No. 08-1371

In The

Supreme Court of the United States

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

Petitioner,

v.

LEO P. MARTINEZ, et al.,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals For the Ninth Circuit

Brief of *Amicus Curiae* Center for Constitutional Jurisprudence In Support of Petitioner

JOHN C. YOO
KAREN J. LUGO
Center for Const'l Jurisprudence
c/o Chapman Univ. School of Law
One University Drive
Orange, California 92886

EDWIN MEESE III
214 Massachusetts Ave. N.E.
Washington D.C. 20002

ANTHONY T. CASO
Counsel of Record
Law Office of
Anthony T. Caso
8001 Folsom Blvd., Ste. 100
Sacramento, CA 95826
Telephone: (916) 386-4432
Facsimile: (916) 307-5164

Counsel for Amicus Curiae
Center for Constitutional Jurisprudence

QUESTION PRESENTED

May a state university discriminate against a student Christian organization based on the organization's religious beliefs?

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus, Center for Constitutional Jurisprudence[1] is dedicated to upholding the principles of the American Founding, including the proposition that the Founders intended to encourage public expressions of faith as a civic virtue. In addition to providing counsel for parties at all levels of state and federal courts, the Center has participated as amicus curiae before this Court in several cases of constitutional significance, including *Van Orden v. Perry*, 545 U.S. 677 (2005); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

The Center believes the issue before this court is one of special importance to the individual rights protected by the Constitution. The Religion Clauses of the First Amendment were meant to protect and enhance public expressions of faith. The decision below instead permits state suppression of that faith, based on the university's disagreement with the strictures of the faith.

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

As Chief Justice Rehnquist noted, "[i]t is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history." *Wallace v. Jaffree*, 472 U.S. 38, 92 (1985) (Rehnquist, CJ, dissenting). Thomas Jefferson's "wall of separation" missive is referenced in more than 200 federal decisions. Repetition, however, does not validate it as an accurate representation of the original understanding of the First Amendment. Indeed, as Chief Justice Rehnquist pointed out, Jefferson was not even in the Country at the time the Religion Clauses were debated and had no role in their inclusion in the Constitution. *Id.*

Constitutional history is better understood by examining the original state constitutions that were in existence at the time United States Constitution and Bill of Rights were drafted. These constitutions show a diversity of treatment of religion, but with a clear theme for protecting and *encouraging* religious expression. The history of the federal experience after adoption of the First Amendment amplifies this theme.

The Founders were also concerned with Freedom of Association. State constitutions prohibited interference with the leadership and internal workings of religious societies and the Framers expressed concern with the idea that the government may attempt to regulate membership policies of private associations.

The University in this case has violated the First Amendment rights of Freedom of Religion and Freedom of Association of the Christian Legal

Society, and this Court should reverse the decision of the Ninth Circuit.

ARGUMENT

I

THE RELIGION CLAUSES WERE INTENDED TO PROTECT AND ENCOURAGE PUBLIC EXPRESSION OF RELIGIOUS FAITH; HASTINGS SUPPRESSION OF RELIGIOUS EXPRESSION VIOLATES THESE PROTECTIONS

A. Early State Constitutions Demonstrate Intent to Protect and Encourage Public Expression of Religious Belief

The Framers of the federal Constitution did not write on a blank slate. At the time the Constitution was drafted, many of the original thirteen states had already created their own constitutions and had substantial experience with constitutional government. In 1780, Congress ordered the printing of a compilation of these state constitutions, leading to the creation of pocket-sized editions that were widely used by delegates to constitutional conventions. Marsha L. Baum & Christian G. Fritz, *American Constitution-Making: The Neglected State Constitutional Sources*, 27 Hastings Const. L.Q. 199, 203 (2000); *The Constitutions of the Several Independent States of America* (Rev. William Jackson ed., 2d ed. 1783) (reproducing the congressional resolution of December 29, 1780). These state charters provide an important context that illuminates the meaning of the federal Constitution and Bill of Rights. If the First Amendment was intended to erect a wall of separation between the

federal government (and later, the state governments) and religion, there should be some indication of antipathy toward religion in the original state charters. After all, it is unlikely that representatives from states that promoted public expressions of faith would approve a federal charter that mandated hostility toward religion.

Far from aversion to public expressions of faith, however, the early state constitutions demonstrate encouragement. The Massachusetts Constitution of 1780 recognized a "duty of all men in society, publicly, and at stated seasons, to worship the Supreme Being." *Id.* at 38 (Mass. Const. part I, § 2 (1780)). The next section of the Massachusetts Constitution went on to note that "preservation of civil government, essentially depend on piety, religion, and morality" and this was best accomplished through "public worship of God, and of public instructions in piety, religion and morality." *Id.* at 39 (Mass. Const. part I, § 3). To protect the freedom of worship, however, the constitution also prohibited government interference with the governance of religious societies and further protected "every denomination of Christians demeaning themselves peaceably" by guaranteeing them equal protection of the law. *Id.* at 40 (Mass. Const. part I, § 3). This section of the constitution also forbade "subordination of any one sect or denomination to another." *Id.*

Rhode Island's constitution was initially published as an addition to the colonial charter. *Id.* at 131. The constitution itself was relatively sparse, but included a provision prohibiting religious establishments "any farther than depends upon the

voluntary choice of individuals." *Id.* (Rhode Island Charter). This freedom was apparently qualified, however, in the next sentence: "All men professing one Supreme Being are equally protected by the laws, and no particular sect can claim preeminence." *Id.*

Many early state constitutions contained some form of "free exercise" clause that guaranteed a right to worship. One example is found in New Jersey's constitution guaranteeing that "no person shall ever within this colony be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience." *Id.* at 175 (N.J. Const. art. XVIII (1776)). Similar provisions are found in the constitutions of New York, Pennsylvania, Delaware, and North Carolina. *Id.* at 162 (N.Y. Const. art. XXXVIII (1777)), 183 (Pa. Const. art. II (1776)), 212 (Del. Const. art. 29 (1776)), 294 (N.C. Const. part A, art. 19 (1776)). There does not appear to be a similar protection of lack of religious belief. Indeed, lack of belief was a disqualification from public office in a number of states.

The Maryland Constitution required office holders to subscribe "a declaration of [their] belief in the Christian religion." *Id.* at 246 (Md. Const. part A, art. XXXV (1776)). Members of the Pennsylvania Legislature were required to make a more detailed pledge: "I do believe in one God, the Creator and Governor of the Universe, the rewarder of the good, and the punisher of the wicked. And I do acknowledge the scriptures of the Old and New Testament to be given by divine inspiration." *Id.* at 191 (Pa. Const. ch. 2, § 10 (1776)). Delaware's

oath of office required the profession of a Trinitarian belief while providing a right of free exercise and prohibiting the "establishment of any one religious sect in this State in preference to another." *Id.* at 229 (Del. Const. art. 22 (1776)), 233 (Del. Const. art. 29 (1776)).

These early constitutions demonstrate that the founding generation was not intent on excluding religion from the public square. Instead, many state constitutions recognized a "duty to worship." While guaranteeing freedom to practice religion and prohibiting state establishment of a particular religious sect, the state charters nonetheless recognized the value of public worship and sought to encourage public expressions of faith.

The Religion Clauses of the First Amendment were not intended to reverse these practices, but rather to ensure that the federal government could not use its new powers to reverse these public policies.

B. The Framers of the Federal Constitution Also Sought to Protect and Encourage Public Expression of Religious Faith

John Adams, the moving force behind the Massachusetts Constitution,[2] put the Founders' special view of religious liberty most vividly when, during the War for Independence he declared the expansion of free exercise in some states "so far as to give compleat Liberty of Conscience to Dissenters" was "worth all of the Blood and Treasure which has been and will be Spent in this war." *Letter of John*

[2] Baum & Fritz, *supra*, at 202.

Adams to James Warren, Feb. 3, 1777, *in* 6 LETTERS OF DELEGATES TO CONGRESS, 1774-1789, at 202 (P.H. Smith ed., 2000). As noted in the Massachusetts state constitution, this liberty of conscience entailed public expression of faith. Jackson, *supra*, at 38. James Madison reiterated this point while opposing a bill for the establishment of the Anglican Church as the official religion of Virginia. Madison noted that religious duties take precedence, and that a man, upon entering society and a social contract with government, does not shed his responsibilities to God:

> It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe.

James Madison, *Memorial and Remonstrance*, *in* FAITH OF OUR FATHERS 142-43 (Edwin S. Gaustad ed., 1987).

For Americans in the eighteenth century, religious freedom included both the right of the individual to free exercise and the right of religious organizations to autonomy, including the ability to choose their own leaders, free from civil interference. *See* Jackson, *supra*, at 40 (Massachusetts Constitution), 209 (Pennsylvania Constitution), 244 (Maryland Constitution). The free exercise clauses in state constitutions around the time of the founding "seem to allow churches and other religious

institutions to define their own doctrine, membership, organization, and internal requirements without state interference." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1464-465 (1990). In addition, "[f]ree exercise of religion also embraced the right of the individual to join with like-minded believers in religious societies, which religious societies were free to devise their own modes of worship, articles of faith, standards of discipline, and patterns of ritual." John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 Notre Dame L. Rev. 371, 395 (1996).

The founding generation did not see a conflict between prohibitions on establishment of a particular religious sect on the one hand, and encouragement of religion in citizens and public officials on the other. Instead, religion was viewed as necessary to civil society and properly functioning government, and, therefore, civil authorities would be wise to foster it as long as specific sects were not singled out for preference or punishment. Zabdiel Adams, the cousin of both John and Samuel Adams, declared that "religion and morality among the people, are an object of the magistrate's attention. As to religion, they have no farther call to interpose than is necessary to give a general encouragement." Zabdiel Adams, *An Election Sermon*, Boston, 1782, *in* 1 Charles S. Hyneman & Donald S. Lutz, AMERICAN POLITICAL WRITING DURING THE FOUNDING ERA, 1760-1805, at 556 (1983). George Washington's Farewell Address cautioned the country from erroneously thinking the government could function without religion among the people, and urged politicians and

citizens alike "to respect and to cherish" religion. George Washington, *Farewell Address*, Sept. 19, 1796, *in* 35 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES 229 (John C. Fitzpatrick ed., 1931-1944). And Daniel Shute, an advocate of the new federal constitution at Massachusetts' ratifying convention, presented that era's views on religion's link to the public good when he stated:

> The great advantages accruing from the public social worship of the Deity may be a laudable motive to civil rulers to exert themselves to promote it . . . there is indeed such a connection between them [church and state], and their interest is so dependent upon each other, that the welfare of the community arises from things going *well* in both; and therefore both, though with such restrictions as their respective nature requires, claim the attention and care of the civil rulers of a people, whose duty it is to protect, and foster their subjects in the enjoyment of their religious rights and privileges, as well as civil, and upon the same principle of promoting their happiness.

Daniel Shute, *An Election Sermon*, Boston, 1768, *in* Hyneman & Lutz, *supra*, at 120.

The Founders' actions matched their words. Benjamin Franklin recalled that the First Continental Congress held daily supplications to Deity. 1 *The Records of the Federal Convention of 1787*, at 451-52 (Max Farrand ed., 1911). He would later scold the constitutional convention for

forgetting that "powerful Friend" who had helped them gain independence, and then moved that daily prayer be again instituted, though the motion eventually failed due to lack of funds to hire chaplains. *Id.* During the War of Independence General Washington sought funds to hire military chaplains of every denomination for his troops, and was upset when the Continental Congress planned to appoint chaplains at the brigade rather than smaller regimental level because it "in many instances would compel men to a mode of Worship which they do not profess." *Letter from George Washington to the President of Congress*, June 8, 1777, *in* 8 Fitzpatrick, *supra*, at 203.

The Continental Congress saw nothing amiss with authorizing legislative and military chaplains supported by taxes, appropriating funding from taxes for missionaries and religious school, proclaiming days of prayer, fasting, and thanksgiving, having prayers said at the opening of its sessions and on thanksgiving days, establishing diplomatic ties with the Vatican, or providing for the importation of Bibles. Arlin M. Adams & Charles J. Emmerich, *A Nation Dedicated to Religious Freedom: The Constitutional Heritage of the Religion Clauses* 10 (1990). Furthermore, the first U.S. Congress did not find it to be a violation of church-state relations to select two official chaplains (of different denominations) as a joint congressional resolution required, or to implement the Northwest Ordinance with its language that religion was "necessary to good government and the happiness of mankind." James H. Hutson, *Religion and the Founding of the American Republic* 79 (Library of Congress, 1998); 1 Stat. 52, Article III (1787); Gaustad, *supra*, at 156.

Even Thomas Jefferson, author of the infamous "wall of separation" quote, opened federal buildings to public worship. As President, Jefferson attended church services held on Sundays by numerous denominations in the House of Representatives, apparently seeing nothing wrong with Congress using its property to facilitate religious worship as long as it was open to all sects. *Manasseh Cutler to Josiah Torrey*, Jan. 3, 1803 *in* 2 LIFE JOURNALS AND CORRESPONDENCE OF REV. MANASSEH CUTLER, LL.D. 119 (William Parker Cutler & Julia Perkins Cutler eds., 1888); *see also Forty Years of Washington Society* 13 (Gaillard Hunt ed., 1906). Jefferson decided to open the War Office and the Treasury, both buildings of the executive branch, for the use of all denominations for Sunday services starting in 1801. Hutson, *supra*, at 89. Interestingly, the Supreme Court's chambers were also used for church services during Jefferson's administration, leading to the observation that "on Sundays in Washington during Thomas Jefferson's presidency, the state became the church." *Id.* at 91. Given this history, it would be odd indeed if the government required that a sectarian religious service be open to people of other faiths or even non-believers, much the leadership of the religion, as a condition on use of the government's forum.

Quite simply, there is no support in the history of the Religion Clauses that would justify the University of California's actions in this case. The University cannot claim that it is merely insuring that it is not "establishing" a religion. Use of University property for religious exercises or religious societies is no more an establishment of religion than was Jefferson's decision to allow church

services in federal buildings. The Religion Clauses were not designed to outlaw religion, but rather to encourage and protect it, and especially its public expression.

The University's actions run contrary to the constitutional policy of protecting religious expression and violate the students' the freedom of association.

II

PETITIONER'S HAVE A FIRST AMENDMENT ASSOCIATIONAL RIGHT TO DETERMINE THE QUALIFICATIONS OF MEMBERSHIP

A. Freedom of Association Is a Key to Freedom of Expression Under the First Amendment

Founding history and Supreme Court precedent recognize the fundamental nature of the First Amendment's guarantee that Americans may gather together, informally or through civic organizations, for the purpose of forming an "expressive association."[3] This Court has further recognized that part and parcel of the right of freedom of association is the determination of the form and content of the message to be expressed. *See Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); *Hurley v. Irish-American Gay, Lesbian & Bisexual Club of Boston*, 515 U.S. 557 (1995); *New York State Club Ass'n, Inc.*

[3] In *Abood v. Detroit Bd. of Educ.*, this Court unequivocally recognized the importance of an individual's right to freely associate, holding, "Our decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments." 431 U.S. 209, 233 (1977).

v. City of New York, 487 U.S. 1 (1988); *Bd. of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987); and *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984). Included in this right, and perhaps the most fundamental tenet of the freedom of association, is the right of the association itself to determine who shall be admitted to membership. Moreover, this Court has recognized that this determination rests in the hands of the association itself; that for a law, regulation or court edict to manipulate the membership of a private association by compelling the inclusion of those who dissent from the message to be expressed is exactly the same as compelling the association to alter its expression. Under the regulation at issue, the Christian Legal Society must give up control over its beliefs and membership in order to be treated equally with other student groups for access to University facilities and student activity fees. No other student group is required to abandon their rights of association.

During debate in the convention which gave us our Constitution, Gouverneur Morris noted that "every Society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted." Farrand, *supra*, at 238. The sanctity of that principal continues to be recognized to this day: "There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire." *Roberts*, 468 U.S. at 623. Professor Tribe has noted, "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being."

Laurence Tribe, *American Constitutional Law* 791 (1st ed. 1978). *See also Democratic Party of the U.S. v. Wisconsin*, 450 U.S. 107, 122 (1981), where this Court held that the freedom associate to promote shared values includes "freedom to identify the people who constitute the association, and to limit the association to those people only." Thus, "Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts*, 468 U.S. at 623 (citing *Abood*, 431 U.S. at 234-35).

Although not absolute, the freedom to choose one's associates is particularly strong in the context of intimate and expressive associations, such as those fostered by the Christian Legal Society at issue here. This right remains crucial to the continued flourishing of this Republic by "preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Dale* 530 U.S. at 647-48. Inherent in this concern, is the protection of expressive associations from those that do not share their own views or purpose. Without such protections, the existence and mission of the association would be compromised by forced inclusion of those that wish their ideals harm. Such a result would be disastrous to the spirit of the American people, for as Alexis de Tocqueville observed more than a century and a half ago, "[the intellectual and moral associations in America] are as necessary as the [political and industrial associations] to the American people, perhaps more so." Alexis de Tocqueville, *Democracy in America* 517 (J.P. Mayer ed., George Lawrence trans., HarperPerrenial 1969) (1835).

By forcing the Christian Legal Society to open its leadership positions to those who espouse by word and deed a position contrary and adverse to the Society as a condition to equal access to University facilities and student activity fees, the University ignores the principle set forth in *Roberts*, *Rotary Club*, *New York State Club Ass'n*, and *Dale*. In each of those cases, this Court recognized that a private association could not be forced to admit members whose views were contrary to those of the organization. In *Roberts*, this Court upheld a decision requiring the Jaycees to admit women *only after* finding that the Minnesota public accommodations law did not require any change in the organization's creed or impose any restrictions on its "ability to exclude individuals with ideologies or philosophies different from those of its existing members." 468 U.S. at 627. In *Rotary Club*, this Court upheld a similar decision requiring the Rotary Clubs to admit women *only after* finding that the admission of women would not affect that organization's ability to carry out its purposes "in any significant way." 481 U.S. at 548.

Further, in *Dale* this Court held that "forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." 530 U.S. at 648 (citing *New York State Club Ass'n*, 487 U.S. at 13). Like the Boy Scouts of America in *Dale*, the Christian Legal Society is founded upon a common belief in morality and faith. Should the Society be forced to open leadership positions to individuals who oppose the core beliefs of the Society, its ability to advocate public or private

viewpoints would be destroyed. The cornerstone on which all associations are built is the belief that each member will advocate for the association in a manner that furthers its purpose.

As this Court noted in *New York State Club Ass'n*: "If a club seeks to exclude individuals who do not share the views that the club's members wish to promote, the Law erects no obstacle to this end." 487 U.S. at 13. Invidious discrimination is simply not at work when the Christian Legal Society limits voting membership to Christians sharing the same religious beliefs.

"[U]nder the First Amendment, [] a speaker has the autonomy to choose the content of his own message." *Hurley*, 515 U.S. at 573. This basic understanding is also at work in Justice O'Connor's concurrence in *Roberts*, where she noted, "[p]rotection of the association's right to define its membership derives from the recognition that the formation of an expressive association is the creation of a voice, and the selection of members is the definition of that voice." 468 U.S. at 633. In this case, the University has decided to suppress the voice of the Christian Legal Society and replace it with the University's message of hostility to the group's beliefs. By imposing a requirement that the Christian Legal Society must admit to its leadership and voting membership those who oppose its core religious beliefs the University has violated students' First Amendment right of freedom of association.

It is through the common purpose that an association (i.e. club, group, etc.) finds its identity. By forcing Christian Legal Society to include as leaders and voting members those who do not share

this common interest, the University has deprived the Society of its identity and meaning. "There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire." *Roberts*, 468 U.S. at 623. In this case, however, the violation is much worse. One imagines that the Christian Legal Society genuinely hopes that all students at Hastings would be willing to make the faith commitment necessary for membership in the organization. However, by conditioning equal access to University facilities and student activity fees on the Society's acceptance, as voting members, of those who actively oppose the core religious beliefs of the group, the University destroys the ability of the group to be an expressive association. *Id.* Such an outcome negates the basic understanding of an association as an avenue for individuals to join with like-minded individuals to pursue a common purpose.

The reason that associations and other like groups require membership to share common beliefs and purpose is to ensure the safety of the association's message. This Court has long sought to protect this ideal by ensuring that membership standards be upheld. *Dale*, 530 U.S. at 653.

A regulation forcing a religious society to open leadership and voting membership positions to irreligious students destroys the organization. This regulation prohibits the message of the Christian Legal Society and instead permits only the University's message that those who share the Society's beliefs are not welcome to participate on campus.

Such an outcome strikes at the very heart of the First Amendment and the "notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State." *Abood*, 431 U.S. at 235. By forcing the Christian Legal Society to abandon its religious convictions, the University is rewriting the Society's message and therefore its belief, all under a veil of viewpoint neutrality.

B. The University Engages in Unconstitutional Viewpoint Discrimination By Taxing Students for Support of Clubs and Then Dictating Beliefs and Membership Policies

By refusing university recognition, the University has discriminated against the Christian Legal Society on the basis of its Christian viewpoint. As this Court has held, viewpoint discrimination is a more deliberate and particularly "egregious form of content discrimination." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992)). As such, viewpoint discrimination is presumed to be unconstitutional. For "when the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination." *Morse v. Frederick*, 551 U.S. 393, 436 (2007) (quoting *Rosenberger*, 515 U.S. at 828-29). In this case, the University is attempting to regulate speech by the Christian Legal Society by conditioning the Society's access to University

facilities and student activity fees to agreement to abandon the group's faith-based principles. No other student group is subject to such prohibited viewpoint discrimination.

Just as the newspaper in *Rosenberger*, the Christian Legal Society also espouses the Christian viewpoint. This viewpoint is summarized in its Statement of Faith, which encompasses belief in Christian doctrine as written in the Bible, a*vailable at* http://www.clsnet.org/society/about-cls/statement-faith (last visited Feb. 2, 2010). Grounded in its view of the Christian faith, this viewpoint not subject to change or mitigation. The University cannot, consistent with the First Amendment, deny the Christian Legal Society equal access to University facilities and student activity fees based solely on the organization's faith.

CONCLUSION

The Founders sought to protect and encourage religious expression. They believed that public worship and acknowledgement of a Supreme Being was a civic virtue that helped advance the goals of civil society. The University charts a different path. It would like a campus free of religious speech (or at least, free of this religious speech) and thus seeks to suppress the organization and its message.

The University's actions are contrary to the protections enshrined in the First Amendment. The Religion Clauses protect and encourage public pronouncements of faith and further protect the right of expressive association. This Court should reverse the decision of the Ninth Circuit and uphold

the Christian Legal Society's right to set its own membership policies.

DATED: February, 2010.

Respectfully submitted,

JOHN C. YOO
KAREN J. LUGO
Center for Constitutional Jurisprudence
c/o Chapman University School of Law
One University Drive
Orange, CA 92886

ANTHONY T. CASO
Counsel of Record
Law Office of
Anthony T. Caso
8001 Folsom Blvd., # 100
Sacramento, CA 95826
Telephone: (916) 386-4432
Facsimile: (916) 307-5164

EDWIN MEESE III
214 Mass. Ave. NE
Washington, DC 20002

Counsel for Amicus Curiae
Center for Constitutional Jurisprudence