

In The
Supreme Court of the United States

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

Petitioner,

v.

LEO P. MARTINEZ, ET AL.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF *AMICUS CURIAE*
ADVOCATES INTERNATIONAL
IN SUPPORT OF PETITIONER**

—◆—
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**STATEMENT OF INTEREST
OF *AMICUS CURIAE*¹**

Founded in 1992, Advocates International (“AI”) is an international association of lawyers, law students, law professors, and judges who share a common Vision, Mission and Statement of Christian Faith, Commitment and Practice similar to the core values and statement of faith for which Petitioner was denied recognition by Respondents in this case. AI is also a tax-exempt 501(c)(3) not-for-profit organization incorporated in the Commonwealth of Virginia.² Since the fall of the Berlin Wall in 1989 and the subsequent collapse of the USSR in 1991, AI’s core mission has been to mobilize advocates around the globe to promote the rule of law, religious freedom, human rights and peaceful conflict resolution. AI also views strengthening professional responsibility and ethical integrity within the legal profession and the judiciary as core components of its mission.

AI’s global network informally links thousands of advocates – composed largely of lawyers, judges, law professors and students – in about 150 nations

¹ Pursuant to Rule 37.6, *Amicus* disclose that: (1) no counsel for a party authored this brief, in whole or in part; and (2) no person or entity has made a monetary contribution to the preparation or submission of this brief. As required by Rule 37.3(a), letters from all the parties consenting to the filing of this *amicus* brief have been received by *Amicus* and submitted for docketing with the Clerk of Court.

² See AI’s web site for further information, www.advocatesinternational.org.

through regional networks organized on each of the six continents, such as Advocates Africa, Advocates Asia and Advocates Europe. Since its inception, AI, through its Global Council, six regional networks and its more than 100 affiliated national groups have conducted over 150 conferences addressing human rights, including the problems associated with the state-imposed discrimination or denial of the freedoms of speech, association and moral conscience rooted in sincerely held religious beliefs, such as those involved in this case. In the past 17 years, well over 25,000 conferees have participated in these sessions locally, nationally, regionally and globally. In October 2008, over 1,000 advocates convened for just these purposes at the Advocates International 5th Global Convocation in Washington, DC.

Through its national affiliates, the AI network has been extensively engaged in advocacy before government agencies, legislatures, as well as in both trial and appellate courts on all continents, including participating as *amicus curiae* in cases before this Court. In many such matters, the central issue involved the rights of religious minorities to exercise their fundamental rights, particularly those impacting the freedom of expression, freedom of conscience, freedom of belief, freedom of religion, freedom of association and freedom of the press.

A serious concern of AI, its regional networks and national affiliates is the growing worldwide state denial of the fundamental rights of freedom of speech, association and religion in cases analogous to the

instant case where private religious fellowships who otherwise pose no threat to public health or safety, like the CLS Law Student Chapter in this case, are discriminatorily denied registration or recognition because of their disfavored religious beliefs, ideals or commitments.



STATEMENT OF THE CASE

Amicus adopts the Statement of the Case as set forth in the Brief for Petitioner. Pet. Brief at 2-20.



SUMMARY OF ARGUMENT

As Petitioner’s Brief emphasizes, this case does *not* present a “clash between religious freedom and rights pertaining to sexual orientation.” Pet. Brief at 58. Rather, under the false rubric of “non-discrimination” asserted by Respondents in this case, the contested state university policy and practice actually presents an unreasonable and unwarranted challenge by Respondents to the well-established First Amendment jurisprudence of this Court that has long-protected the rights of all people, including religious people like Petitioner, to privately associate without state discrimination in any public forum for the free expression of their most deeply held beliefs.

While not otherwise binding on this Court, it is a well-established prudential practice in this Court to cite and rely on foreign law in the process of both upholding and striking down the constitutionality of federal or state laws. While not without its critics, this practice seems least controversial when the Court cites and relies on international instruments and foreign laws and adjudicated judgments which merely serve to confirm a universally acknowledged principle of human rights already firmly rooted in our nation's constitutional jurisprudence. Such an instance is presented in this case.

Amicus write to inform the Court that this case presents an issue of common concern to people all over the world who, like Petitioner, face growing state denials or impermissible conditions perniciously designed to muzzle the exercise of their freedoms of speech, association and religion in cases analogous to the instant case where private religious fellowships who otherwise pose no threat to public health or safety are discriminatorily denied registration or recognition because of their disfavored religious beliefs, ideals or commitments.

The universally acknowledged freedoms of speech, association and religion set forth in the UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), the INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR) and the EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR), as adjudicated in analogous cases by the European Court of Human Rights, confirm the

prudential wisdom of the applicable First Amendment cases upon which Petitioner relies in asking this Court to reverse the judgment below. *Amicus* joins in this request.

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ARGUMENT

I. The Freedoms of Speech, Association and Religion Protected by International Human Rights Declarations and Covenants to which the United States Is a Signatory Support Reversal of the Decision Below

Obviously inspired, in part, by the already well-established First Amendment principles involved in this case, the rights of individuals to freely express themselves, form and exercise their religious beliefs according to the dictates of their conscience, and come together and form associations for these and other purposes – political parties, social and cultural associations, churches, human rights organizations, trade unions, charitable welfare associations and the like – were clearly established in international law more than 60 years ago when the United Nations (UN) General Assembly adopted the UNIVERSAL DECLARATION OF HUMAN RIGHTS on December 10, 1948. GA res. 217A (III), UN Doc. A/810 at 71 (1948).

Article 2 of that Declaration (the “UDHR”) expansively states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without

distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UDHR, Article 7 states:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

UDHR, Article 18 states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

UDHR, Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

UDHR, Article 20 states:

Everyone has the right to freedom of peaceful assembly and association.

In recognition of the fact that the UDHR does not of its own force impose obligations as a matter of international law, the United Nations General Assembly, on December 16, 1966, adopted the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) as a multilateral treaty committing its parties to respect the civil and political rights of individuals, including the rights to freedom of speech, religion and assembly implicated in this case. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. As of October 2009, the Covenant had 72 signatories, including the United States, and 165 parties.³

With the intention of turning the UDHR's aspirations into binding legal obligations, the ICCPR, *inter alia*, also seeks to protect the freedoms of speech, religion and association that are involved in this case.

³ The United States Senate ratified the ICCPR in 1992, with five reservations, five understandings, and four declarations. U.S. RESERVATIONS, DECLARATIONS, AND UNDERSTANDINGS, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 138 CONG. REC. S4781-01 (daily ed., April 2, 1992). Included in the Senate's ratification was the declaration that "the provisions of Article 1 through 27 of the Covenant are not self-executing". *Id.* at S4781-84 and in a SENATE EXECUTIVE REPORT stated that the declaration was meant to "clarify that the Covenant will not create a private cause of action in U.S. Courts." S. Exec. Rep. No. 102-23 (1992); *see generally* Louis Henkin, *U.S. Ratification of Human Rights Treaties: The Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341, 346 (1995).

ICCPR, Article 3, states:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ICCPR, Article 18, establishing the freedom of thought, conscience and religion states:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

ICCPR, Article 19, establishing the freedom of expression states:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order, or of public health or morals.*

ICCPR, Article 21, establishing the right of peaceful assembly, states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or

morals or the protection of the rights and freedoms of others.

ICCPR, Article 22, establishing the freedom of association, in pertinent part, states:

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. . . .*

While this Court has recognized the “moral authority” that the above-cited international authorities are entitled to receive, it has also held that these authorities are not binding law in this country. *Sosa v. Alvarez-Machin*, 542 U.S. 692, 734 (2004). More recently, the Court has also said that “the opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.” *Roper v. Simmons*, 543 U.S. 551, 578 (2005). Such confirmatory reliance is especially appropriate in this case where the confirmatory international or foreign law sources cited above simply affirm “fundamental rights” and confirm well-established First Amendment precedents securing “individual freedoms” under our constitutional law.

In the words of this Court written by Justice Kennedy in *Roper v. Simmons* and joined by Justices Stevens, Souter, Ginsberg and Breyer):

Over time, from one generation to the next, the Constitution has come to earn the high respect and even, as Madison dared to hope, the veneration of the American people. See The Federalist No. 49, p. 314 (C. Rossiter ed.1961). The document sets forth, and rests upon, innovative principles original to the American experience, such as federalism; a proven balance in political mechanisms through separation of powers; specific guarantees for the accused in criminal cases; and broad provisions to secure individual freedom and preserve human dignity. These doctrines and guarantees are central to the American experience and remain essential to our present-day self-definition and national identity. Not the least of the reasons we honor the Constitution, then, is because we know it to be our own. It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.

Id. See generally Steven G. Calabresi, *A Shining City on a Hill: American Exceptionalism and the Supreme Court's Practice of Relying on Foreign Law*, 86 BOSTON U. L. REV. 1335 (2006).

For all of the reasons set forth in the Brief of Petitioner, this is an important case about religious liberty affecting the First Amendment expressive association, equal access and the viewpoint non-discrimination rights of thousands of religious student groups at university campuses throughout the nation. But it is also a case where this Court's reversal of the decision below will not only affirm its own applicable First Amendment precedents, but it will also affirm in the circumstances of this kind of case the fundamental freedoms of speech, religion and association protected by the international norms set forth in UDHR and ICCPR that protect people all over the world. A result not only deserving of the "veneration of the American people," but the grateful thanks of freedom-loving people around the world.

II. Analogous Cases Adjudicated by the European Court of Human Rights Interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms Consistently Confirm the Precedents of this Court Supporting the Reversal of the Decision Below.

THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the

convention entered into force on September 3, 1953.⁴ All 47 Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.⁵

Section II of the ECHR established the European Court of Human Rights (the European Court). Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the European Court. The decisions of the Court are not automatically legally binding, but the Court does have the power to award damages. The establishment of the European Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The ECHR is still the only international human rights agreement providing such a high degree of individual protection. As such the European Court's adjudication of cases and issues analogous to those presented in this case are instructive and are respectfully offered by *Amicus* in

⁴ CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, CETS No.: 005, open for signature, April 11, 1950; entry into force, with 10 ratifications, March 9, 1953. See generally <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

⁵ COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY, Resolution 1031 (1994). [Http://assembly.coe.int/Documents/AdoptedText/TA94/ERES1031.HTM](http://assembly.coe.int/Documents/AdoptedText/TA94/ERES1031.HTM)

confirmatory support of this Court's reversal of the decision below.

Like the UDHR and ICCPR, the ECHR protects the same fundamental rights that are asserted by Petitioner in this case.⁶ Under the ECHR, any association of individuals for religious purposes, like Petitioner, would enjoy – as a society – rights of freedom of religion, freedom of expression, freedom of association and non-discrimination under ECHR Articles 9, 10, 11 and 14, respectively.

A. Freedom of Thought, Conscience and Religion

ECHR, Article 9 – Freedom of thought, conscience and religion, provides:

- 1 *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2 *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a*

⁶ ECHR, Article 1 – Obligation to respect human rights, provides: “*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I [Article 2 through 18] of this Convention.*”

democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

In *Kokkinakis v. Greece* (1994) 17 EHRR 397, the European Court considered a case involving a man prosecuted for proselytism for trying to convert the wife of a Greek Orthodox cantor in Crete to his Jehovah's Witness faith. In finding the prosecution violated ECHR, Article 9, the European Court stated:

31. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions. According to Article 9 (art. 9), freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try

to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 would be likely to remain a dead letter. Thus Article 9 protects not only the right to have and to change a belief, but the right to seek to persuade others to change their faith."

As argued by Petitioner in this case the "religion" and "sexual orientation" provisions of Respondent's Nondiscrimination Policy is viewpoint-discriminatory in violation of their First Amendment rights as interpreted by the prior decisions of this Court. Pet. Brief at 36-41. As these same principles were adjudicated by the European Court in its *Kokkinakis* decision, ECHR, Article 9, requires no less protection than Petitioner asserts in this case.

B. Freedom of Expression

ECHR, Article 10 – Freedom of expression, provides:

- 1 *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2 *The exercise of these freedoms, since it carries with it duties and responsibilities, may*

be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In *Handyside v. United Kingdom*, (5493/72) [1976] ECHR 5 (7 December 1976), the European Court considered a case where the publisher had been charged with printing an obscene publication in violation of the OBSCENE PUBLICATIONS ACT, the Court held that the Act, as applied, violated ECHR, Article 10, stating:

49. Court's supervisory functions oblige it to pay the utmost attention to the principles characterizing a "democratic society". Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of ECHR, Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness

without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.

As Petitioner’s Brief argues, it doesn’t matter whether the theological or ethical views of Petitioner are socially unfavorable or offend Respondents. In this case Petitioner is protected by its First Amendment rights of free speech and expressive association. Pet. Brief at 21-34. As adjudicated in the European Court’s *Handyside* decision, ECHR, Article 10, only serves to support and confirm this just conclusion.

C. Freedom of Assembly and Association

ECHR, Article 11 – Freedom of assembly and association, in pertinent part, provides:

- 1 *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2 *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. . . .*

In *Sidiropoulos and Others v. Greece*, (57/1997/841/1047) (10 July 1998), the European Court considered the refusal of the Greek authorities to register a proposed cultural association, ('Home of Macedonian Civilisation'). In finding a violation of ECHR, Article 11, the Court stated:

40. The Court points out that the right to form an association is an inherent part of the right set forth in Article 11, even if that Article only makes express reference to the right to form trade unions. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions. Consequently, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes

hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.

Most recently, in *Moscow Branch of the Salvation Army v. Russia* (Application No. 72881/01) (5 October 2006), the European Court found a violation of ECHR, Article 11, read in the light of ECHR, Article 9 in Russia’s refusal to re-register the Moscow Branch of the Salvation Army. This decision contains the fullest statement so far of the relevant Convention principles concerning religious associations.

The Court stated:

57. *The Court refers to its settled case-law to the effect that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (see Metropolitan Church of Bessarabia and Others v. Moldova, no. 45701/99, § 114, ECHR 2001-XII).*

58. *While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to “manifest [one’s] religion” alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one’s religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious*

communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see Metropolitan Church of Bessarabia, cited above, §§ 118 and 123, and Hasan and Chaush v. Bulgaria [GC], no. 30985/96, § 62, ECHR 2000-XI).

59. The Court further reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see Sidiropoulos and Others v. Greece, judgment of 10 July 1998, Reports of Judgments and Decisions 1998-IV, § 40).

In requiring adherence to its Statement of Faith by its members, particularly its leaders, Petitioner in

this case is acting in accordance with its religious freedom and expressive association rights protected by the Court's First Amendment jurisprudence to associate with those it pleases and determine the identity of its association by what it expresses and determines not to express. Respondents' imposition of an alternative standard for such association in the form of its Nondiscrimination Policy represents a prima facie restriction of that fundamental right. Like the Greek and Russian governments adjudicated in the European Court's *Sidiropoulos* and *Moscow Branch of the Salvation Army* decisions, Respondents have simply failed to provide a legitimate, much less any "convincing and compelling reasons" needed to justify restrictions on Petitioner's freedom of association. ECHR, Article 11, as interpreted by the European Court, only serves to support and confirm these compelling conclusions fact and law.

D. Prohibition of Discrimination

ECHR, Article 14 – Prohibition of discrimination, provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In *Thlimmenos v. Greece* (2000) 9 B.H.R.C. 12, the European Court had to consider the problem of a

Jehovah's Witness whose conscientious objection led to his being denied entry to the accountancy profession. The Court found unlawful religious discrimination under ECHR, Article 14, in conjunction with a violation of ECHR, Article 9. The Court explained its holding, as follows:

40. The Court recalls that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols. [Citations omitted]

41. The Court notes that the applicant was not appointed a chartered accountant as a result of his past conviction for insubordination consisting in his refusal to wear the military uniform. He was thus treated differently from the other persons who had applied for that post on the ground of his status as a convicted person. The Court considers that such difference of treatment does not generally come within the scope of Article 14 in so far as it relates to access to a particular profession, the right to freedom of profession not being guaranteed by the Convention.

42. *However, the applicant does not complain of the distinction that the rules governing access to the profession make between convicted persons and others. His complaint rather concerns the fact that in the application of the relevant law no distinction is made between persons convicted of offences committed exclusively because of their religious beliefs and persons convicted of other offences. In this context the Court notes that the applicant is a member of the Jehovah's Witnesses, a religious group committed to pacifism, and that there is nothing in the file to disprove the applicant's claim that he refused to wear the military uniform only because he considered that his religion prevented him from doing so. In essence, the applicant's argument amounts to saying that he is discriminated against in the exercise of his freedom of religion, as guaranteed by Article 9 of the Convention, in that he was treated like any other person convicted of a serious crime although his own conviction resulted from the very exercise of this freedom. Seen in this perspective, the Court accepts that the "set of facts" complained of by the applicant – his being treated as a person convicted of a serious crime for the purposes of an appointment to a chartered accountant's post despite the fact that the offence for which he had been convicted was prompted by his religious beliefs – "falls within the ambit of a Convention provision", namely Article 9.*

43. *In order to reach this conclusion, the Court, as opposed to the Commission, does*

not find it necessary to examine whether the applicant's initial conviction and the authorities' subsequent refusal to appoint him amounted to interference with his rights under Article 9 § 1. In particular, the Court does not have to address, in the present case, the question whether, notwithstanding the wording of Article 4 § 3 (b), the imposition of such sanctions on conscientious objectors to compulsory military service may in itself infringe the right to freedom of thought, conscience and religion guaranteed by Article 9 § 1.

44. The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [Citations omitted] However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

45. It follows that Article 14 of the Convention is of relevance to the applicant's complaint and applies in the circumstances of this case in conjunction with Article 9 thereof.

46. *The next question to be addressed is whether Article 14 of the Convention has been complied with. According to its case-law, the Court will have to examine whether the failure to treat the applicant differently from other persons convicted of a serious crime pursued a legitimate aim. If it did the Court will have to examine whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised [Citations omitted]*

47. *The Court considers that, as a matter of principle, States have a legitimate interest to exclude some offenders from the profession of chartered accountant. However, the Court also considers that, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The Court takes note of the Government's argument that persons who refuse to serve their country must be appropriately punished. However, it also notes that the applicant did serve a prison sentence for his refusal to wear the military uniform. In these circumstances, the Court considers that imposing a further sanction on the applicant was disproportionate. It follows that the applicant's exclusion from the profession of chartered accountants did not pursue a legitimate aim. As a result, the*

Court finds that there existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a serious crime.

Just as in the *Thlimmenos* case, Respondents acting under color of their Nondiscrimination Policy are violating Petitioner's religious freedoms and discriminatorily excluding it from recognition without any objective and reasonable justification for treating Petitioner differently than Respondent has treated other student groups. For this reason alone, as set forth in Petitioner's Brief, Petitioner's First Amendment rights have been violated. As adjudicated in the European Court's *Thlimmenos* decision, ECHR, Article 11, only serves to support and confirm this just conclusion.

III. Reversal of the Decision Below Can Only Have a Beneficial Judicial Influence on the Rights of Religious Organizations Around the World to Freely Associate Without State Discrimination Based upon their Religious Identity

Amicus write to inform the Court that this case presents an issue of common concern to people all over the world who, like Petitioner, face growing state denials or impermissible conditions perniciously designed to muzzle the exercise of their freedoms of speech, association and religion in cases analogous to the instant case where private religious fellowships who otherwise pose no threat to public health or

safety are discriminatorily denied registration or recognition because of their disfavored religious ideals or commitments.

If the decision below is not reversed, this Court's well-respected decisions protecting student equal access, expressive association, and viewpoint non-discrimination, fully set forth in Petitioner's Brief, will be lost or compromised not only to the detriment of religious American students, but also to the detriment of religious people and organizations, including students, who are being persecuted for their exercise of these rights all over the world.

The universally acknowledged freedoms of speech, association and religion set forth in the UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), the INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR) and the EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ECHR), as adjudicated in analogous cases by the European Court of Human Rights, confirm the jurisprudential wisdom of the applicable First Amendment cases upon which Petitioner relies in asking this Court to reverse the judgment below. *Amicus* join in this request.



CONCLUSION

Amicus request that this Court affirm the applicable constitutional principles set forth in its well-established First Amendment jurisprudence, with the confidence that these principles are only confirmed and supported by the applicable international and foreign law. Applying these principles to the undisputed facts in this case, *Amicus* urges this Court to reverse the judgment below.

Respectfully submitted,

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APPENDIX A

ADVOCATES INTERNATIONAL CORE VALUES

VISION

A WORLDWIDE FELLOWSHIP OF ADVOCATES BEARING WITNESS OF JESUS CHRIST THROUGH THE LEGAL PROFESSION.

MISSION

ENCOURAGING AND ENABLING ADVOCATES TO MEET LOCALLY, ORGANIZE NATIONALLY, COOPERATE REGIONALLY AND LINK GLOBALLY TO PROMOTE JUSTICE, RULE OF LAW, RELIGIOUS FREEDOM, RECONCILIATION AND INTEGRITY.

STATEMENT OF FAITH, COMMITMENT AND PRACTICE

- WE ACKNOWLEDGE GOD'S REVELATION IN THE LORD JESUS CHRIST.
- WE CONFESS JESUS AS GOD AND SAVIOR ACCORDING TO THE OLD AND NEW TESTAMENT SCRIPTURES.
- WE BELIEVE THE SCRIPTURES AS ORIGINALLY GIVEN BY GOD ARE DIVINELY INSPIRED, TRUSTWORTHY AND ENTIRELY AUTHORITY IN ALL MATTERS OF FAITH AND CONDUCT.
- WE COMMIT OURSELVES, IN OBEDIENCE TO GOD'S WILL AND IN THE POWER OF THE HOLY SPIRIT, TO BEAR WITNESS TO JESUS CHRIST THROUGH THE LEGAL PROFESSION BY WORKING FOR JUSTICE, PEACE, TRUTH, MERCY AND INTEGRITY.

App. 2

- WE COMMIT OURSELVES TO BE ADVOCATES FOR THE POOR, VULNERABLE AND OPPRESSED.
 - WE SHALL ENDEAVOR TO ENCOURAGE AND ENABLE LAWYERS TO MEET LOCALLY, ORGANIZE NATIONALLY, COOPERATE REGIONALLY AND LINK GLOBALLY.
 - WE SHALL SEEK TO DO ALL TO THE GLORY OF THE ONE GOD, FATHER, SON AND HOLY SPIRIT.
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