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Senator Jeff King, Chair
Senate Judiciary Committee
Statehouse
Topeka, KS 66612

Re: Senate Bill 175

Dear Senator King:

Thank you for allowing me to testify in support of SB 175 that would protect religious student groups' religious liberty by protecting their ability to meet on public college campuses.

I am Craig Shultz, a Kansas native who has practiced law in Wichita for over 35 years. I am past president of the Christian Legal Society, or "CLS," a national organization of Christian attorneys, law students, and law professors with attorney chapters in Wichita and Kansas City, Missouri. CLS also has student chapters at approximately 90 law schools, including Washburn University School of Law and the University of Kansas School of Law. In addition to its attorney and student chapters, CLS encourages its members to participate in legal aid programs.

Through its Center for Law & Religious Freedom, CLS is a leading national advocate for religious liberty and has worked for 40 years to protect religious students' right to meet on college campuses. I respectfully request that the letter from Kim Colby, Director of CLS's Center for Law & Religious Freedom, along with its attachments be included with my written statement in the record of this hearing.

Christian Legal Society has long believed that pluralism, essential to a free society, prospers only when the First Amendment rights of all Americans are protected regardless of the current popularity of their speech. For that reason, CLS was instrumental in passage of the Equal Access Act of 1984 that protects the right of all high school students - Democrats, Republicans, Christians, and LGBT students -- to meet for "religious, political, philosophical or other" speech on public secondary school campuses.

SB 175 would address the ongoing national problem of some colleges using nondiscrimination policies to exclude religious student groups from campus. At too many colleges, religious student groups have been told that they cannot meet on campus if they require their leaders to agree with their religious beliefs. But it is common sense and basic religious liberty - not discrimination -- for religious groups to expect their leaders to share their religious beliefs.

On a typical university campus, hundreds of student groups meet. As recognized student groups, they can reserve meeting space, communicate with other students, and apply for student activity fee funding available to all groups. Without recognition, it is virtually impossible to exist on campus.

The Supreme Court acknowledged the importance of recognition in its landmark 1972 decision, *Healy v. James*. The Court ruled that the First Amendment required a public college to recognize the Students for a Democratic Society. The Court rejected the college's argument that it would be endorsing the SDS's sometimes violent political agenda if it recognized the group. Recognition, the Court said, is not endorsement.

In 1981, in *Widmar v. Vincent*, the Court ruled that the First Amendment protects religious student groups' right to be recognized, and the Establishment Clause does not prohibit religious groups' meetings. Again the Court ruled that recognition is not endorsement.

After the Court removed the Establishment Clause as a justification for denying religious groups recognition, university nondiscrimination policies became the new justification.

Nondiscrimination policies are good and essential. But, at some colleges, nondiscrimination policies are being misinterpreted and misused to exclude religious student groups. Nondiscrimination policies are intended to protect religious students, not prohibit them from campus. But at too many colleges, administrators or student governments misuse nondiscrimination policies to exclude religious student groups from campus.

I was counsel for the CLS student chapter at Washburn University School of Law in 2004 when a student filed a formal complaint against CLS for discriminating on the basis of religion because it would not allow him to lead its Bible studies -- even though he had said that he did not agree with many of CLS's core beliefs. The CLS student leaders told him that he was welcome to attend CLS meetings, but he would not be allowed to lead CLS's Bible studies.

The student filed a complaint of religious discrimination against CLS with the Washburn Student Bar Association, which determined that CLS was not eligible for some benefits available to other student groups because CLS required its leaders and members to agree with its religious beliefs. Only after the CLS student chapter filed a lawsuit to regain the benefits available to other student groups did the university agree that CLS could require its leaders and members to agree with CLS's religious beliefs.

It sounds incredible, but it is true and demonstrates why SB 175 is needed to protect religious groups' right to be religious. Similar problems occur in other states. Last fall, California State University, which has 23 campuses and 450,000 students, excluded InterVarsity Christian Fellowship because it requires its leaders to agree with its basic statement of faith. A letter from Cal State to one of two student groups denying them recognition because they require their leaders to

agree with the groups' religious beliefs and standards of conduct is included in the attachments to the CLS letter from Kim Colby, referenced above.

In 2013, Vanderbilt University administrators excluded fourteen Catholic and evangelical Christian groups from campus because they required their leaders to share the groups' religious beliefs. In August 2011, Vanderbilt administrators informed the CLS student chapter that to expect its leaders to lead its Bible studies was religious discrimination. Its requirement that its leaders agree with its core religious beliefs was also discrimination. In April 2012, Vanderbilt told another Christian student group that it could remain recognized only if it deleted five words from its constitution: "personal commitment to Jesus Christ." Those students left campus rather than recant their belief in Jesus. While Vanderbilt refused to allow religious groups to have religious leadership requirements, it specifically announced that fraternities and sororities could continue to engage in sex discrimination in their selection of both leaders and members.

Legislation such as SB 175 protects students' religious liberty. SB 175 also protects colleges from adopting policies that expose colleges - and eventually state taxpayers - to costly lawsuits. Because the impetus for such policies comes from student government rather than university administrators, by passing SB 175, the legislature provides college administrators with a substantive reason for resisting student government's mistakes in judgment.

Misuse of nondiscrimination policies to exclude religious persons from the public square threatens the pluralism at the heart of our free society. The genius of the First Amendment is that it protects everyone's speech, no matter how unpopular, and everyone's religious beliefs, no matter how unfashionable. When that is no longer true--and we seem dangerously close to the tipping point--when nondiscrimination policies are misused as instruments for the intolerant suppression of traditional religious beliefs, then the pluralism so vital to sustaining our political and religious freedoms will no longer exist. SB 175 protects basic First Amendment freedoms, and it does so where those freedoms must be respected and taught--college campuses--if we are not to lose religious liberty and free speech for the next generation.

Very truly yours,

Craig Shultz

Enclosures