by meeting others with “similar values [or] interests”; and it doesn’t dispute that letting groups select mission-aligned leaders is essential to that purpose. IVCF Br., ECF No. 47, PageID.1135; WSU Opp., ECF No. 53, PageID.2417-2419 (no response). Nor could it. Organizing around shared interests inherently requires leaders with shared interests, and in light of the forum’s purpose of hosting interest-based groups, it is unreasonable to bar InterVarsity from selecting such leaders.

Citing *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984), the University argues the Supreme Court has “consistently held that antidiscrimination laws serve a purpose ‘unrelated to the suppression of expression’” and that its Policy likewise implicates only “discriminatory conduct, and not speech.” WSU Opp., ECF No. 53, PageID.2417. Not so. *Roberts* upheld application of a policy only because there was no evidence “*in this case*” that it would “impede the organization’s ability . . . to disseminate its preferred views.” 468 U.S. at 624, 627 (emphasis added). And where a nondiscrimination policy *does* impede expression, the Supreme Court has not hesitated to enjoin it. *See Hurley v. Irish-American GLIB Group*, 515 U.S. 557, 568. (1995) (enjoining application of nondiscrimination policy to parade because of “inherent expressiveness of marching”); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 654 (2000) (enjoining nondiscrimination policy where it would “interfere with the Boy Scouts’ choice not to propound a point of view contrary to its beliefs”). Here, there is no question that InterVarsity’s purpose is expressive, and that its leaders

carry out that purpose. IVCF SOMF ¶¶ 3-9 (describing how leaders advance mission to share gospel of Jesus Christ); *Dale*, 530 U.S. at 650 (“indisputable that an association that seeks to transmit such a system of values engages in expressive activity”). Application of the University’s policy to regulate InterVarsity’s leadership selection thus would “significantly affect [its] ability to advocate public or private viewpoints” in violation of the First Amendment. *Dale*, 530 U.S. at 650.

## **2. Wayne State engaged in viewpoint discrimination.**

Leadership selection is an expressive act. The Supreme Court has “vigorously affirm[ed] the special place the First Amendment reserves” for an expressive organization to “select[] a standard bearer who best represents [its] ideologies.” *Cal. Dem. Party v. Jones*, 530 U.S. 567, 575 (2000); *CLS v. Martinez*, 561 U.S. 661, 680 (2010) (“*Who* speaks on [a group’s] behalf . . . colors *what* concept is conveyed.”). Wayne State claims it can respect that expression for some RSOs and University programs while denying that respect to InterVarsity. Its arguments fail.

First, Wayne State claims there is only “false equivalence” between religious groups and those—such as “the College Democrats, PETA, and the International Youth Students for Social Equality”—that are allowed to “limit membership or leadership based on ‘core ideological or ethical beliefs.’” WSU Opp., ECF No. 53, PageID.2419. Religion, the University implies, is just an “identity,” and the other groups only discriminate on “beliefs,” not on “characteristics enumerated by the policy.” *Id.*, PageID.2419-20, n.12. But being a Democrat, vegan, or socialist is also an identity: like religion, these labels identify individuals by their beliefs. Allowing organizations with secular beliefs, but not those with religious beliefs, “to speak

about . . . protected traits through their leadership criteria” is “viewpoint discrimination.” *BLinC*, 360 F. Supp. 3d at 899; *InterVarsity Christian Fellowship v. Univ. Iowa*, 408 F. Supp. 3d 960, 980 (S.D. Iowa 2019) (“*IVCF-Iowa*”).<sup>2</sup>

Whether Wayne State discriminated with bad “purpose,” WSU Opp., ECF No. 53, PageID.2420, is irrelevant. The First Amendment “targets the operation of the laws” not “merely the motives of those who enacted them.” *Reed v. Town of Gilbert*, 576 U.S. 155, 165-67 (2015). The Ninth Circuit’s contrary ruling is not just non-binding, *see InterVarsity Christian Fellowship/USA v. WSU*, 413 F. Supp. 3d 687 (E.D. Mich. 2019), it is wrong, *see IVCF Opp.*, ECF No. 55, PageID.2555-56.

Second, the University claims that exemptions for Greeks and club-sports are based on “historical operations” and the “national practice” of recognizing them at colleges “throughout the country.” WSU Opp., ECF No. 53, PageID.2421. But religious groups have also historically operated at colleges “throughout the country”—InterVarsity was at Wayne State for 75 years. Although evidence of improper purpose is not essential, the University’s attempt to distinguish religious groups on such flimsy premises suggests it *is* acting with hostile intent.

Finally, the University claims that, beyond Greeks and club sports, its only uneven applications of the Policy were “oversight[s].” WSU Opp., ECF No. 53, PageID.2421-22. But the exceptions for Greeks and club sports are alone enough to

---

<sup>2</sup> Wayne State’s discrimination leads to unreasonable results. RSOs may enforce beliefs *about* protected categories such as race or sex. But a religious RSO is uniquely forbidden from requiring leaders to ascribe to its beliefs. That policy is uniquely harmful to religion: the only belief-related category in the Policy is the only RSO category that cannot insist on holding certain beliefs.



show constitutional infirmity. And Wayne State just ignores the Policy's amorphous, know-it-when-you-see-it exemption for "affirmative-action," which itself proves viewpoint discrimination. In any event, the "oversight" argument is not credible.<sup>3</sup>

As for discrimination within the University's own programs, scholarships, and awards, the University does not deny it, but just claims the discrimination is "outside the scope of the Court's analysis" as outside the RSO forum. WSU Opp., ECF No. 53, PageID.2423. But this is a distinction without a difference. The University admits that its Policy applies as much to its own activities, including the "admission, training and treatment of students," as it does to the "extracurricular activities" of RSOs. IVCF SOMF ¶ 21. Having failed to explain why exemptions are okay in activities it controls, but not in activities that RSOs control, it should not be heard to complain about being called out for its discrimination. And claiming that its own exemptions are justified as "affirmative action" only underscores that the discrimination is viewpoint based. Wayne State gives preferential treatment to women and certain "minorities" because it agrees with the message such selectivity sends. WSU Opp., ECF No. 53, PageID.2424 ("designed to achieve full equity"). But it denies similar treatment to InterVarsity because it attributes a negative

---

<sup>3</sup> InterVarsity identifies not "two," WSU Opp., ECF No. 53, PageID.2423, but over a dozen RSOs that violate the Policy without an exemption. IVCF SOMF ¶¶ 49-50, 52, 54-58 (including IVCF Replies); ECF No. 55, PageID.2520-2522; ECF No. 55, PageID.2525-2527 (addressing Anakh Shenyah Di's "all girls" dance team, Queer WSU Students of Color's express preference for queer persons of color, and others).

message to InterVarsity’s selectivity. WSU Opp., ECF No. 53, PageID.2386 (“excludes” nonbelievers). This is textbook viewpoint discrimination.<sup>4</sup>

**B. Wayne State violated free association and assembly rights (Counts 6, 9).**

Wayne State’s argument against InterVarsity’s free association claim under cases like *Dale* is that *Martinez* “reject[ed] *Dale* in the context of university student organizations.” WSU Opp., ECF No. 53, PageID.2427. That is incorrect. *Martinez* simply concluded that the free association arguments “fit[] comfortably” within the “less restrictive limited-public-forum analysis,” which “adequately respect[ed] both” claims. 561 U.S. at 682-83. *Martinez* did not bar courts from considering the claims separately. Wayne State is also wrong that its discrimination is excusable because it is only withholding benefits. *Martinez* directly rejected that argument, stating it was “not upset[ting]” longstanding precedent that a university cannot use funding to “justify it in ‘discriminat[ing] based on the viewpoint of private persons whose speech it [funds].” *Id.* at 682, n.13.

On freedom of assembly, Wayne State argues mainly that it should not extend to leadership selection. WSU Opp., ECF No. 53, PageID.2429, n.7. But selecting an assembly’s leaders is at the heart of assembly, and it is undisputed that Wayne State’s actions disrupted InterVarsity’s ability to assemble with members and like-minded students. Reply SOMF ¶¶ 37, 76-81; *accord* IVCF Br., ECF No. 47 PageID.1144.

---

<sup>4</sup> Wayne State’s resort to “dicta in *Martinez*” fails. Justice Kennedy warned that plaintiffs “would have a substantial case” if a nondiscrimination policy were used to “challenge [a group’s] leadership in order to stifle its views.” 561 U.S. at 706. Also, the leadership language Wayne State cites was limited to the context of a true all-comers policy. *Id.* at 692. Wayne State’s Policy has the opposite purpose of *promoting* interest-based associations, thus making leadership selection crucial.

**C. Wayne State violated InterVarsity’s free exercise rights (Counts 3-4).**

**General Applicability.** InterVarsity identified four ways Wayne State’s actions are not generally applicable and thus infringe the Free Exercise Clause. IVCF Br., ECF No. 47, PageID.1145-1148. Wayne State admits most of these ways by conceding that it makes major exemptions for secular reasons but not for religious ones. Thus, Wayne State’s “exception-ridden” Policy triggers “the gauntlet of strict scrutiny.” *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012).

To avoid that outcome, Wayne State claims that “Greek organizations,” “club sports,” other favored RSOs, and its own exempted programs are not “similarly situated,” and that “federal law” recognizes some of them as “deserving differential treatment.” WSU Opp., ECF No. 53, PageID.2432. Both claims err.

First, for purposes of the Free Exercise Clause, the question is not whether all RSOs (or Wayne State programs) are “similarly situated.” The question is whether they are governed by the same Policy (they are), and whether exempting them from that Policy implicates the same interests Wayne State claims to be protecting in refusing to exempt InterVarsity (they do). *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993) (comparing “nonreligious conduct” that endangered the asserted interests “in a similar or greater degree” as religious conduct); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 2020 WL 6948354, at \*2 (Nov. 25, 2020) (comparing COVID restrictions on churches to those on “acupuncture facilities, camp grounds, garages,” manufacturing plants, and “transportation facilities”); *id.* at \*8 (Kavanaugh, J., concurring) (“once a State creates a favored class,” it “must justify why [religious groups] are excluded”).

Wayne State makes the comparison easy: it excluded InterVarsity to avoid “a less open, less diverse campus, where the free exchange of ideas is stifled by organizations that refuse to open opportunities to all students.” WSU Opp., ECF No. 53, PageID.2443. But, as explained in *IVCF-Iowa* (which Wayne State never attempts to distinguish), the University’s exemptions for Greeks, sports clubs, and political groups “cause much more harm” to Wayne State’s purported “interests in equal access and creating an environment for diverse viewpoints” than “granting InterVarsity the exemption it seeks.” 408 F. Supp. 3d at 982-83. So too for Wayne State’s exemptions for its own programs. Thus, denying InterVarsity an exemption constitutes an impermissible “value judgment” that “secular reasons for deviating from the [Policy] are more important than . . . religious reasons.” *Id.* at 983.

Second, Wayne State is wrong to suggest (presumably in reference to Title IX) that federal law grants special treatment solely to Greeks and sports clubs. The First Amendment itself gives “special solicitude to the rights of religious organizations.” *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 189 (2012). So do other federal statutes, including Title IX itself. 20 U.S.C. § 1681(a)(3); *see also* 42 U.S.C. § 2000bb; 42 U.S.C. § 2000e-1(a). Wayne State’s selective deference to federal law, ignoring the stronger protections for religious organizations, underscores its discrimination.

**Neutrality.** “A double standard is not a neutral standard,” *Ward*, 667 F.3d at 740, yet that is what Wayne State employs here. It argues that *Ward* doesn’t apply because there was no written policy there, and because the case turned on evidence of discriminatory intent. Wrong on both counts: in *Ward*, the university had policies, but none accounted for the practice. 667 F.3d at 738-40. The same is true here—

Wayne State's practice doesn't follow its Policy. Nor was proof of discriminatory intent necessary. The *Ward* court analyzed the Free Exercise claim "independently" and rested the analysis on the lack of a uniform rule. *Id.*; *Roberts v. Neace*, 958 F.3d 409, 415 (6th Cir. 2020) ("[T]he Free Exercise Clause is not confined to actions based on animus."). Indeed, under *Ward*, the "system of individualized exemptions" created by the affirmative-action loophole alone qualifies as "the antithesis of a neutral and generally applicable policy." 667 F.3d at 740. And rightly so. Greater government discretion makes action taken "more, not less, constitutionally suspect." *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1299 (10th Cir. 2004).

**D. Wayne State violated the Establishment Clause (Count 5).**

By registering some religious groups with leadership preferences, but not InterVarsity, Wayne State violated the "clearest command of the Establishment Clause." IVCF Br., ECF No. 47, PageID.1149. Under *Harkness v. Secretary of Navy*, it claims strict scrutiny applies only when a law discriminates on its face. 858 F.3d 437, 447 (6th Cir. 2017). But Wayne State's facial affirmative-action exemption means the Policy *does* discriminate on its face. Nor can it be the case that Wayne State can discriminate among religions, so long as it does not expressly say so.

Even Wayne State admits that facial distinctions are not the end of the inquiry, urging the Court to apply *Lemon*. But the Supreme Court now looks past *Lemon* to history and whether the challenged practice "further[s] the ideals of respect and tolerance embodied in the First Amendment." *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2090 (2019). *Lemon* thus should "no longer govern[]," *Kondrat'yev*

*v. City of Pensacola*, 949 F.3d 1319, 1325 (11th Cir. 2020); courts instead “employ ‘a history and tradition test.’” *Fields v. Speaker*, 936 F.3d 142, 149 (3d Cir. 2019).

Considering the directly applicable, historic constitutional protections for religious leadership selection, Wayne State violated that test. *Smith v. Jefferson Cty. Bd.*, 788 F.3d 580, 588 (6th Cir. 2015). Excluding a 75-year-old ministry from campus, like removal of a 75-year-old monument, is “the manifestation of ‘a hostility toward religion.’” *Am. Legion*, 139 S. Ct. at 2074. And Wayne State has made its hostility express by accusing InterVarsity of “invidious discrimination” simply for selecting religious leaders. WSU Opp., ECF No. 53, PageID.2410.

#### **E. Wayne State fails strict scrutiny.**

Wayne State has the burden on strict scrutiny. *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1050 (6th Cir. 2015). Its failure to address InterVarsity’s arguments means it “necessarily . . . fails strict scrutiny.” *Navajo Nation v. San Juan Cty.*, 266 F. Supp. 3d 1341, 1364 (D. Utah 2017), *aff’d*, 929 F.3d 1270 (10th Cir. 2019).

### **III. Individual defendants violated the Michigan Constitution (Count 15).**

Michigan’s Constitution applies strict scrutiny to state-imposed burdens on sincere religious beliefs. *McCready v. Hoffius*, 586 N.W.2d 723, 729 (Mich. 1998), *vacated in part on other grounds*, 593 N.W.2d 545 (Mich. 1999). Wayne State’s cases agree. *See, e.g., Reid v. Kenowa Hills Pub. Schs.*, 680 N.W.2d 62, 68-69 (Mich. Ct. App. 2004). And Defendants are wrong that the burdens they imposed on InterVarsity—including financial damages and potential suspension and expulsion—are insignificant. IVCF Opp., ECF No. 55, PageID.2561, 64-66.

**IV. This Court should grant permanent injunctive relief.**

InterVarsity has established that it will succeed on the merits of its claims. The injury to its First Amendment rights “unquestionably constitutes irreparable injury.” *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012). And damages alone are inadequate relief. Wayne State insists that it will require InterVarsity “to permit students who do not share [its] faith to . . . run for office.” WSU Opp., ECF No. 53, PageID.2443. Thus, absent an injunction, InterVarsity and its student leaders will face continuing exposure to further injury, including expulsion of its student leaders. Reply SOMF ¶ 91; WSU SOMF ¶ 6, IVCF Opp., ECF No. 55, PageID.2497. A permanent injunction is necessary. *IVCF-Iowa*, 408 F. Supp. 3d at 990.

**CONCLUSION**

InterVarsity asks the Court to grant this motion for summary judgment, award nominal damages, issue a permanent injunction, and set a trial to determine damages.

Respectfully submitted this 3rd day of December, 2020.

Paul C. Schultz  
Mitzel Law Group PLC  
1590 Eisenhower Pl.  
Ann Arbor, MI 48108-3284  
(734) 668-4100 phone  
*pschultz@mitzellow.com*

Respectfully submitted,  
*/s Daniel H. Blomberg*  
Daniel H. Blomberg  
Eric S. Baxter  
Christopher Mills  
Lori Windham  
The Becket Fund for Religious Liberty  
1919 Penn. Ave. NW, Suite 400  
Washington, DC 20006  
(202) 955-0095 phone  
*dblomberg@becketlaw.org*  
***Counsel for Plaintiffs***

**CERTIFICATE OF SERVICE**

I, Daniel H. Blomberg, certify that the forgoing document was filed and served via the Court's electronic case filing and noticing system (ECF) this 3rd day of December, 2020, which will automatically send notification of such filing to all attorneys and parties of record registered electronically.

/s/ Daniel H. Blomberg  
Daniel H. Blomberg