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David A. French
Director, Center for Academic Freedom
Alliance Defense Fund
15333 N. Pima Road, Suite 165
Scottsdale, AZ 85260

Re: University of Wisconsin System Policies on Recognized
Student Organizations

Dear Mr. French:

Last week, you wrote to University of Wisconsin (UW) System President Kevin Reilly, UW-Madison Chancellor John D. Wiley, UW-Superior Chancellor Julius Erlenbach and me regarding UW System policies on recognized student organizations. I have been asked to respond to your letter on behalf of all addressees.

Your letter expresses concern about laws and university policies prohibiting discrimination by recognized student organizations (RSOs) in their membership and leadership eligibility requirements. You allege that certain RSOs at UW-Madison and UW-Superior have been "de-recognized" because they discriminate. Relying on the court's decision to grant a preliminary injunction in *Christian Legal Society v. Walker*, No. 05-3239, 2006 WL 1881131, (7th Cir., 2006), you suggest that requiring nondiscrimination by RSOs as a condition of recognition violates students' First Amendment rights of free speech and association. You also suggest that failure to recognize student organizations that disagree with non-discrimination laws and policies would constitute illegal viewpoint discrimination.

Prohibitions on discrimination by RSOs are, as you know, common in universities across the nation. Many institutions of higher education, including the UW System, have repeatedly expressed their strong commitment to equal opportunity and diversity, have adopted nondiscrimination policies, and work to ensure compliance with other laws, such as s. 36.12, Wisconsin Statutes, that prohibit discrimination in the provision of educational programs.

In several recent cases, however, university policies requiring nondiscrimination as a condition of recognition as a student organization have been challenged by student groups wishing to exclude from membership and leadership positions certain protected classes of individuals (usually homosexuals). The law in this area remains unsettled. A recent decision involving the Hasting College of Law, for example, resulted in summary judgment for the college, the court holding that the college's prohibition on discrimination did not violate the First or Fourteenth Amendment rights of the plaintiffs. See, *Christian Legal Society v. Kane, et al.*, No. C 04-04484 JSW (N.D. California, 2006). The *Walker* case, to which you refer, suggests a different result, but the decision concerns only the grant of a preliminary injunction, and is not a final decision on the merits of the claims asserted. Thus, it is narrowly applicable to the parties involved, and a trial on the merits with a fully developed record might produce a different result.

The UW System will, of course, continue to monitor developments in these and other cases to ensure compliance with the law. Internal reviews of student segregated fee policies resulting from a recent audit are underway, and these reviews will include consideration of the issues you raise, as well as related policy matters involving recognition of student organizations generally, and allocation of student fees for their support in accordance with the principles of *Board of Regents v. Southworth*, 529 U.S. 217 (2000).

Finally, with regard to your assertion that certain student organizations at UW-Madison and UW-Superior have been "de-recognized," it should be noted that UW-Madison staff have been working with the Knights of Columbus to establish a student affiliate group that meets the eligibility criteria for recognition on campus as a registered student organization. The applications of the other two groups you mention are pending at this time.

Sincerely,



Patricia A. Brady
General Counsel

cc: UW System President Reilly
Chancellor Wiley
Chancellor Erlenbach
Regents